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October 28, 2025

Power Advisory
22 Devens Street
Concord, MA 01742

Re: Request for Information for Applications for Transmission Connected Energy Storage Complying with the Next Generation Energy Act

To Whom It May Concern:

The Maryland Office of People's Counsel (OPC) files these comments in response to the Request for Information (RFI) issued by Power Advisory on behalf of the Maryland Public Service Commission (PSC or Commission) on October 14, 2025.[1] The RFI seeks public comment on several areas relevant to the forthcoming period for a first-round solicitation of 800 megawatts (MW) of front-of-the-meter transmission connected energy storage under the Next Generation Energy Act (NGEA).[2] Through these comments, OPC requests that the Commission maximize the value of the procured storage resources for ratepayers by prioritizing shorter-term contracts, longer duration storage resources, co-located storage resources, and storage resources capable of utilizing tax incentives prior to the incentives being phased out or eliminated. At the same time, risks to ratepayers should be minimized with contracts that are indexed to the capacity value of the storage resource and by ensuring the resource pays for any operational or availability-related penalties rather than ratepayers. To foster effective competition, the Commission should deem utilities ineligible to participate.

Introduction

When the Maryland General Assembly directed the Public Service Commission to procure up to 1600 MW of transmission-connected- energy storage capacity, it did so in

[1] Power Advisory Request for Information (Oct. 14, 2025), available at https://mdpsc-ngea-storage.com/wp-content/uploads/2025/10/power-advisory_md-psc-transmission-connected-energy-storage-rfi.pdf.
[2] Md. Code Ann., Pub. Util. Art. § 7-1224 - § 7-1229 as enrolled in Senate Bill 937/ House Bill 1035.

the context of high utility bills and in response to growing concerns over affordability.[3] These procurements—initially envisioned as part of the Abundant Affordable Clean Energy (AACE) Act[4] and later incorporated into the NGEA—were part of a package of reforms designed to lower customers' electric bills.[5] Reflecting this intent, the relevant provisions of the NGEA include guardrails to ensure that these procurements—intended to make energy more affordable for customers in the medium and long-term—do not unnecessarily drive utility bills up even higher in the short term.[6] It is through this affordability lens that OPC[7] makes the following comments in response to the RFI.

[3] *See, e.g.*, OPC, Maryland's Utility Rates and Charges (last updated Mar. 2025), available at https://opc.maryland.gov/Consumer-Learning/Utility-Rates-and-Basics; Tim Prudente & Hayes Gardner, *Think your BGE bill is high? Rates are rising*, Baltimore Banner (Jan. 5, 2025), https://www.thebanner.com/community/local-news/bge-rates-maryland-utility-winter-storm-ZT4JQLC3OZCCTMHPWNAVVS2LHY/; Mallory Sofastaii, *Utility customers report steep increases in bills; advocates warn costs will continue to rise*, WMAR-TV Channel 2 (Jan. 23, 2025), https://www.wmar2news.com/matterformallory/utility-customers-report-steep-increases-in-bills-advocates-warn-costs-will-continue-to-rise.

[4] House Bill 398/Senate Bill 316 (2025), available at https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0398?ys=2025RS.

[5] *See, e.g.*, Pres. Bill Ferguson, Economic Matters Committee Hearing for HB 1035 (Feb. 28, 2025), https://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=ecm&ys=2025RS&clip=ECM_2_28_2025_meeting_1&billNumber=hb1035, at min 12:26 (describing HB1035 as "a comprehensive bill for dealing with the affordability of [Maryland's] utility bills, the reliability of [Maryland's] electric grid, and the predictability of [the] regulatory environment in Maryland."); Josh Kurtz, *Leaders' bills seek to transform Maryland energy landscape — but questions remain*, Md. Matters (Feb. 3, 2025) (quoting Speaker Adrienne A. Jones: "We need to address these issues and protect everyday Marylanders and business owners across the state from unaffordable costs."), https://marylandmatters.org/2025/02/03/leaders-bills-seek-to-transform-maryland-energy-landscape-but-questions-remain/.

