

HOUSE BILL 1178
EMERGENCY BILL

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C5

1999 Regular Session
(91r2592)

ENROLLED BILL
-- Environmental Matters/Finance --

Introduced by **Frederick County Delegation**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Electricity - Affiliate Wheeling Industrial Customer Choice**

3 FOR the purpose of ~~requiring the Public Service Commission to require electric~~
4 ~~companies to offer nondiscriminatory affiliate wheeling on certain terms;~~
5 ~~requiring a wheeling company to establish certain terms and conditions for~~
6 ~~providing affiliate wheeling under certain circumstances; establishing certain~~
7 ~~requirements for certain contracts for affiliate wheeling; prohibiting an electric~~
8 ~~company from imposing certain charges on certain customers under certain~~
9 ~~circumstances; providing for certain applications and appeals relating to~~
10 ~~affiliate wheeling; requiring certain information to be provided to certain~~
11 ~~persons in a certain manner; prohibiting certain acts by electric companies and~~
12 ~~wheeling companies; providing for certain notice before a certain customer~~
13 ~~ceases to purchase electricity from an electric company; declaring the findings of~~
14 ~~the General Assembly; defining certain terms; making the provisions of this Act~~
15 ~~severable; providing for the termination of this Act; and generally relating to~~
16 ~~affiliate wheeling of electricity; authorizing certain industrial electricity~~
17 ~~customers to have access to customer choice during a certain period and under~~

1 certain circumstances; making this Act an emergency measure; and generally
 2 relating to customer choice for certain industrial customers.

3 BY adding to

4 Article ~~Public Utility Companies~~
 5 Section 7-501 through 7-509, inclusive, to be under the new subtitle "Subtitle 5-
 6 Affiliate Wheeling"
 7 Annotated Code of Maryland
 8 (1998 Volume)

9 BY renumbering

10 Article ~~Public Utility Companies~~
 11 Section 7-510(e) through (f), respectively
 12 to be Section 7-510(d) through (g), respectively
 13 Annotated Code of Maryland
 14 (1998 Volume)
 15 (As enacted by Chapters 3 and 4 of the Acts of the General Assembly of 1999)

16 BY adding to

17 Article ~~Public Utility Companies~~
 18 Section 7-510(e)
 19 Annotated Code of Maryland
 20 (1998 Volume)
 21 (As enacted by Chapters 3 and 4 of the Acts of the General Assembly of 1999)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 23 MARYLAND, That Section(s) 7-510(e) through (f), respectively, of Article ~~Public~~
 24 Utility Companies of the Annotated Code of Maryland be renumbered to be Section(s)
 25 7-510(d) through (g), respectively.

26 SECTION 1. 2. AND BE IT FURTHER ENACTED BY THE GENERAL
 27 ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

28 **Article ~~Public Utility Companies~~**

29 7-510:

30 (C) (1) NOTWITHSTANDING § 7-505 (B)(1) OF THIS SUBTITLE, FROM THE
 31 EFFECTIVE DATE OF THIS ACT THROUGH DECEMBER 31, 2000, AN INDUSTRIAL
 32 ELECTRICITY CUSTOMER THAT HAS A DEMAND OF AT LEAST 250 MEGAWATTS
 33 DURING A 1 HOUR PERIOD OF ANY CALENDAR YEAR SHALL HAVE THE OPPORTUNITY
 34 FOR CUSTOMER CHOICE ONLY DURING THOSE PERIODS WHEN THE ELECTRIC
 35 COMPANY SERVING THE INDUSTRIAL ELECTRICITY CUSTOMER DESCRIBED UNDER
 36 THIS SUBSECTION IS PURCHASING POWER TO SUPPLEMENT ITS EXISTING
 37 GENERATION DUE TO A SHORTAGE OF GENERATING CAPACITY DEDICATED TO
 38 SERVING REGULATED LOAD.

