

CHAPTER 131

(House Bill 374)

AN ACT concerning

EmPOWER Maryland Energy Efficiency Act of 2008

FOR the purpose of establishing the State goal of achieving certain percentage reductions in per capita electricity consumption and peak demand by the end of a certain year; requiring the Public Service Commission to make certain calculations each year and to report those calculations to the General Assembly each year as part of its annual report; requiring certain municipal electric utilities and ~~small~~ certain rural electric cooperatives to include certain programs or services to encourage and promote the efficient use and conservation of energy as part of their service to their customers; requiring that, by certain dates, the ~~Public Service~~ Commission shall adopt regulations or issue orders requiring each electric company to procure or provide to certain customers certain energy efficiency and conservation ~~measures~~ programs and services that are designed to achieve certain energy reduction targets by certain dates; requiring electric companies to submit to the Commission a certain plan by certain dates; requiring electric companies to consult with the Maryland Energy Administration regarding certain plans; requiring the Administration to provide certain findings to the Commission; requiring the Commission to review certain plans by a certain time; authorizing the Commission and the Administration to request certain information; prohibiting the Commission from requiring or allowing an electric company to require an electric customer to allow the electric company to control the amount of the electric customer's electricity usage; ~~requiring the Commission, by regulation or order, to require certain electric companies to implement certain rate adjustment mechanisms for certain customers~~ requiring the Commission to monitor and analyze the impact of certain programs and services; requiring the Commission to direct electric companies to include certain information in a certain annual update ~~and certain demand response programs for certain customers~~; requiring the Commission to submit certain reports to the Governor and the General Assembly by certain dates; requiring the Commission to evaluate certain technology and authorizing the Commission to require its implementation; authorizing the Commission to impose a certain special assessment on certain electric companies for a certain fiscal year; authorizing amounts collected from a special assessment to be expended in accordance with an approved budget amendment for certain expenses; requiring the Administration, on or before a certain date, to review the anticipated achievement of certain goals for a certain purpose and, after providing opportunity for public comment, report its findings to certain committees; requiring the Administration, on or before a certain date, to study the feasibility of setting certain targets for natural gas companies and, after

providing opportunity for public comment, report its findings to certain committees; defining certain terms; and generally relating to energy efficiency and demand management measures programs and services.

BY repealing and reenacting, with amendments,
Article – Public Utility Companies
Section 7-211 and ~~7-510(e)(4)(ii)2.C.~~
Annotated Code of Maryland
(1998 Volume and 2007 Supplement)

~~BY adding to
Article – Public Utility Companies
Section 7-213 and 7-214
Annotated Code of Maryland
(1998 Volume and 2007 Supplement)~~

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

Article – Public Utility Companies

7-211.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “DEMAND RESPONSE PROGRAM” MEANS A PROGRAM ESTABLISHED BY AN ELECTRIC COMPANY THAT PROMOTES CHANGES IN ELECTRIC USAGE BY CUSTOMERS FROM THEIR NORMAL CONSUMPTION PATTERNS IN RESPONSE TO:

(I) CHANGES IN THE PRICE OF ELECTRICITY OVER TIME;

OR

(II) INCENTIVES DESIGNED TO INDUCE LOWER ELECTRICITY USE AT TIMES OF HIGH WHOLESALE MARKET PRICES OR WHEN SYSTEM RELIABILITY IS JEOPARDIZED.

(3) “ELECTRICITY CONSUMPTION” AND “ELECTRICITY CONSUMED” MEAN THE SUM OF RETAIL ELECTRICITY SALES TO ALL CUSTOMERS AND REPORTED ELECTRICITY LOSSES WITHIN THE ELECTRIC DISTRIBUTION SYSTEM.

~~(2)~~ (4) “PEAK DEMAND” MEANS THE HIGHEST LEVEL OF ELECTRICITY DEMAND IN THE STATE MEASURED IN MEGAWATTS DURING THE PERIOD FROM MAY 1 TO SEPTEMBER 30 ON A WEATHER-NORMALIZED BASIS.

(5) “PER CAPITA ELECTRICITY CONSUMPTION” MEANS THE RESULT CALCULATED BY DIVIDING THE TOTAL GIGAWATT-HOURS OF ELECTRICITY CONSUMED BY ELECTRICITY CUSTOMERS IN THE STATE AS OF DECEMBER 31 OF A YEAR, AS DETERMINED BY THE COMMISSION, BY THE POPULATION OF THE STATE AS OF DECEMBER 31 OF THAT YEAR, AS DETERMINED BY THE DEPARTMENT OF PLANNING.