[6] *See, e.g.*, PUA 7-1224(a) (requiring procurements to be "competitive"); PUA 7-1225(a)(2) (requiring proposals to include a "cost-benefit analysis"); and PUA 1226(d) (explicitly providing that "[t]he Commission may end the solicitation process without selecting a proposal if the Commission finds that none of the proposals adequately support the goals established under this subtitle, including the goal of securing affordable, reliable electrical service for Maryland residents.").

[7] OPC is the statutorily appointed representative of residential and non-commercial utility customers in matters before the Commission. Md. Code Ann. Pub. Util. Art. §2-204.

Given the short timeframe allotted for review, OPC's comments respond to the prompts with the greatest potential to directly impact residential customers.[8] In particular, OPC directs attention to the recommendation responding to prompt 17 below that the request for proposals (RFP)[9] should make clear that utilities are not eligible to submit proposals in this first-round application period. This clarification is essential to ensure the procurement is competitive and is consistent with Commission Order No. 91812, recently issued in Case No. 9715, in which the Commission found that having utility-owned transmission-connected energy storage devices under existing circumstances "would not be in the public interest."[10] Additionally, the Commission should publish a draft RFP sufficiently in advance of the solicitation period to allow potential developers and interested parties two weeks to review and provide written comments on the draft.

Comments

1. The RFP should require each proposal to include an offer for a 15-year contract term, with the option to include one or more additional offers for a longer contract term.

*This section responds to **prompt 1**, requesting comments on desirable contract length.*

Long-term contracts may provide developers with increased certainty, potentially enabling them to secure financing at lower rates, and in turn, offer a lower fixed price payment, reducing costs for customers. At the same time, however, locking in energy prices through ratepayer-backed, long-term procurements requires guesswork about future market prices that puts customers at greater risk. Generally, the further out in time the generation procurement arrangement lasts, the more potential for risk to ratepayers due to the difficulty in speculating on future generation markets. Procurement during times of high capacity market prices—like the present—could benefit customers, but only if capacity prices remain high, since the NGEA requires capacity market revenue to be refunded to ratepayers. If the monthly capacity price paid to the procured resource is

[8] Nothing in these comments shall be construed to limit OPC's ability to submit further comments in the future.

[9] While the Commission's notice of October 15, 2025 uses the term "request for proposals," the RFI uses the term "request for applications." The difference in terminology may purely be an issue of semantics, but OPC notes that "requests for proposals" are generally used in competitive procurement processes, while "requests for applications" are generally used when approval is assured if enumerated criteria are met. Because the NGEA clearly requires a "competitive process for procurement," *see* PUA § 7-1224(a), OPC uses the term "request for proposals" in these comments.

[10] PSC Order No. 91812, Case No. 9715 (Sept. 9, 2025) at 16.

locked in and future capacity market prices decline, customers will end up paying more for the procured storage than they otherwise would.

To account for the greater risks associated with a longer-term contract, the RFP should require each proposal to include an offer for the statutory minimum contract term of 15 years. To the extent that an offeror is interested in proposing a contract terms longer than 15 years, the RFP should require such offers to be in addition to—rather than instead of—a 15-year contract term. This side-by-side comparison of costs under two different contract terms for the same individual project would enable the Commission and other interested parties to weigh concrete—rather than speculative—benefits of a longer-term contract against the potential risks.

2. To minimize risks to ratepayers, fixed contract prices should be indexed to the capacity value of the energy storage facility.

