THE P3 GROUP

Testimony of Glen R. Thomas

On behalf of the PJM Power Providers Group

Before the Maryland House Economic Matters Committee

Public Hearing on House Bills 1530 and 1312

March 26, 2009 1:00 p.m.

Chairman Davis, Vice Chairman Rudolph, and all members of the House Economic Matters Committee, it is a distinct pleasure to appear before you today and present testimony on behalf of the PJM Power Providers Group (P3).[1]

Today my testimony will address two bills, House Bill 1530, an Act "concerning the Public Service Commission – New Electric Generation Facilities – Rate Regulation and Contracts" and House Bill 1312, the "Maryland Electric Reregulation and Energy Independence Act of 2009."

P3 submits the following comments in opposition to HB 1530 and HB 1312. P3 believes both bills are an attempt to return Maryland to a regulatory scheme that failed in the past and is likely to fail in the future. In addition, both bills are unconstitutional and preempted by federal law. P3 urges this Committee to reject both bills.

1. A Return to Regulation Will Not Save Maryland Consumers Money

HB 1530 and HB 1312 are grounded on the flawed assumption that a return to regulation will somehow lower prices for Maryland consumers. The proponents of these bills forget the many reasons that led to competition in the first place. Inefficient plants, cost overruns and poor operating performance were all hallmarks of the regulated electricity industry. Under this

[1] P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM region including Maryland. Combined, P3's eleven member companies own over 75,000 megawatts of power and over 51,000 miles of transmission lines in the PJM region, serve nearly 12.2 million customers and employ over 55,000 people in the 13-state plus District of Columbia PJM region. The views expressed in this testimony do not necessarily reflect the views of individual P3 members. For more information on P3, visit www.p3powergroup.com

vertically-integrated monopoly regime, utility companies had little motivation to lower costs, and, in many cases, were actually incented to increase costs. Nationally, this regime created over $100 billion in "stranded costs" and saddled ratepayers with costs that competition could have avoided. [2]

Furthermore, the suggestion that states that chose not to restructure are faring much better is similarly misleading and erroneous. In fact, numerous states that remained regulated are now witnessing historic, double-digit rate increases. Kansas, Missouri, Alabama and New Mexico are just a sampling of the many vertically-integrated states that now know all too well that they are not immune from major rate increases. In Kansas and Missouri, the **Kansas City Power and Light** is asking for a 71.6 million and $102 million increase, respectively, that would amount to a **17.5%** rate increase for residential customers in each state[3]. In Alabama, customers are experiencing a **13%** increase after the Alabama Public Service Commission recently allowed two separate rate increases for the **Alabama Power Company** over a three-month period. These increases amount to the largest rate increases since 1982 for Alabama residential customers.[4] Finally, customers of **Public Service Company of New Mexico** (PNM) are facing a **15%** rate increase this year; this is especially noteworthy, given the fact that the New Mexico Regulation Commission awarded PNM an **18%** increase just last year.[5] Meanwhile, in Pennsylvania, a state that restructured its electricity rates, the Public Utility Commission last month approved the results of a competitive procurement that will lower rates by approximately 11% for the typical residential consumers.[6]

A hasty return to regulation without consideration of these factors could lead to extraordinary unintended consequences. Maryland is not an energy island – nor should it strive to be. Careful consideration needs to be given to the reliability impact, in addition to the price impact, of any change in market structure given that Maryland currently imports nearly a third of its electricity. Re-regulation, as contemplated by HB 1530 and HB 1312, would chill the

