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BILL NO.: House Bill 1404 – Public Utilities - Energy Generation and Transmission

COMMITTEE: Environment and Transportation

HEARING DATE: March 10, 2026 (ENT)

SPONSOR: Delegates Reilly, Arentz, Beauchamp, Hutchinson, McComas, Miller, T. Morgan, Nkongolo, Rose, Schmidt, and Tomlinson

POSITION: Unfavorable

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The Office of People's Counsel (OPC) respectfully submits the following informational testimony on House Bill 1404 – Public Utilities - Energy Generation and Transmission. HB 1404 would amend Public Utilities Article § 7-510(c) to permit an investor-owned electric company to construct, acquire, or lease, and operate generation and related transmission facilities without the express authorization of the Public Service Commission (PSC).

As a general matter, HB 1404 is premised upon a misleading narrative—advanced by Baltimore Gas and Electric Company and its parent company, Exelon—that recent increases in PJM's capacity-market supply costs are to blame for spiking energy bills. To be sure, energy supply is in the news and warrants serious attention, but higher supply costs from the now infamous capacity market auctions at PJM were *not* in residential customer bills last winter—when this Committee and local officials held hearings on high utility bills<sup>1</sup>—and were *not* in residential BGE customer bills for the winter months of

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<sup>1</sup> [Joint Briefing on Maryland's Rising Energy Prices](#) (Mar. 12, 2025); Balt. City Council, [Informational Hearing on High Utility Bills, Rate Increases, and Winter Shutoffs](#) (Feb. 20, 2025).

this year. For BGE, these costs have only been in its customer bills in three months, September to November 2025, and then again starting March 1.<sup>2</sup> Pepco and Delmarva Power customers also are not seeing the impacts of the escalated capacity market costs in their bills and will not see the full impact until late summer. Exhibit A to these comments show the timing of the customer impacts of the capacity market increase on Exelon utility customer bills.

Moreover, the energy crisis last winter was largely attributable to high gas—not electric—bills, largely driven by increases in gas distribution rates, combined with high consumption due to cold weather. *Gas distribution rate increases have nothing to do with electricity or the electric capacity market.* The same is true this winter when customers are again seeing massive utility bills.

This overstated messaging blaming supply costs serves two purposes: it distracts attention from rising distribution costs, and it supports Exelon’s theory that legislation should be enacted to allow it to create a new ratepayer-funded profit center — power generation.

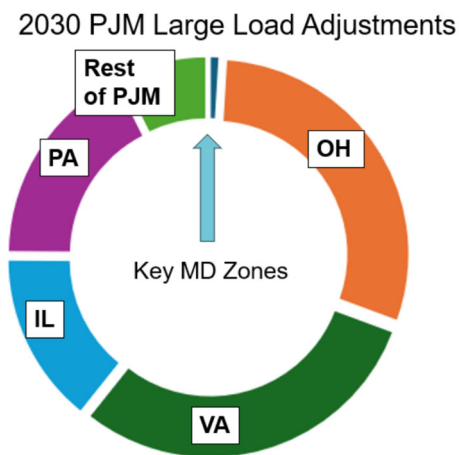
But Exelon’s effort would require Maryland utility customers to pay the costs of generation that is primarily—if not only—needed to cover the city-sized energy needs of data centers, mostly located outside of Maryland. As documented by the PJM Independent Market Monitor, data centers have raised the price in the last three auctions by \$23 billion.<sup>3</sup> As the figure below shows, that projected growth in demand is almost entirely outside Maryland.

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<sup>2</sup> Md. Pub. Serv. Comm’n, Letter Order (May 29, 2025) #4, 4/23/25 AM; Maillog Nos. 316774, 319193 (deciding issue presented at the April 23, 2025 administrative meeting); *see also*, Balt. Gas and Elec. Co., Supplement No. 736 to P.S.C. Md. E-6, Maillog No. 319295 (Case Nos. 9056, 9064, June 2, 2025) at 1.

<sup>3</sup> *See [Analysis of the 2027/2028 RPM Base Residual Auction](#)*, Independent Market Monitor for PJM (Jan. 5, 2026) (explaining that “[t]he total increase in costs to other PJM customers as a result of data center load in the last three BRAs was \$23,100,955,341.”).