*This section responds to **prompt 2**, requesting comments on managing risks of a partial tolling agreement.*

Under a partial toll agreement, the developer is responsible for the device dispatch and takes the market risk for energy and ancillary services, and the developer refunds capacity market revenue back to customers. This contract structure protects customers against the risk and volatility of the energy and ancillary services markets, while exposing customers to some capacity market revenue risk. One way to manage ratepayer risk from capacity market revenue volatility is to index the annual fixed contract cost of the megawatt capacity sold by the facility into PJM's capacity market, based on the accreditation value for the energy storage facility as determined by their Accredited Unforced Capacity (UCAP). UCAP establishes an upper limit on the amount of unforced capacity that a generating facility can offer to provide in PJM's capacity market and is based on Effective Load Carrying Capability (ELCC) ratings for each ELCC class.[11]

PJM uses ELCC to calculate the capacity contribution of all generation facilities, including energy storage facilities, and adjusts the ELCC values annually. For example, the ELCC class ratings in the 2026/2027 delivery year for 4-hour, 6-hour, 8-hour, and 10-hour storage are 50 percent, 58 percent, 62 percent, and 72 percent respectively.[12] That ELCC rating is the main factor that determines the amount of capacity a unit can bid into the capacity market. Thus, an energy storage facility with an 80 MW nameplate capacity

[11] PJM groups generation classes based on common operational characteristics among the type of generator, such fuel type, whether the generation is variable, and whether the generation from the facility is limited in duration.

[12] ELCC Class Ratings for the 2026/2027 Base Residual Auction, available at https://www.pjm.com/-/media/DotCom/planning/res-adeq/elcc/2026-27-bra-elcc-class-ratings.pdf.

would be able to bid approximately 40 MW of capacity into PJM's capacity market. Different durations of battery storage will have different ELCC values (e.g., since longer duration batteries can supply power over a longer duration, they are more capable of contributing supply during periods of system stress, when supply is needed the most). ELCC values can change over time due to changes in modeling methodology, changes in the timing of peak load, and generation portfolios. For example, PJM's most recent projections based on the current ELCC modeling show that battery storage ELCCs are expected to decrease substantially over the next 10 years, meaning that the amount of capacity an energy storage facility could bid into PJM's capacity market could decline over time, lowering capacity market revenue, and introducing risk to ratepayers of overpayment to the energy storage facility. To lower such risk, the amount of capacity purchased from a procured energy storage facility should be the same amount of capacity that facility is allowed to sell based on ELCC. Indexing capacity purchased to the ELCC will ensure that energy storage owners are compensated commensurate with the capacity value they provide, while also ensuring that Marylanders are not exposed to the risk associated with changing PJM ELCC ratings over time.

3. Ratepayers should not pay for penalties assessed by PJM if the energy storage facility underperforms.

*This section responds to **prompt 4**, requesting comment on penalties for non-performance.*

Under the contract structure prescribed by the NGEA, ratepayers receive all capacity market revenue earned by the storage project. However, projects that underperform or otherwise fail to meet their capacity commitment can be penalized by PJM, thereby reducing the project's total revenues. The contract should require that the capacity market revenues to which ratepayers are entitled are not reduced by any penalties that may be assessed by PJM on the project for underperformance. This requirement is necessary to ensure that project owners/operators are incentivized to perform according to their capacity commitments and that ratepayers are not negatively impacted by the project's underperformance.

4. The benefits of co-located resources should be compared to stand-alone resources by using PJM's ELCC ratings.

*This section responds to **prompt 6**, requesting comments on comparing co-located and stand-alone resources.*

One method of comparing the benefits of co-located resources and stand-alone energy storage[13] is to compare the ELCC of the co-located facility with the stand-alone facility, as determined by PJM. A co-located facility would likely have a higher ELCC rating compared to a stand-alone energy storage facility because the storage component would increase the availability of the non-storage component, particularly if the non-storage component is an intermittent resource such as wind or solar. As a result of the higher ELCC rating, the co-located facility would likely earn more capacity market revenue and provide more benefit to ratepayers.

5. Energy Storage Capacity Credit awards should be conditioned on a project providing benefits to customers in the Base Residual Auction delivery year in which the storage facility is participating.

