



P.O. Box 278
Riverdale, MD 20738

Committee: Education, Energy, and the Environment

Testimony on: SB 474 “Certificate of Public Convenience and Necessity and Related Approvals - Definition of Generating Station (Critical Infrastructure Streamlining Act of 2024)”

Position: Oppose

Hearing Date: February 22, 2024

The Maryland Chapter of the Sierra Club opposes SB 474, the Critical Infrastructure Streamlining Act of 2024. The Act would update the definition of “generating station” to exempt certain generating facilities, including diesel generators, from the Certificate of Public Convenience and Necessity (CPCN) permitting process.

In Maryland, like most states, electric generators over a certain size must apply and secure the CPCN permit. Recognizing that these facilities have an impact on our environment, our communities, and the electric grid, the CPCN process provides a critical moment for public input and regulatory review. SB 474 would exempt large backup generator systems most often associated with data centers.

Sierra Club recognizes that the growing data center industry provides an opportunity for economic growth in Maryland, and welcomes a conversation on the appropriate regulatory design to facilitate sustainable development. However, we believe wholesale repeal of an important regulatory process would be harmful and set a bad precedent.

The CPCN Provides Important Environmental Regulation

Before building a large electric generating facility or transmission line, a company must apply for a CPCN permit. This is the process – for power generation and transmission – by which the PSC carries out its charge to ensure that projects comply with Maryland law. The PSC noted that the CPCN is a process for *“evaluating the effects of proposed power generation facilities on surrounding communities, involving—among other things—the notification of specified stakeholders, the holding of public hearings, the consideration of recommendations by State and local government entities, and the consideration of the project’s effects on various aspects of the State infrastructure, economy and environment.”*¹

¹ PSC Order 90830 Provisional order Granting in Part and Denying in part Applicant’s Request for Rehearing, Oct 10, 2023.

The CPCN does include some broad exemptions. Projects under 2 MW, or under 70 MW if 80% of energy is consumed on site, are granted exemptions. It should be noted that backup systems for other facilities, such as hospitals, will come nowhere close to 70 MW. That scale of use would only be seen at large industrial energy consumers like data centers.

In 2023, the Maryland PSC, in a 5-0 decision, issued a prudent refusal to exempt the proposed Aligned data center project from the CPCN process. The Aligned data center project proposed procuring 504 MW of diesel generators,² enough power for approximately half a million homes.³ It is appropriate for power generation at this scale, whether to serve the grid or as backup, to engage in the CPCN process.

Diesel power generators, at the scale proposed by Aligned, will have an impact on air quality in the communities where they are located, and those communities deserve a say in their future. Diesel generators emit particulate matter and nitrogen oxides. These pollutants can cause and exacerbate lung conditions and form ozone,⁴ which is described by the American Lung Association as “one of the most dangerous and widespread pollutants in the U.S.”⁵

Backup generators are allowed to operate up to 100 hours a year for testing and maintenance.⁶ So it is prudent to ask what the environmental impact will be to run 168 diesel generators for 100 hours each year. This is equivalent to two of the 3MW diesel generators running continuously 24/7.

Data Centers Pose A Challenges for Maryland’s Climate Goals

Data centers’ energy use more generally poses tremendous ramifications for Maryland’s ability to meet its statutory mandates under the Climate Solutions Now Act—which requires a 60% reduction in greenhouse gas emissions by 2031 and net-zero carbon emissions by 2045⁷—while also threatening Governor Moore’s ambition of ensuring that “Maryland generates 100% clean energy by 2035.”⁸ This is particularly true because the data center industry is rapidly growing

² See Md. Pub. Serv. Comm’n, Maillog No. 302893, *CPCN Exemption Request – Aligned IAD04 Data Center* (filed May 12, 2023).

³ See PJM, *PJM Glossary*, <https://www.pjm.com/Glossary.aspx?p=1#:~:text=PJM%20has%20a%20diverse%20generation,such%20as%20wind%20and%20solar.&text=A%20gigawatt%20is%20a%20unit,800%2C000%20and%20one%20million%20homes>.

⁴ See Clean Air Northeast, *Diesel 101*, <https://cleanairnortheast.epa.gov/diesel101.html#:~:text=Diesel%20engines%20in%20trucks%2C%20buses,millions%20of%20residents%20are%20affected>.

⁵ American Lung Association, *Ozone*, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone>.

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<https://mde.maryland.gov/programs/permits/AirManagementPermits/Documents/Emergency%20Generator%20General%20Permit.pdf>

⁷ Md. S.B. 528 (2022).

⁸ See Wes Moore for Maryland, *Maryland’s Climate, Our Economic Future*, <https://wesmoore.com/issues/climate/>.

and will drive unprecedented increases in electricity demand. While data centers currently use approximately 9.7 GW of power nationally, their demand for electricity is expected to triple to 27 GW in the next few years.⁹ In other words, the energy needs of data centers are likely to reach and soon surpass the entire quantity of offshore wind that the Biden Administration aims to install nationally.¹⁰ In Virginia, Dominion Energy is seeking to build significant gas capacity in the near future to meet a 10 GW growth in projected energy demand, due to data centers, by 2035.¹¹

Maryland should establish and affirm clear regulatory safeguards to regulate the growth and impact of this rapidly growing industry. Maryland has the chance to get it right from the start, rather than playing catchup like neighboring Virginia, which is facing the prospect of skyrocketing electricity rates, new power plants, and massive public unrest.

We urge the Moore Administration to work with the General Assembly to bring the data center industry to the state in a way that advances both the state's and the industry's climate and environmental justice goals. Data center leaders are looking for opportunities to site data centers in regulatory environments that are welcoming and help them achieve their own sustainability objectives.

As the Moore Administration and the General Assembly consider incentivizing data centers, we offer these overarching principles that we believe could facilitate data center growth in a way that is more consistent with Maryland's climate goals.

Maryland should:

- Ensure that data centers procure additional (net-new) local renewable energy and storage that meets the energy and capacity requirements of their facilities during all hours, including at peak demand;
- Develop energy efficiency standards for data centers' operations, requiring them to attain a power usage effectiveness (PUE) score no higher than 1.2; and
- As technologically feasible, preclude fossil fuel backup generation for data centers, including diesel backup generators (which would collectively lead to unhealthy air during adverse power conditions), and require data centers to be equipped with clean backup sources of power, such as battery storage, fuel cells utilizing green hydrogen, or onsite generation.

⁹ See Cushman & Wakefield, *Americas Data Center Update* (Oct. 2023), <https://cw-gbl-gws-prod.azureedge.net/-/media/cw/global/insights/2023/americas-oct-2023-data-center-update.pdf?rev=6999a6eb9c364977b49720739abaf564>.

¹⁰ <https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/21/fact-sheet-biden-harris-administration-advances-offshore-wind-transmission-strengthens-regional-supply-chain-buildout-and-drives-innovation/>

¹¹ Dominion Energy, *Economic Development*, <https://economicdevelopment.dominionenergy.com/va/key-industries/data-centers/>.

The Maryland Chapter of the Sierra Club urges an unfavorable report on SB 474. We welcome a larger conversation on how to best incentivize and properly regulate data centers, but given the potential impacts, a full-scale exemption from an important regulatory process is not the right approach.

Mariah Shriner
Climate Campaign Representative
Mariah.Shriner@MDSierra.org

Josh Tulkin
Chapter Director
Josh.Tulkin@MDSierra.org