1 ~~(2) THE COMMISSION MAY ISSUE ORDERS OR REGULATIONS TO~~
2 ~~IMPLEMENT THIS SUBSECTION.~~

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
4 MARYLAND, That:

5 (a) Notwithstanding § 7-505(b)(1) of the Public Utility Companies Article as
6 enacted by Chapters 3 and 4 of the Acts of the General Assembly of 1999, from the
7 effective date of this Act through December 31, 2000, an industrial electricity customer
8 that consumed at least 2 billion kilowatt hours of electricity in calendar year 1998
9 shall have the opportunity for customer choice only during those on-peak periods when
10 the electric company serving the industrial electricity customer described under this
11 Act is purchasing power to supplement its existing generation due to a shortage of
12 generating capacity dedicated to serving regulated load, if the shortage would trigger a
13 requirement under a contract between the customer and the electric company that the
14 customer either reduce load or authorize the electric company to purchase power for the
15 customer.

16 (b) The Public Service Commission may issue orders or regulations to
17 implement the provisions of this Act.

18 ~~SECTION 3- 2. AND BE IT FURTHER ENACTED,~~ That this Act is an
19 emergency measure, is necessary for the immediate preservation of the public health
20 and safety, has been passed by a yea and nay vote supported by three-fifths of all the
21 members elected to each of the two Houses of the General Assembly, and shall take
22 effect from the date it is enacted.

23 SUBTITLE 5. AFFILIATE WHEELING.

24 ~~7-501.~~

25 ~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~
26 ~~INDICATED.~~

27 ~~(B) "APPLICANT" MEANS A PERSON WHO:~~

28 ~~(1) SEEKS TO SUPPLY ELECTRICITY FOR THE PERSON'S OWN NEEDS OR~~
29 ~~THE NEEDS OF AN AFFILIATE OR SUBSIDIARY OF THE PERSON;~~

30 ~~(2) OWNS ELECTRICITY GENERATION FACILITIES;~~

31 ~~(3) IS A WHOLESALE GENERATOR OF ELECTRICITY APPROVED BY THE~~
32 ~~FEDERAL ENERGY REGULATORY COMMISSION; AND~~

33 ~~(4) MAKES A WRITTEN REQUEST FOR AFFILIATE WHEELING UNDER~~
34 ~~THIS SUBTITLE.~~

35 ~~(C) "AFFILIATE WHEELING" MEANS WHEELING SUFFICIENT TO ENABLE AN~~
36 ~~APPLICANT TO TRANSPORT ELECTRICITY TO SATISFY ITS OWN NEEDS OR THE NEEDS~~
37 ~~OF AN AFFILIATE OR SUBSIDIARY, LIMITED TO THE TRANSMISSION AND~~

~~1 DISTRIBUTION SYSTEM ACCESS TO WHICH THE APPLICANT, THE APPLICANT'S
2 AFFILIATE, OR SUBSIDIARY IS ENTITLED UNDER EXISTING CONTRACTS OR TARIFFS.~~

~~3 (D) "AFFILIATE WHEELING ORDER" MEANS AN ORDER OF THE COMMISSION
4 THAT REQUIRES A WHEELING COMPANY TO PROVIDE AFFILIATE WHEELING OVER
5 AND THROUGH TRANSMISSION OR DISTRIBUTION FACILITIES LOCATED IN THE
6 STATE.~~

~~7 (E) "WHEEL" MEANS TO USE A TRANSMISSION OR DISTRIBUTION FACILITY OF
8 A WHEELING COMPANY TO TRANSMIT ELECTRICITY.~~

~~9 (F) "WHEELING COMPANY" MEANS AN INVESTOR OWNED ELECTRIC
10 COMPANY THAT WHEELS ELECTRICITY TO A THIRD PARTY UNDER THIS SUBTITLE
11 FOR AN APPLICANT THAT THE ELECTRIC COMPANY DOES NOT OWN, CONTROL, OR
12 LEASE.~~

~~13 7-502.~~

~~14 THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THE PURPOSE OF THIS
15 SUBTITLE IS TO:~~

~~16 (1) MODIFY AND CLARIFY EXISTING LAW TO ESTABLISH THE RIGHT OF A
17 RETAIL ELECTRIC CUSTOMER TO OBTAIN ITS ELECTRICITY FROM AN AFFILIATE OR
18 SUBSIDIARY THAT IS NOT LOCATED ON THE SITE OF THE RETAIL ELECTRIC
19 CUSTOMER;~~