*This section responds to **prompt 7**, requesting comments on the interaction between the ESCC award and construction approval processes.*

Although neither the NGEA nor the Renewable Energy Certainty Act—which established the requirement that a project receive Commission approval before beginning construction of a front-of-the-meter energy storage device[14]—explicitly link the process of construction approval with the process for awarding Energy Storage Capacity Credits (ESCC), the two processes are, as the RFI notes, "linked." Said otherwise, a project that is awarded ESCCs but does not receive Commission approval to construct would be unable to deliver the benefits for which it would receive payments.

The Commission recently issued notice that Commission advisors, in partnership with the Power Plant Research Program (PPRP), have developed a draft application for approval of construction of energy storage devices (ESD) greater than or equal to 20 MWh, "including transmission-connected energy storage projects that will be considered for energy storage capacity credit awards pursuant to the Next Generation Energy Act."[15] A virtual meeting is scheduled for October 28, 2025, to discuss the proposed application. If adopted, the proposed application would require applicants to provide documentation of the public notice, community engagement, and county coordination required by statute, as well as documentation demonstrating that the project complies with certain safety standards and provides a pre-incident safety plan, emergency response plan, and

[13] "Co-located resources" here refers to a combination of an energy storage facility along with another technology type, such as solar, behind the same point of interconnection and operating together as one integrated resource. On the other hand, a stand-alone energy storage facility would operate independently as a single resource.
[14] PUA § 7-219, as enrolled in Senate Bill 931/ House Bill 1036.
[15] Case No. 9715 and PC 75, ML 323336 (Oct. 15, 2025).

extreme weather tracking plan.[16] The construction approval process is, therefore, not only a necessary step to construct and operate an ESD but also provides important safeguards for communities that are not—and need not be—addressed in the ESCC award process, as long as ESCC awards are, in some way, conditioned on receipt of Commission approval to construct. Conditioning the award of ESCCs on approval to construct will protect ratepayers from making payments towards any project that does not ultimately deliver the promised capacity. Ultimately, notwithstanding any grant of ESCCs, any actual payment for ESCCs by customers should not occur until customers receive benefits, which would not occur until the Base Residual Auction delivery year in which the procured storage facility is participating.

6. Safety standards should be addressed as part of the construction approval process.

*This section responds to **prompt 8**, requesting comments on the safety standards that should be required to be as part of the ESCC process.*

As described in response to prompt 7, the proposed application for construction approval of ESDs greater than or equal to 20 MWh includes requirements for extensive documentation on compliance with certain safety standards and provision of a pre-incident safety plan, emergency response plan, and extreme weather tracking plan.[17] It is OPC's understanding that any transmission-connected ESD eligible to receive ESCCs would also be required to submit an application for Commission approval through this parallel process, and that any requirement to comply with specific safety standards in the ESCC process would, therefore, be duplicative. To the extent that there are transmission-connected projects that are not subject to the specific requirements of the construction approval process, the ESCC award process should require the project to meet the same safety requirements.

7. The required cost-benefit analysis should utilize the unified benefit cost analysis (UBCA) framework and consider the value of longer duration storage resources.

*This section responds to **prompt 10**, requesting comments on the cost-benefit analysis required by the NGEA.*

[16] Draft Application for Commission Energy Storage Construction Approval and Waivers, ML 323336 (Oct. 15, 2025) at 8-14, 29.
[17] Draft Application for Commission Energy Storage Construction Approval and Waivers, Case No. 9715 and PC 75, ML 323336 (Oct. 15, 2025) at 8-14, 29.