[2] See FERC Order 888 at page 447 (http://www.ferc.gov/legal/maj-ord-reg/land-docs/rm95-8-00w.txt).
[3] Missouri Public Service Commission, www.psc.mo.gov; February 23, 2009.
[4] Alabama Public Service Commission http://www.psc.state.al.us/orders2/2008/08oct/docket_u-4553_and_24860_modify_base_charge_order_9-2008.html; see also http://www.clantonadvertiser.com/news/2008/oct/07/psc-approves-higher-alabama-power-rates/
[5] New Mexico Public Regulation Commission: Statement by Chairman Jason Marks on the rate increase application filed this week by PNM, September 22, 2008. www.nmprc.state.nm.us
[6] Pennsylvania Public Utility Commission, February 3, 2009, *PUC Certifies Penn Power Competitive Bidding Process for Residential, Commercial Rates as Transparent, Non-Discriminatory, Reflecting Market-Based Prices.* See http://www.puc.state.pa.us/General/press_releases/Press_Releases.aspx?ShowPR=2183

prospect of competitively built generation in Maryland and further limit Maryland's future energy options – including the prospect of innovative renewable projects.

2. Competitive Markets Offer the Best Long Term Option for Maryland Consumers

A return to regulation as contemplated by HB 1530 and HB 1312 would result in a market structure that would ill-serve Maryland consumers over the long term. Instead, over time, Maryland consumers will benefit from competitive markets, with appropriate oversight by federal and state regulators that give consumers choices, encourage new technologies and reward consumers for their conservation efforts. Competitive markets have been proven to deliver value that must be captured for Maryland's ratepayers.

Moving forward Maryland will be faced with enormous challenges that will certainly increase consumer rates regardless of market structure. Federal climate change legislation and increased state and federal renewable standards will likely serve to increase costs to consumers. Moreover, the need to replace aging generation, transmission and distribution assets all suggest that we are in an era of rising costs that will persist.[7] The question is not how to lower consumers' rates, but rather what market structure is most appropriate to handle these new challenges in a manner that benefits consumers.

On that question, the NorthBridge Group recently released a study evaluating the risks associated with a return to regulation and summed it up appropriately: "To successfully navigate the confluence of an increasing public desire for environmentally-friendly resources with the rising cost of energy globally, participants in the electric industry must confront tough decisions and make difficult technological choices . . . . Decades of experience in the electric industry suggest that regulation is not well-equipped to meet such challenges. But recent experience in restructured electricity markets and significant experience in other competitive industries suggests that competitive markets are. We should learn from this history rather than repeat the regulatory mistakes of the past." [8]

[7] A 2008 report by the Brattle Group estimated that $1.5 trillion will be needed to maintain a reliable electricity system in America. See: http://www.eei.org/ourissues/finance/Documents/Transforming_Americas_Power_Industry.pdf

[8] *Embrace Electric Competition Or Its Déjà Vu All Over Again*, Frank Huntowski, Neil Fisher, and Aaron Patterson, October 2008. See http://www.nbgroup.com/publications/Embrace_Electric_Competition_Or_Its_Deja_Vu_All_Over_Again.pdf

3. Both HB 1530 and 1312 are an Unconstitutional Interference With Interstate Commerce

In addition, both bills violate the Commerce Clause because of their interference with interstate commerce. These bills discriminate against interstate commerce in that they require that generation being offered for sale from a Maryland electric generation facility be offered for sale to Maryland customers first. Such a requirement is inconsistent with numerous Supreme Court cases interpreting the Commerce Clause and will unlikely survive the heighted constitutional scrutiny under which they would be subject.

4. Both HB 1530 and HB 1312 Are Preempted by Federal Law

Both bills are invalid, because they seek to regulate an area of exclusive federal control – the interstate sale of electricity. As a result of United State Supreme Court decisions, the Federal Energy Regulatory Commission (FERC) has exclusive, plenary jurisdiction over the interstate wholesale energy market and preempts any state regulation within the area. Both bills purport to restrict who may own wholesale electricity generation and where locally-produced electricity may be sold. Therefore the bills have an effect upon the national wholesale energy market and would be preempted under the Federal Power Act.

Due to the inevitable legal challenges that will arise surrounding the constitutionality of these bills, the legislature will not meet its goal of saving taxpayers money. Rather, these bills will result in costly and time consuming litigation which could exist for several years.

On behalf of P3, I thank you for the opportunity to testify before this Committee today, and urge this Committee to reject both HB 1530 and HB 1312 for all the reasons stated.