~~20 (2) CLARIFY THE AUTHORITY OF THE COMMISSION TO ORDER
21 AFFILIATE WHEELING OF ELECTRICITY; AND~~

~~22 (3) AID IN THE CREATION OF A MORE COMPETITIVE RETAIL
23 ELECTRICITY SUPPLY MARKET.~~

~~24 7-503.~~

~~25 (A) THE COMMISSION SHALL REQUIRE WHEELING OF ELECTRICITY FOR THE
26 APPLICANT LIMITED TO THAT TRANSMISSION AND DISTRIBUTION CAPACITY TO
27 WHICH THE APPLICANT AND AN AFFILIATE OR SUBSIDIARY OF THE APPLICANT IS
28 ENTITLED UNDER A CONTRACT OR TARIFF WITH THE WHEELING COMPANY.~~

~~29 (B) (1) ON THE WRITTEN REQUEST OF AN APPLICANT OR BY ORDER OF THE
30 COMMISSION, A WHEELING COMPANY SHALL BE REQUIRED TO ESTABLISH TERMS
31 AND CONDITIONS FOR PROVIDING AFFILIATE WHEELING.~~

~~32 (2) THE TERMS AND CONDITIONS SHALL PROVIDE FOR THE
33 NONDISCRIMINATORY AFFILIATE WHEELING OF ELECTRICITY AND SHALL BE FILED
34 WITH THE COMMISSION AS PUBLIC INFORMATION.~~

~~35 (C) (1) A SERVICE CONTRACT ENTERED INTO ON A NONDISCRIMINATORY
36 BASIS FOR THE AFFILIATE WHEELING OF ELECTRICITY SHALL BE FILED WITH THE
37 COMMISSION OR OTHER APPROPRIATE REGULATORY UNIT.~~

1 (2) ~~THE SERVICE CONTRACT MAY INCLUDE:~~
2 (I) ~~TERMINATION PROVISIONS, INCLUDING CONDITIONS OF~~
3 ~~SERVICE;~~
4 (II) ~~EXTENDED CONTRACT DURATION PROVISIONS; AND~~
5 (III) ~~SPECIFIC RATE SCHEDULES APPLICABLE TO ALL WHEELING~~
6 ~~COMPANIES IN THE STATE.~~
7 (4) ~~THE COMMISSION MAY IMPOSE TERMS AND CONDITIONS ON THE~~
8 ~~AFFILIATE WHEELING OF ELECTRICITY THAT THE COMMISSION CONSIDERS~~
9 ~~NECESSARY TO SAFEGUARD SYSTEM INTEGRITY.~~

10 ~~7-504.~~

11 (A) ~~EXCEPT AS ALLOWED UNDER ANY ELECTRIC UTILITY INDUSTRY~~
12 ~~RESTRUCTURING LEGISLATION AND AS APPROVED BY THE COMMISSION, A~~
13 ~~WHEELING COMPANY MAY NOT IMPOSE OR ASSESS A PENALTY OR AN EXIT OR ENTRY~~
14 ~~FEE ON A RETAIL ELECTRIC CUSTOMER IF THE RETAIL ELECTRIC CUSTOMER:~~

15 (1) ~~RETURNS TO THE ELECTRIC COMPANY TO OBTAIN ELECTRICITY~~
16 ~~AFTER OBTAINING ELECTRICITY THROUGH AN AFFILIATE WHEELING~~
17 ~~ARRANGEMENT; OR~~

18 (2) ~~CHOOSES TO LEAVE THE ELECTRIC COMPANY AND OBTAIN~~
19 ~~ELECTRICITY FROM ANOTHER SOURCE THROUGH AN AFFILIATE WHEELING~~
20 ~~ARRANGEMENT, IF THAT ELECTRICITY IS AVAILABLE.~~

21 (B) (1) ~~THE COMMISSION MAY NOT ALLOW A WHEELING COMPANY TO~~
22 ~~IMPOSE UNDUE COSTS OR BURDENS ON ANY NONWHEELING RETAIL ELECTRIC~~
23 ~~CUSTOMER WHO IS NOT A DIRECT ECONOMIC BENEFICIARY OF AFFILIATE~~
24 ~~WHEELING.~~