The relevant provisions of the NGEA require the Commission to "include specifications in a procurement solicitation issued under § 7-1224 of this subtitle that require each proposal to… include a cost-benefit analysis of the project and proposed pricing schedule comparison on a dollar-per-megawatt-hour basis, including an analysis of" an enumerated list of factors.[18]

The statute does not specify the methodology that proposals must contain to analyze the enumerated costs and benefits, but the Commission has recognized the importance of evaluating projects "holistically under common assumptions and evaluation criteria" to "assist with identification of the least-cost means to achieve Maryland's policy goals, increase transparency and efficiency in the assessment of energy resources, and provide … greater regulatory certainty in preparing filings.[19] To this end, in Case No. 9715, the Commission recently directed that applications under the Maryland Energy Storage Program utilize the Unified BCA ("UBCA") framework adopted by the Commission in Case No. 9674.[20] "Until UBCA methodologies consistent with this framework are further developed in Phase II of Case No. 9674," the Commission directed that developers "should seek to align with the National Standard Practice Manual ("NSPM") to the extent possible in order to remain consistent with the Commission's direction to Commission workgroups in establishing a UBCA Framework for valuing distributed energy resources ("DERs"), including energy storage."[21] For the same reasons the Commission has previously cited, the RFP should direct proposals to include the UBCA framework to conduct the required cost-benefit analysis. To the extent that the UBCA does not provide sufficient guidance on the methodology to calculate energy storage-specific benefits, such as avoided transmission benefits, the BCA should adhere as closely to the National Standard Practice Manual (NSPM) as possible.

The value of longer duration storage should be incorporated into the cost-benefit analysis by considering how the projected resource accreditation of the storage resource will impact capacity market revenues, including how ELCCs are expected to change over time. As described above, resource accreditation values will affect the quantity of capacity market revenue benefit that flows to ratepayers. Longer duration storage resources currently have higher accreditation ratings, and their ratings are projected to stay relatively higher than shorter duration resources over the next 10 years. The cost-benefit analysis should evaluate the trade-offs between expected higher fixed costs and higher capacity market revenues that longer duration storage offers.

[18] PUA § 7-1226(a).
[19] *See, e.g.*, Order No. 90212, Case No. 9674 (May 13, 2022) at 11; Order No. 91424, Case No. 9674 (Nov. 22, 2024) at 3.
[20] Order No. 91705, Case No. 9715 (June 24, 2025) (citing Case No. 9674) at 3-4.
[21] *Id.*

To the extent that the UBCA does not provide sufficient guidance on the methodology to calculate avoided transmission benefits, the BCA should adhere as closely to the National Standard Practice Manual (NSPM) as possible.

Transmission costs for each transmission zone in PJM are driven in part by the zone's monthly peaks. To ensure that storage projects' operational schedules result in transmission benefits, the contract should include a requirement for storage facilities to discharge during PJM's monthly transmission peaks, with penalties for failing to do so. While project owners and operators already have some incentive to discharge during transmission peaks, since they tend to coincide with high locational market prices, the penalties would enhance the price signal for storage projects to prioritize transmission benefits.

8. The RFP should direct that proposals include whether and how the value or viability of the proposed project is impacted by the phase-out of relevant tax incentives.

*This section responds to **prompt 13**, requesting comments on how the solicitation should account for any trends in the energy storage industry.*

The One Big Beautiful Bill Act (OBBBA)[22] changes tax incentives that could directly affect energy storage projects commencing construction after December 31, 2025. Specifically, the OBBBA bars any project from claiming the clean energy investment tax credit set forth in 26 U.S.C. § 45Y, or the clean energy production tax credit set forth in 26 U.S.C. § 45E if the project fails to meet "foreign entity of concern" (FEOC) requirements. These requirements preclude projects owned, controlled, or receiving "material assistance" from a prohibited foreign entity. The material assistance provision limits the allowable percentage of component value that can come from FEOCs. The applicable material assistance amount is 40 percent in 2026, 45 percent in 2027, 50 percent in 2028, 55 percent in 2029 and 60 percent in 2030 and after. Thus, energy storage facilities that do not meet the FEOC requirements for each year would be unable to receive certain tax credits that could previously apply to them.[23]

Additionally, the OBBBA amends 26 U.S.C. § 45Y and 26 U.S.C. § 48E to end all credits for solar and wind facilities placed into service after December 31, 2027, although projects that begin construction before July 4, 2026, remain eligible under the prior phase-out schedule rather than the December 2027 cutoff.