**Figure 1: Large load growth (2030)**

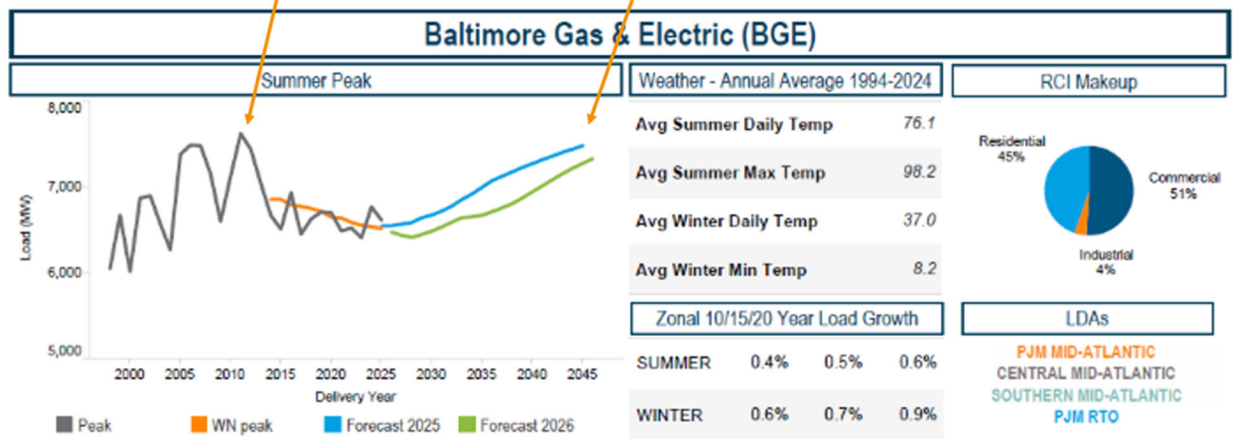


Source: PJM's 2026 load forecast

Meanwhile, PJM’s forecasts for load growth *in Maryland*—based on information in part provided by the utilities themselves—are modest. PJM now projects that the Maryland Exelon utilities’ power demands decrease—not increase—through 2029. Aside from small data center growth compared to PJM—growth that Maryland customers should not be responsible for—the Exelon utilities’ projected demands increase only modestly beginning in 2030, at a growth rate much lower than historical growth rates. In fact, the PJM illustration below shows that BGE’s electric demand today (6,500 megawatts (MW)) is significantly less than it was in 2011 (about 7,600 MWs) and never reaches the 2011 level of load through 2046, 20 years from now.<sup>4</sup>

**Figure 2: BGE Summer Peak—PJM 2026 Forecast**

PJM projects BGE's peak load in 20 years will be less than its peak was 15 years ago.



Source: PJM 2026 load forecast

<sup>4</sup> [2026 PJM Load Forecast Report](#) at 15.

To be sure, PJM has a problem with data centers. As a member of PJM, Maryland cannot ignore this problem, which requires a regional solution. OPC is vigorously advocating for policies that prevent residential customers from bearing the costs of data centers. But Maryland customers should not take on risks or responsibility for the monumental projections of increased energy demand. Maryland customers are not driving the power demands and should not bear the costs necessary to meet those rising demands, whether they are real or phantom. This principle of “cost causation” is a fundamental tenet of public utility regulation and core to the legal standard that utility rates be “just and reasonable.”<sup>5</sup> As PJM’s Independent Market Monitor (“IMM”) points out, the best solution to protect customers and prevent reliability issues is for data centers to bring their own power supply.<sup>6</sup> Many efforts are underway to ensure that data centers are responsible for their own power needs and infrastructure costs.

While any generation may lower costs in the medium to long term, utility-owned generation would do so at much greater risk to existing utility customers and likely at a much higher cost than relying on independent power producers to construct more generation in the competitive market. Since 1999 in Maryland, law allows utilities to build and own generation subject to Public Service Commission approval, but this law has not been utilized.

Allowing monopoly utilities to build generation poses significant risks to Maryland’s utility customers, with few offsetting benefits.

*First*, power generation is a competitive business, not a monopoly service. But under HB 1404 captive utility customers—rather than the investors of private, competitive “merchant” generation companies—would bear all the risks that the future costs paid to the utilities would be higher than market prices. That is the opposite of how risks are allocated currently—which is to the *investors* of competitive generation companies. And no one knows what future generation markets (for capacity or energy) will be. Indeed, speaking about the volatility of capacity and energy market revenues, Exelon’s own consultant explained to the PSC last year that “[i]t is very difficult to forecast tomorrow’s prices, let alone a 15-year stream.”<sup>7</sup>

*Second*, outside of future market prices, utility customers would bear all the other risks associated with building a power plant (or plants) at costs that could easily be billions of dollars. A non-exhaustive list of potential risks includes:

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<sup>5</sup> PUA § 4-201 (“[A] public service company shall charge just and reasonable rates for the regulated services that it renders.”).