~~(3)~~ (6) “PLAN” MEANS AN ELECTRICITY SAVINGS AND DEMAND REDUCTION PLAN AND COST RECOVERY PROPOSAL.

(B) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(1) ENERGY EFFICIENCY IS AMONG THE LEAST EXPENSIVE WAYS TO MEET THE GROWING ELECTRICITY DEMANDS OF THE STATE; AND

(2) TO PROVIDE AFFORDABLE, RELIABLE, AND CLEAN ENERGY FOR CONSUMERS OF MARYLAND, IT IS THE GOAL OF THE STATE TO ACHIEVE THE FOLLOWING ENERGY EFFICIENCY, CONSERVATION, AND DEMAND RESPONSE TARGETS, BASED ON 2007 ELECTRICITY CONSUMPTION:

(I) A 15% REDUCTION IN PER CAPITA ELECTRICITY CONSUMPTION BY THE END OF 2015; AND

(II) A 15% REDUCTION IN PER CAPITA PEAK DEMAND BY THE END OF 2015.

(C) BEGINNING WITH THE 2008 CALENDAR YEAR AND EACH YEAR THEREAFTER, THE COMMISSION SHALL CALCULATE:

(1) THE PER CAPITA ELECTRICITY CONSUMPTION FOR THAT YEAR; AND

(2) THE PEAK DEMAND FOR THAT YEAR.

[(a)] ~~(C)~~ (D) Subject to review and approval by the Commission, each gas company and electric company shall develop and implement programs and services to encourage and promote the efficient use and conservation of energy by consumers, gas companies, and electric companies.

~~(D)~~ **(E) AS DIRECTED BY THE COMMISSION, EACH MUNICIPAL ELECTRIC UTILITY AND ~~SMALL-RURAL~~ EACH ELECTRIC COOPERATIVE THAT SERVES A POPULATION OF LESS THAN 250,000 IN ITS DISTRIBUTION TERRITORY SHALL INCLUDE ~~THESE~~ ENERGY EFFICIENCY AND CONSERVATION PROGRAMS OR SERVICES AS PART OF THEIR SERVICE TO THEIR CUSTOMERS.**

[(b)] ~~(E)~~ (F) The Commission shall:

(1) require each gas company and electric company to establish any program or service that the Commission deems appropriate and cost effective to encourage and promote the efficient use and conservation of energy;

(2) adopt rate-making policies that provide cost recovery and, in appropriate circumstances, reasonable financial incentives for gas companies and electric companies to establish programs and services that encourage and promote the efficient use and conservation of energy; and

(3) ensure that adoption of electric customer choice under Subtitle 5 of this title does not adversely impact the continuation of cost effective energy conservation and efficiency programs.

~~(F)~~ **(G) ON EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, ON OR BEFORE DECEMBER 31, 2008, BY REGULATION OR ORDER, THE COMMISSION SHALL:**

(1) TO THE EXTENT THAT THE COMMISSION DETERMINES THAT COST-EFFECTIVE ENERGY EFFICIENCY AND CONSERVATION PROGRAMS AND SERVICES ARE AVAILABLE, FOR EACH AFFECTED CLASS, REQUIRE EACH ELECTRIC COMPANY TO PROCURE OR PROVIDE FOR ITS ELECTRICITY CUSTOMERS COST-EFFECTIVE ENERGY EFFICIENCY AND CONSERVATION MEASURES PROGRAMS AND SERVICES WITH PROJECTED AND VERIFIABLE ENERGY ELECTRICITY SAVINGS THAT ARE DESIGNED TO ACHIEVE THE FOLLOWING:

~~(1)~~ **A TARGETED REDUCTION OF AT LEAST 5% BY THE END OF 2011 AND 10% BY THE END OF 2015 OF PER CAPITA ELECTRICITY CONSUMED IN THE ELECTRIC COMPANY'S SERVICE TERRITORY DURING 2007; AND**

(2) REQUIRE EACH ELECTRIC COMPANY TO IMPLEMENT A COST-EFFECTIVE DEMAND RESPONSE PROGRAM IN THE ELECTRIC COMPANY'S SERVICE TERRITORY THAT IS DESIGNED TO ACHIEVE A TARGETED REDUCTION OF AT LEAST 5% BY THE END OF 2011, 10% BY THE END OF 2013, AND 15% BY THE END OF 2015, IN PER CAPITA PEAK DEMAND OF ELECTRICITY CONSUMED IN THE ELECTRIC COMPANY'S SERVICE TERRITORY DURING 2007.