[22] One Big Beautiful Bill Act, Pub. L. No. 19-21, 139 Stat. 72 (2025).
[23] The Internal Revenue Service also issued guidance redefining the "commence construction" definition, making it harder for projects to meet commence construction deadlines and maintain eligibility for credits by requiring projects meet a "physical work test" instead of the previous "five percent harbor" test.

Given that the timing that a project begins construction could substantially impact a project's costs, proposals should be required to state whether and how a project's costs and viability will be impacted by expiring tax credits to allow the Commission the ability to potentially prioritize that project. Similarly, proposals that are co-located with wind or solar projects should be required to state whether the value or viability of their proposed project is impacted by the timing of the approval of their proposed storage facility. To the extent the viability of a co-located storage and wind, or storage and solar project is impacted by the expiring tax credits, such a project should be prioritized so that the wind and solar resources can take advantage of relevant tax credits before they expire.

9. The RFP should clarify that utilities are not eligible to respond to the RFP.

*This section responds to **prompt 17**, requesting any additional comments.*

Unlike the provisions of the Public Utilities Article that establish the Maryland Energy Storage Program[24] and that direct the construction or procurement of at least 150 MW of distribution-connected energy storage devices,[25] the provisions governing the Commission's procurement of transmission-connected energy storage devices do not require utility-owned projects but rather a competitive procurement. To ensure the procurement is effectively competitive, it is essential for the Commission to clarify that utilities are not eligible to participate in this procurement.

As OPC and other stakeholders have repeatedly cautioned, utility ownership of transmission-connected energy storage devices may inhibit the growth of a competitive marketplace for economic, third-party-owned storage deployment.[26] In a utility-owned project, ratepayers—rather than developers—bear risks associated with delays, cost overruns, and other uneconomic costs. While this may allow the utility to bid a lower fixed monthly price, it obscures the total cost to ratepayers. Allowing regulated utilities—which have unearned advantages due to their exclusive government monopolies and captive customers—to participate in a "competitive" procurement would render the procurement anti-competitive by definition. Utility participation would significantly increase the need for regulatory protections and raise questions of how to prevent ratepayers from subsidizing costs that a third-party developer would otherwise incur—for example, costs for office space, employees, and land.

[24] PUA § 7-216.1.
[25] PUA § 7-216.2.
[26] *See, e.g*, ML 317236, Case No. 9715 (Mar. 28, 2025) at 19-20.

Prohibiting the utilities from participating in the procurement would also be consistent with Commission Order No. 91812, recently issued in Case No. 9715, in where the Commission found that having utility-owned transmission-connected energy storage devices under existing circumstances "would not be in the public interest."[27] In reacting to the joint Exelon utilities' proposal to own transmission-connected energy storage devices, the Commission found that "having utility-owned transmission connected BESS that are primarily used for participation in PJM wholesale markets would not be in the public interest."[28] Although the Commission left open the possibility of utility-owned storage as a transmission asset (SATA) projects in the future, such projects are not yet approved by PJM for transmission planning.[29] For at least this first round, it is essential that the RFP clarify up front that utilities are not eligible to participate to ensure that potential developers are not disincentivized by potential unfair competition with utilities.

OPC appreciates the opportunity to offer comments on the RFI and looks forward to working with the Commission, Power Advisory, and other stakeholders to advance a process that maximizes the potential benefits of energy storage while also minimizing risks to ratepayers.

Sincerely,

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[27] PSC Order No. 91812, Case No. 9715 (Sept. 9, 2025) at 16.
[28] *Id. at* 16.
[29] *Id*.