<sup>6</sup> [Analysis of the 2027/2028 RPM Base Residual Auction](#), Independent Market Monitor for PJM (Jan. 5, 2026).

<sup>7</sup> See Md. Pub. Serv. Comm’n, [Legislative Style Hearing on Energy Storage](#) (Case No. 9715, Apr. 15, 2025) at 20:55.

- Picking the wrong type of plant;
- Building it in the wrong place;
- Transmission costs for interconnection being higher than anticipated;
- Permitting delays;
- Cost overruns;
- Mechanical failures once operational; and
- Penalties for failure to perform when called upon.

Cost overruns are of particular concern, given the utilities’ record of poor forecasting of costs and the frequency with which they exceed their budgets. Exhibit B shows how, as part of its first multiyear rate plan, BGE far exceeded its forecasted budget. Exhibit C provides just a few examples of cost Exelon utility cost overruns. These cost overruns occur in the utilities’ areas of core competency—transmission and distribution—and one can reasonably expect more cost overruns for non-core businesses. In fact, in a hearing on geothermal networks last year, BGE opposed a *reporting* requirement for 10 percent cost overruns, on the grounds that “we’ve never built one of these systems before”<sup>8</sup>—a fact that would be true of any generation plant as well.

*Third*, utility ratepayers could bear uneconomic costs. Maryland ratepayers would still have to cover power plant costs (plus a profit margin) if the units are never completed or if they sit unused because there are other lower-cost generators available to serve customers or they are incompatible with federal or State climate goals. Indeed, data shows that New Jersey customers narrowly avoided paying nearly a half billion dollars above the market in previous years because a proposal to build out-of-market generation was overturned by the courts.

*Fourth*, utilities have no inherent advantages in constructing generation over non-utilities other than their ability to recover all their costs—no matter how high—from their captive customers. Non-utility generation companies, in fact, purchase the equipment to build generating plants from the same vendors as a Maryland utility would. Also, non-utility companies have much greater experience actually building generation, which utilities have not done for about three decades.

*Fifth*, utilities should focus on their core activities. Like any private enterprise with monopoly power, utilities want to expand their business activities into new areas—beyond their core competencies. Utilities frequently exceed their projected costs on matters within their core competencies (Exhibit C), such as transmission and distribution; and utilities are likely more challenged to contain costs for businesses in which they have little or no experience.

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<sup>8</sup> Md. Pub. Serv. Comm’n., [Legislative Style Hearing on Pilot Thermal Energy Network Systems](#) (Case No. 9749, Sept. 30, 2025).

Several provisions of HB 1404 reflect just how risky a proposition it is to build and operate a billion-dollar generating facility. For example, HB 1404 would require that a premier credit rating agency provide a “rating assessment” that finds that the terms of the construction, acquisition, or lease and operation of a generating facility is “unlikely to be negative for the creditworthiness” of the utility and its affiliates. That assessment is only necessary because of the massive costs and inherent risks of generation that would fall to ratepayers under the bill. And the rating assessment depends on ratepayers taking on risks that today fall to investors of merchant generators.

HB 1404 would also give utilities unprecedented statutory protection from the consequences of building power plants that turn out to be unnecessary by explicitly guaranteeing that utilities can recover “investments and costs that became stranded for any reason.” Under standard regulatory practices, utilities are only able to recover costs associated with infrastructure that is “*used and useful*.”<sup>9</sup> HB 1561 shifts to customers *all* risk that the facility is not ultimately built, is more costly than anticipated, does not perform as anticipated, is ultimately unnecessary or otherwise becomes uneconomic.

OPC appreciates the opportunity to provide these comments on HB 1404 and remains available to work with the Committee to develop solutions to address energy affordability.

**Recommendation:** OPC requests an unfavorable Committee report on HB 1404.

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<sup>9</sup> PUA § 4-101(3) (“‘just and reasonable rate’ means a rate that: ... will result in an operating income to the public service company that yields, after reasonable deduction for depreciation and other necessary and proper expenses and reserves, a reasonable return on the fair value of the public service company's property used and useful in providing service to the public.”).