~~(G)~~ (H) (1) (I) ON OR BEFORE ~~OCTOBER~~ JULY 1, 2008, AND EVERY 3 YEARS THEREAFTER, EACH ELECTRIC COMPANY SHALL ~~SUBMIT TO THE COMMISSION AN ELECTRICITY SAVINGS AND DEMAND REDUCTION PLAN AND COST RECOVERY PROPOSAL FOR THE 3 SUBSEQUENT CALENDAR YEARS~~ CONSULT WITH THE MARYLAND ENERGY ADMINISTRATION REGARDING THE DESIGN AND ADEQUACY OF THE ELECTRIC COMPANY'S PLAN TO ACHIEVE THE ELECTRICITY SAVINGS AND DEMAND REDUCTION TARGETS SPECIFIED IN SUBSECTION (G) OF THIS SECTION.

(II) AN ELECTRIC COMPANY SHALL PROVIDE THE MARYLAND ENERGY ADMINISTRATION WITH ANY ADDITIONAL INFORMATION REGARDING THE PLAN, AS REQUESTED.

(2) ON OR BEFORE SEPTEMBER 1, 2008, AND EVERY 3 YEARS THEREAFTER, AN ELECTRIC COMPANY SHALL SUBMIT ITS PLAN TO THE COMMISSION THAT DETAILS THE ELECTRIC COMPANY'S PROPOSALS FOR ACHIEVING THE ELECTRICITY SAVINGS AND DEMAND REDUCTION TARGETS SPECIFIED IN SUBSECTION (G) OF THIS SECTION FOR THE 3 SUBSEQUENT CALENDAR YEARS.

(3) THE COMMISSION SHALL CONSIDER ANY WRITTEN FINDINGS PROVIDED BY THE MARYLAND ENERGY ADMINISTRATION REGARDING THE DESIGN AND ADEQUACY OF THE PLAN.

~~(H)~~ (4) EACH ELECTRIC COMPANY SHALL PROVIDE ANNUAL UPDATES TO THE COMMISSION AND THE MARYLAND ENERGY ADMINISTRATION ON PLAN IMPLEMENTATION AND PROGRESS TOWARDS ACHIEVING THE ELECTRICITY SAVINGS AND DEMAND REDUCTION TARGETS SPECIFIED IN SUBSECTION ~~(F)~~ (G) OF THIS SECTION.

~~(2) BEFORE SUBMITTING THE PLAN TO THE COMMISSION, EACH ELECTRIC COMPANY SHALL CONSULT WITH THE MARYLAND ENERGY ADMINISTRATION REGARDING PROGRAM DESIGN AND ADEQUACY OF THE PLANS TO ACHIEVE THE ELECTRICITY SAVINGS AND DEMAND REDUCTION TARGETS SPECIFIED IN SUBSECTION (F) OF THIS SECTION.~~

~~(3)~~ (5) (I) THE PLAN SHALL INCLUDE A DESCRIPTION OF ~~THE~~ THE PROPOSED ENERGY EFFICIENCY AND CONSERVATION ~~MEASURES~~ PROGRAMS AND SERVICES AND THE PROPOSED DEMAND RESPONSE PROGRAM, ANTICIPATED COSTS, PROJECTED ELECTRICITY SAVINGS, AND ANY OTHER INFORMATION REQUESTED BY THE COMMISSION.

(II) THE PLAN SHALL ADDRESS RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL SECTORS AS APPROPRIATE, INCLUDING LOW-INCOME COMMUNITIES AND LOW- TO MODERATE-INCOME COMMUNITIES.

~~**(4) BEFORE THE COMMISSION TAKES ACTION ON THE PLAN, THE MARYLAND ENERGY ADMINISTRATION SHALL PROVIDE WRITTEN FINDINGS TO THE COMMISSION WITH RESPECT TO PROGRAM DESIGN AND THE ADEQUACY OF THE PLAN TO ACHIEVE THE ELECTRICITY SAVINGS AND DEMAND REDUCTION TARGETS SPECIFIED IN SUBSECTION (F) OF THIS SECTION.**~~

~~**(5)**~~ **(6) THE COMMISSION SHALL REVIEW EACH ELECTRIC COMPANY'S PLAN TO DETERMINE IF THE PLAN IS ADEQUATE AND COST-EFFECTIVE IN ACHIEVING THE ELECTRICITY SAVINGS AND DEMAND REDUCTION TARGETS SPECIFIED IN SUBSECTION (F) (G) OF THIS SECTION.**

~~**(6) THE COMMISSION AND THE MARYLAND ENERGY ADMINISTRATION MAY REQUEST ADDITIONAL INFORMATION FROM AN ELECTRIC COMPANY REGARDING ITS PLAN.**~~

(I) (1) IN DETERMINING WHETHER A PROGRAM OR SERVICE ENCOURAGES AND PROMOTES THE EFFICIENT USE AND CONSERVATION OF ENERGY, THE COMMISSION SHALL CONSIDER THE:

(I) COST-EFFECTIVENESS;

(II) IMPACT ON RATES OF EACH RATEPAYER CLASS;

(III) IMPACT ON JOBS; AND

(IV) IMPACT ON THE ENVIRONMENT.