25 (2) ~~ANY REVENUE FOREGONE OR COST INCURRED BY AN APPLICANT~~
26 ~~ENGAGED IN AFFILIATE WHEELING MAY NOT BE RECOVERED FROM ANY OF THE~~
27 ~~WHEELING COMPANY'S REMAINING NONWHEELING RETAIL ELECTRIC CUSTOMERS,~~
28 ~~INCLUDING ANY COST ATTRIBUTABLE TO AN ASSET OF THE WHEELING COMPANY OR~~
29 ~~ELECTRIC COMPANY THAT IS IDLED BY AN AFFILIATE WHEELING ARRANGEMENT~~
30 ~~UNDER THIS SUBTITLE.~~

31 (C) ~~A RETAIL ELECTRIC CUSTOMER WHO RETURNS TO THE WHEELING~~
32 ~~COMPANY'S SYSTEM SHALL HAVE THE SAME RIGHTS AND PRIVILEGES AS A NEW~~
33 ~~ELECTRICITY SUPPLY CUSTOMER.~~

1 ~~7-505.~~

2 ~~AN ELECTRIC COMPANY OR WHEELING COMPANY MAY NOT:~~

3 ~~(1) FRUSTRATE OR OTHERWISE INTERFERE WITH THE~~
4 ~~IMPLEMENTATION OF THIS SUBTITLE, IN ANY MANNER, OR CONSTRAIN THE~~
5 ~~EFFECTS OF COMPETITION ARISING FROM THIS SUBTITLE TO SET THE PRICE OF~~
6 ~~ELECTRICITY AT MARKET PRICE LEVELS RATHER THAN REGULATED PRICE LEVELS;~~
7 ~~OR~~

8 ~~(2) USE A COMMISSION-DESIGNATED DISTRIBUTION TERRITORY OR~~
9 ~~ORDER GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO~~
10 ~~PROHIBIT OR PREVENT AFFILIATE WHEELING UNDER THIS SUBTITLE.~~

11 ~~7-506.~~

12 ~~(A) AN APPLICANT MAY:~~

13 ~~(1) APPEAL TO THE COMMISSION IF A WHEELING COMPANY DENIES A~~
14 ~~REQUEST FOR AFFILIATE WHEELING; AND~~

15 ~~(2) REQUEST REASONABLE INFORMATION, AS DETERMINED BY THE~~
16 ~~COMMISSION, FROM THE POTENTIAL WHEELING COMPANY, INCLUDING~~
17 ~~INFORMATION ABOUT AVAILABLE CAPACITY AND RELIABILITY OF THE WHEELING~~
18 ~~COMPANY'S TRANSMISSION OR DISTRIBUTION SYSTEM UNDER VARIOUS~~
19 ~~ASSUMPTIONS AND SCENARIOS.~~

20 ~~(B) IF A WHEELING COMPANY DENIES A REQUEST FOR AFFILIATE WHEELING,~~
21 ~~THE COMMISSION, ON REQUEST OF THE APPLICANT, SHALL HOLD AN EVIDENTIARY~~
22 ~~HEARING ON THE FAIRNESS OR REASONABLENESS OF THE DENIAL.~~

23 ~~(C) ALL REASONABLE INFORMATION REQUESTED UNDER SUBSECTION (A) OF~~
24 ~~THIS SECTION SHALL BE PROVIDED TO THE APPLICANT BY THE WHEELING~~
25 ~~COMPANY:~~

26 ~~(1) WITHIN 30 DAYS AFTER THE WHEELING COMPANY RECEIVES THE~~
27 ~~APPLICANT'S REQUEST FOR INFORMATION; AND~~

28 ~~(2) IN WRITTEN FORM.~~

29 ~~(D) A WHEELING COMPANY BEARS THE BURDEN OF PROVING BY CLEAR AND~~
30 ~~CONVINCING EVIDENCE TO THE COMMISSION:~~

31 ~~(1) THAT THERE IS A LACK OF TRANSMISSION OR DISTRIBUTION~~
32 ~~FACILITY CAPACITY;~~

33 ~~(2) THAT THE AFFILIATE WHEELING WOULD CAUSE A DETERIORATION~~
34 ~~OF SYSTEM RELIABILITY THAT CANNOT REASONABLY BE REMEDIED; OR~~

