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Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Public Service Companies - Standards of Conduct Relating to Unregulated Business**
3 **Activities**

4 FOR the purpose of requiring certain principles to be used by the Public Service
5 Commission in approving certain allocations and transactions between certain
6 public service companies and certain unregulated affiliates and activities; providing
7 certain standards of conduct between certain public service companies and certain
8 affiliates and activities; providing certain penalties for certain violations; defining
9 certain terms; providing for the construction of this Act; and generally relating to
10 public service companies and unregulated business activities.

11 BY adding to
12 Article 78 - Public Service Commission Law
13 Section 54E
14 Annotated Code of Maryland
15 (1995 Replacement Volume and 1996 Supplement)

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

18 **Article 78 - Public Service Commission Law**

19 54E.

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

22 (2) "AFFILIATE" INCLUDES AN UNREGULATED BUSINESS ACTIVITY OF A
23 PUBLIC SERVICE COMPANY REGARDLESS OF THE ORGANIZATIONAL STRUCTURE OF
24 THE ACTIVITY.

25 (3) "BUSINESS ACTIVITY" DOES NOT INCLUDE A CHARITABLE
26 CONTRIBUTION MADE TO A NOT-FOR-PROFIT ORGANIZATION OR ENTITY.

27 (B) THIS SECTION APPLIES TO A PUBLIC SERVICE COMPANY THAT:

28 (1) IS REGULATED BY THE COMMISSION;

29 (2) PROVIDES GAS OR ELECTRIC SERVICE; AND

2

1 (3) ENGAGES IN OR HAS A SUBSIDIARY THAT ENGAGES IN AN
2 UNREGULATED BUSINESS ACTIVITY.

3 (C) A PUBLIC SERVICE COMPANY MAY HAVE AN AFFILIATE THAT ENGAGES
4 IN A BUSINESS ACTIVITY NOT REGULATED BY THE COMMISSION ONLY WITH THE
5 APPROVAL OF THE COMMISSION IN ACCORDANCE WITH THE FOLLOWING
6 PRINCIPLES:

7 (1) ALLOCATIONS BETWEEN REGULATED AND UNREGULATED
8 ACTIVITIES SHOULD BE MADE ON THE BASIS OF FULLY DISTRIBUTED COST
9 ALLOCATION METHODOLOGY;

10 (2) FOR TRANSACTIONS IN WHICH A PUBLIC SERVICE COMPANY
11 PROVIDES A BENEFIT TO AN UNREGULATED AFFILIATE, THE COST OF THESE
12 SERVICES SHOULD BE BASED UPON THE FULL COST OF THE SERVICE, INCLUDING
13 BOTH DIRECT AND INDIRECT COSTS THAT CAN BE CLEARLY ASCERTAINED;

14 (3) FOR SERVICES THAT COULD REASONABLY BE MARKETED BY A
15 PUBLIC SERVICE COMPANY TO THE PUBLIC AND THAT HAVE CLEAR VALUE TO THE
16 UNREGULATED AFFILIATE, FAIR MARKET VALUE OF THE SERVICES MUST BE
17 ALLOCATED AS THE IMPUTED COST; AND

18 (4) FOR TRANSFERS OF ASSETS, ASYMMETRIC PRICING PRINCIPLES
19 MUST BE ADOPTED AS NECESSARY FOR THE PROTECTION OF THE REGULATED
20 UTILITY OPERATIONS, SO THAT TRANSFERS OF ASSETS FROM A PUBLIC SERVICE
21 COMPANY TO AN UNREGULATED AFFILIATE SHOULD BE RECORDED AT THE
22 GREATER OF BOOK COST OR MARKET VALUE, BUT TRANSFERS FROM AN
23 UNREGULATED AFFILIATE TO A PUBLIC SERVICE COMPANY SHOULD BE AT THE
24 LESSER OF BOOK COST OR MARKET VALUE.

25 (D) A PUBLIC SERVICE COMPANY THAT HAS AN AFFILIATE THAT ENGAGES IN
26 A BUSINESS ACTIVITY NOT REGULATED BY THE COMMISSION SHALL CONFORM TO
27 THE FOLLOWING STANDARDS OF CONDUCT CONCERNING REGULATED AND
28 UNREGULATED BUSINESS ACTIVITIES:

29 (1) EXCEPT AS ARRANGED BY THE CUSTOMER, JOINT CALLS TO A
30 CUSTOMER BY THE PUBLIC SERVICE COMPANY AND ITS AFFILIATE ARE
31 FORBIDDEN;