(2) THE COMMISSION SHALL MONITOR AND ANALYZE THE IMPACT OF EACH PROGRAM AND SERVICE TO ENSURE THAT THE OUTCOME OF EACH PROGRAM AND SERVICE PROVIDES THE BEST POSSIBLE RESULTS.

(3) IN MONITORING AND ANALYZING THE IMPACT OF A PROGRAM OR SERVICE UNDER PARAGRAPH (2) OF THIS SUBSECTION, IF THE COMMISSION FINDS THAT THE OUTCOME OF THE PROGRAM OR SERVICES MAY NOT BE PROVIDING THE BEST POSSIBLE RESULTS, THE COMMISSION SHALL DIRECT THE ELECTRIC COMPANY TO INCLUDE IN ITS ANNUAL UPDATE UNDER SUBSECTION (H)(4) OF THIS SECTION SPECIFIC MEASURES TO ADDRESS THE FINDINGS.

(J) (1) AT LEAST ONCE EACH YEAR, EACH ELECTRIC COMPANY AND GAS COMPANY SHALL NOTIFY AFFECTED CUSTOMERS OF THE ENERGY EFFICIENCY AND CONSERVATION CHARGES IMPOSED AND BENEFITS CONFERRED.

(2) THE NOTICE SHALL BE PROVIDED BY PUBLICATION ON THE COMPANY'S WEBSITE AND INCLUSION WITH BILLING INFORMATION SUCH AS A BILL INSERT OR BILL MESSAGE.

~~[(c)]~~ ~~(H)~~ ~~(I)~~ **(K)** On or before [February 1, 2001] ~~FEBRUARY 15, 2009, AND EVERY 3 YEARS THEREAFTER~~ **MARCH 1 OF EACH YEAR**, the Commission, in consultation with the Maryland Energy Administration, shall report, subject to § 2-1246 of the State Government Article, to the General Assembly on:

~~(i)~~ **(1)** the status of programs and services to encourage and promote the efficient use and conservation of energy, **INCLUDING AN EVALUATION OF THE IMPACT OF THE PROGRAMS AND SERVICES THAT ARE DIRECTED TO LOW-INCOME COMMUNITIES, LOW- TO MODERATE-INCOME COMMUNITIES TO THE EXTENT POSSIBLE, AND OTHER PARTICULAR CLASSES OF RATEPAYERS;** ~~and~~

~~(ii)~~ **(2)** a recommendation for the appropriate funding level to adequately fund these programs and services; **AND**

(3) IN ACCORDANCE WITH PARAGRAPH (C) OF THIS SUBSECTION SUBSECTION (C) OF THIS SECTION, THE PER CAPITA ELECTRICITY CONSUMPTION AND THE PEAK DEMAND FOR THE PREVIOUS CALENDAR YEAR.

(L) NOTWITHSTANDING ANY OTHER LAW, THE COMMISSION MAY NOT REQUIRE OR ALLOW AN ELECTRIC COMPANY TO REQUIRE AN ELECTRIC CUSTOMER TO AUTHORIZE THE ELECTRIC COMPANY TO CONTROL THE AMOUNT OF THE ELECTRIC CUSTOMER'S ELECTRICITY USAGE, INCLUDING THROUGH CONTROL OF THE ELECTRIC CUSTOMER'S THERMOSTAT.

~~(2)~~ ~~In determining whether a program or service encourages and promotes the efficient use and conservation of energy, the Commission shall consider, among other factors:~~

- ~~(i) the impact on jobs;~~
- ~~(ii) the impact on the environment;~~
- ~~(iii) the impact on rates; and~~
- ~~(iv) the cost-effectiveness.~~

~~7-213.~~

~~(A) IN THIS SECTION, "RATE DECOUPLING" MEANS A RATE ADJUSTMENT MECHANISM THAT SEPARATES A UTILITY COMPANY'S AGREED-ON FIXED COSTS, INCLUDING ALLOWED EARNINGS, FROM THE ACTUAL VOLUME OF UNIT SALES THAT OCCUR.~~