35 ~~(3) ANY OTHER FACTOR RELATING TO THE WHEELING COMPANY'S~~
36 ~~INABILITY TO PROVIDE AFFILIATE WHEELING.~~

~~1 (E) THERE IS A REBUTTABLE PRESUMPTION UNDER THIS SUBTITLE THAT AN
2 ELECTRIC COMPANY'S TRANSMISSION OR DISTRIBUTION FACILITY HAS THE
3 CAPACITY TO PROVIDE FOR AFFILIATE WHEELING TO AN EXISTING CUSTOMER OR
4 LOAD.~~

~~5 7-507.~~

~~6 (A) A RETAIL ELECTRIC CUSTOMER WHO CHOOSES TO LEAVE AN ELECTRIC
7 COMPANY AND OBTAIN ELECTRICITY FROM ANOTHER SOURCE THROUGH AN
8 AFFILIATE WHEELING ARRANGEMENT RETAINS ALL RIGHTS AND OBLIGATIONS TO
9 TRANSMISSION OR DISTRIBUTION CAPACITY AND FACILITIES ALLOCATED TO THAT
10 CUSTOMER BY THE ELECTRIC COMPANY BEFORE IMPLEMENTATION OF AN
11 AFFILIATE WHEELING ARRANGEMENT.~~

~~12 (B) THE COMMISSION SHALL ORDER THE CONSTRUCTION OF NEW
13 TRANSMISSION OR DISTRIBUTION FACILITIES OR APPROPRIATE MODIFICATIONS OF
14 EXISTING TRANSMISSION OR DISTRIBUTION FACILITIES THAT THE COMMISSION
15 CONSIDERS SUFFICIENT AND NECESSARY TO FACILITATE AFFILIATE WHEELING.~~

~~16 (C) THE COMMISSION SHALL DETERMINE THE APPROPRIATE ALLOCATION OF
17 THE COST OF ANY NEW TRANSMISSION OR DISTRIBUTION FACILITIES, TAKING INTO
18 CONSIDERATION THE USE, PURPOSE, AND TIME NECESSARY TO PLACE NEW
19 TRANSMISSION OR DISTRIBUTION FACILITIES IN COMMERCIAL OPERATION AND BE
20 MADE AVAILABLE BY THE WHEELING COMPANY FOR USE BY THE APPLICANT.~~

~~21 7-508.~~

~~22 (A) A RETAIL ELECTRIC CUSTOMER WHO CHOOSES TO CEASE PURCHASING OF
23 ELECTRICITY FROM AN ELECTRIC COMPANY AND REPLACE THAT PURCHASE OF
24 ELECTRICITY WITH AN AFFILIATE WHEELING ARRANGEMENT SHALL NOTIFY THE
25 ELECTRIC COMPANY IN WRITING UP TO 6 MONTHS BEFOREHAND, OR AS SPECIFIED
26 IN A WRITTEN CONTRACT BETWEEN THE ELECTRIC COMPANY AND THE RETAIL
27 ELECTRIC CUSTOMER, WHICHEVER IS GREATER.~~

~~28 (B) THE NOTIFICATION PERIOD OF SUBSECTION (A) OF THIS SECTION MAY BE
29 SUPERSEDED BY LEGISLATION ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING
30 THAT SPECIFIES STANDARD NOTIFICATION PERIODS FOR CHANGING ELECTRICITY
31 SUPPLIERS.~~

~~32 (C) NOTIFICATION GIVEN UNDER SUBSECTION (A) OF THIS SECTION MAY NOT
33 ABROGATE AN EXISTING CONTRACT BETWEEN A RETAIL ELECTRIC CUSTOMER AND
34 AN ELECTRIC COMPANY.~~

~~35 7-509.~~

~~36 THIS SUBTITLE MAY BE REFERRED TO AS THE AFFILIATE WHEELING ACT OF
37 1999.~~

~~38 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
39 Act or the application thereof to any person or circumstance is held invalid for any~~

1 reason in a court of competent jurisdiction, the invalidity does not affect other
2 provisions or any other application of this Act which can be given effect without the
3 invalid provision or application, and for this purpose the provisions of this Act are
4 declared severable.

5 ~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect~~
6 ~~July 1, 1999. It shall remain effective for a period of 4 years and 3 months and, at the~~
7 ~~end of September 30, 2003, with no further action required by the General Assembly,~~
8 ~~this Act shall be abrogated and of no further force and effect.~~