32 (2) PROMOTIONAL MATERIAL MAY ALLOW THE AFFILIATE TO BE
33 IDENTIFIED AS AFFILIATED WITH THE PUBLIC SERVICE COMPANY IF NEITHER THE
34 PUBLIC SERVICE COMPANY NOR THE AFFILIATE REPRESENTS THAT ANY
35 ADVANTAGE ACCRUES TO A CUSTOMER THROUGH THE USE OF THE OTHER ENTITY;

36 (3) JOINT PROMOTIONS ARE PROHIBITED UNLESS THE PROMOTIONS
37 ARE OFFERED TO ALL OTHER COMPETITORS ON THE SAME TERMS AND
38 CONDITIONS;

39 (4) THE PUBLIC SERVICE COMPANY AND THE AFFILIATE SHALL
40 OPERATE FROM PHYSICALLY SEPARATE LOCATIONS TO AVOID INADVERTENT
41 SHARING OF INFORMATION;

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1 (5) THE PUBLIC SERVICE COMPANY MAY NOT PROVIDE SALES LEADS
2 TO THE AFFILIATE, AND MAY NOT GIVE THE APPEARANCE OF SPEAKING ON BEHALF
3 OF THE AFFILIATE;

4 (6) IN RESPONDING TO A CUSTOMER'S REQUEST FOR INFORMATION,
5 THE PUBLIC SERVICE COMPANY SHOULD PROVIDE A LIST OF ALL MARKETERS ON
6 ITS SYSTEM, BUT SHOULD NOT PROMOTE THE AFFILIATE;

7 (7) THE PUBLIC SERVICE COMPANY SHALL PROCESS ALL SIMILAR
8 REQUESTS FOR SERVICE IN THE SAME MANNER AND IN THE SAME PERIOD OF TIME;

9 (8) THE PUBLIC SERVICE COMPANY MAY NOT GIVE PREFERENCE TO ITS
10 AFFILIATE OVER NONAFFILIATED ENTITIES IN MATTERS RELATING TO PROVIDING
11 REGULATED SERVICES;

12 (9) THE PUBLIC SERVICE COMPANY MAY NOT DISCLOSE TO ITS
13 AFFILIATE ANY INFORMATION OBTAINED IN CONNECTION WITH PROVIDING
14 SERVICES TO A NONAFFILIATED ENTITY, CUSTOMER, OR AGENT;

15 (10) THE PUBLIC SERVICE COMPANY SHALL DISCLOSE ANY
16 INFORMATION THAT IT PROVIDES TO ITS AFFILIATE ON ITS SYSTEM, MARKETING OF
17 SERVICES, OR DELIVERY OF SERVICES AT THE SAME TIME TO ALL NONAFFILIATED
18 SUPPLIERS; AND

19 (11) THE PUBLIC SERVICE COMPANY SHALL OFFER THE SAME
20 DISCOUNTS, REBATES, FEE WAIVERS, AND PENALTY WAIVERS TO ALL SIMILARLY
21 SITUATED NONAFFILIATED SUPPLIERS AND CUSTOMERS THAT IT OFFERS TO ITS
22 AFFILIATE AND CUSTOMERS OF THE AFFILIATE.

23 (E) (1) IF THE COMMISSION FINDS THAT A PUBLIC SERVICE COMPANY HAS
24 VIOLATED SUBSECTION (C) OR (D) OF THIS SECTION, THE COMMISSION MAY ISSUE
25 AN ORDER REQUIRING A REFUND FROM THE PUBLIC SERVICE COMPANY TO ITS
26 RATEPAYERS.

27 (2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A REFUND
28 UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE IN AN AMOUNT EQUAL TO
29 THE VALUE OF THE BENEFIT TO THE AFFILIATE IN VIOLATION OF SUBSECTION (C)
30 OR (D) OF THIS SECTION.

31 (3) THE REFUND SHALL BE CALCULATED FROM THE LATER OF:

32 (I) OCTOBER 1, 1997; OR

33 (II) THE DATE OF THE LATEST NOTICE TO THE COMMISSION
34 UNDER § 27(C) OF THIS ARTICLE AFFECTING A RATE INVOLVED IN THE VIOLATION
35 OF SUBSECTION (C) OR (D) OF THIS SECTION.

36 (4) THE REFUND MAY BE PAID TO RATEPAYERS IN A MANNER THE
37 COMMISSION DETERMINES.

38 (F) IN ADDITION TO THE REFUND UNDER SUBSECTION (E) OF THIS SECTION,
39 THE PUBLIC SERVICE COMPANY MAY BE REQUIRED TO PAY A PENALTY UP TO

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1 THREE TIMES THE AMOUNT OF THE REFUND, IN A MANNER THE COMMISSION
2 DETERMINES.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed
4 as clarifying and additional to, and not in derogation of, existing law, and may not be
5 construed to have any effect on any existing regulation, order, or final proceeding of the
6 Public Service Commission.

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 1997.