~~(B) ON OR BEFORE DECEMBER 31, 2008, BY REGULATION OR ORDER, THE COMMISSION SHALL REQUIRE EACH ELECTRIC COMPANY TO IMPLEMENT RATE DECOUPLING FOR CUSTOMERS IN THE ELECTRIC COMPANY'S SERVICE TERRITORY.~~

~~7-214.~~

~~(A) IN THIS SECTION, "DEMAND RESPONSE PROGRAM" MEANS A PROGRAM ESTABLISHED BY AN ELECTRIC COMPANY THAT PROMOTES CHANGES IN ELECTRIC USAGE BY CUSTOMERS FROM THEIR NORMAL CONSUMPTION PATTERNS IN RESPONSE TO:~~

~~(1) CHANGES IN THE PRICE OF ELECTRICITY OVER TIME; OR~~

~~(2) INCENTIVES DESIGNED TO INDUCE LOWER ELECTRICITY USE AT TIMES OF HIGH WHOLESALE MARKET PRICES OR WHEN SYSTEM RELIABILITY IS JEOPARDIZED.~~

~~(B) ON OR BEFORE DECEMBER 31, 2008, BY REGULATION OR ORDER, THE COMMISSION SHALL REQUIRE EACH ELECTRIC COMPANY TO IMPLEMENT A DEMAND RESPONSE PROGRAM FOR RESIDENTIAL CUSTOMERS IN THE ELECTRIC COMPANY'S SERVICE TERRITORY.~~

~~7-510.~~

~~(e) (4) (ii) 2. C. By regulation or order, as a part of the competitive process, the Commission shall require [or allow] the procurement of cost-effective energy efficiency and conservation measures and services [with projected and verifiable energy savings to offset anticipated demand to be served by standard offer service,] IN ACCORDANCE WITH §§ 7-211(B) AND (E) AND 7-214 OF THIS SUBTITLE and SHALL REQUIRE OR ALLOW the imposition of other cost-effective demand-side management programs.~~

SECTION 2. AND BE IT FURTHER ENACTED, That the Public Service Commission shall evaluate whether advance meter technology, commonly known as "smart meters," and digital automation of the components of the entire power supply

system, commonly known as “smart grid,” are cost-effective in reducing consumption and peak demand of electricity in Maryland. If smart meter or smart grid technology are found to be cost-effective, the Commission may require, by regulation or order, each electric company to implement as appropriate smart meter or smart grid technology in its service territory.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) Notwithstanding any other provision of law, for fiscal year 2009 only, in addition to the amounts appropriated in the budget bill for fiscal 2009 and in accordance with § 2-110 of the Public Utility Companies Article, the Public Service Commission may impose up to \$300,000 as a special assessment for the Commission and the Office of the People’s Counsel to accomplish the requirements of this Act.

(b) Of the \$300,000 that may be collected under paragraph (1) of this subsection:

(1) up to \$250,000 may be expended in accordance with an approved budget amendment for consultants, personnel, and related expenses of the Commission, as deemed necessary by the Commission to accomplish the requirements of this Act; and

(2) up to \$50,000 may be expended in accordance with an approved budget amendment for consultants, personnel, and related expenses of the Office of the People’s Counsel, as deemed necessary by the Office of the People’s Counsel to accomplish the requirements of this Act.

(c) The special assessment shall be imposed only on those electric companies otherwise subject to the assessment under § 2-110 of the Public Utility Companies Article.

(d) The bill sent to each electric company subject to the assessment shall equal the product of multiplying:

(1) the amount authorized to be collected under this subsection; and

(2) the ratio of gross operating revenues of the entity subject to the assessment to the total gross operating revenues for all entities subject to the assessment.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That, on or before December 31, 2012, the Maryland Energy Administration, in consultation with the Public Service Commission, shall:

(1) review the anticipated achievement of the goals specified under § 7-211(b)(2) of the Public Utility Companies Article as enacted by this Act for purposes

of determining whether electricity consumption and peak demand reduction targets should be set beyond 2015; and

(2) after providing opportunity for public comment, report its findings, in accordance with § 2-1246 of the State Government Article, to the Senate Finance Committee and the House Economic Matters Committee.

SECTION 4. 5. AND BE IT FURTHER ENACTED, That, on or before December 31, 2012, the Maryland Energy Administration, in consultation with the Public Service Commission, shall:

(1) study the feasibility of setting energy savings targets in 2015 and 2020 for natural gas companies; and

(2) after providing opportunity for public comment, report its findings, in accordance with § 2-1246 of the State Government Article, to the Senate Finance Committee and the House Economic Matters Committee.

SECTION ~~3.~~ ~~5.~~ 6. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~July~~ June 1, 2008.

Approved by the Governor, April 24, 2008.