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By: **Delegates Hecht and Bartlett**  
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Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Electricity - Affiliate Wheeling**

3 FOR the purpose of requiring the Public Service Commission to require electric  
4 companies to offer nondiscriminatory affiliate wheeling on certain terms;  
5 establishing certain requirements for certain tariffs, terms, and contracts for  
6 affiliate wheeling; prohibiting an electric company from imposing certain  
7 charges on certain customers under certain circumstances; authorizing the  
8 Commission to impose certain terms, issue certain orders, and take certain  
9 actions relating to affiliate wheeling; providing for certain applications and  
10 appeals relating to affiliate wheeling; requiring certain information to be  
11 provided to certain persons in a certain manner; describing certain acts  
12 prohibited to wheeling companies and providing for a certain civil penalty;  
13 providing for certain notice before a certain customer ceases to purchase  
14 electricity from an electric company; providing for the disallowance of certain  
15 costs under certain circumstances; requiring certain wheeling companies to use  
16 certain benefits in a certain manner; declaring the findings of the General  
17 Assembly; defining certain terms; making the provisions of this Act severable;  
18 and generally relating to affiliate wheeling of electricity.

19 BY adding to  
20 Article - Public Utility Companies  
21 Section 7-501 through 7-512, inclusive, to be under the new subtitle "Subtitle 5.  
22 Affiliate Wheeling"  
23 Annotated Code of Maryland  
24 (1998 Volume)

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

1 **Article - Public Utility Companies**

## 2 SUBTITLE 5. AFFILIATE WHEELING.

3 7-501.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
5 INDICATED.

6 (B) "APPLICANT" MEANS A PERSON WHO:

7 (1) SELLS OR SEEKS TO SELL ELECTRICITY OR SUPPLIES OR SEEKS TO  
8 SUPPLY ELECTRICITY FOR THE PERSON'S OWN NEEDS OR THE NEEDS OF AN  
9 AFFILIATE OR SUBSIDIARY OF THE PERSON;10 (2) OWNS, CONTROLS, OR LEASES ELECTRICITY GENERATION OR  
11 PRODUCTION FACILITIES; AND12 (3) MAKES A WRITTEN REQUEST FOR AFFILIATE WHEELING UNDER  
13 THIS SUBTITLE.14 (C) "AFFILIATE WHEELING" MEANS WHEELING SUFFICIENT TO ENABLE AN  
15 APPLICANT TO TRANSPORT ELECTRICITY OVER WHICH THE APPLICANT EXERCISES  
16 OWNERSHIP, CONTROL, OR LEASEHOLD INTEREST TO DELIVERY POINTS THAT ARE  
17 PHYSICALLY SEPARATE AND DISTINCT FROM ELECTRICITY GENERATION OR  
18 PRODUCTION LOCATIONS.19 (D) "AFFILIATE WHEELING ORDER" MEANS AN ORDER OF THE COMMISSION  
20 THAT REQUIRES A WHEELING COMPANY TO PROVIDE AFFILIATE WHEELING OVER  
21 AND THROUGH TRANSMISSION OR DISTRIBUTION FACILITIES LOCATED IN THE  
22 STATE.23 (E) "WHEEL" MEANS TO USE A TRANSMISSION OR DISTRIBUTION FACILITY OF  
24 A WHEELING COMPANY TO TRANSMIT ELECTRICITY, EITHER ON A PHYSICAL OR  
25 CONTRACT BASIS, THAT IS PRODUCED BY ANOTHER ELECTRIC COMPANY OR BY AN  
26 APPLICANT WHOM THE WHEELING COMPANY DOES NOT OWN, CONTROL, OR LEASE.27 (F) "WHEELING COMPANY" MEANS AN INVESTOR-OWNED ELECTRIC  
28 COMPANY THAT WHEELS ELECTRICITY TO A THIRD PARTY UNDER THIS SUBTITLE  
29 FOR AN APPLICANT THAT THE ELECTRIC COMPANY DOES NOT OWN, CONTROL, OR  
30 LEASE.

31 7-502.

32 THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THE PURPOSE OF THIS  
33 SUBTITLE IS TO:34 (1) MODIFY AND CLARIFY EXISTING LAW TO ESTABLISH THE RIGHT OF A  
35 RETAIL ELECTRIC CUSTOMER TO OBTAIN ITS ELECTRICITY FROM A GENERATION OR  
36 PRODUCTION FACILITY UNDER ITS OWNERSHIP OR CONTROL OR UNDER THE

1 OWNERSHIP OR CONTROL OF AN AFFILIATE OR SUBSIDIARY BUT IN A LOCATION  
2 SEPARATE FROM THAT OF THE CUSTOMER;

3 (2) CLARIFY THE AUTHORITY OF THE COMMISSION TO ORDER  
4 AFFILIATE WHEELING OF ELECTRICITY; AND

5 (3) AID IN THE CREATION OF A MORE COMPETITIVE RETAIL  
6 ELECTRICITY SUPPLY MARKET.

7 7-503.

8 (A) THE COMMISSION SHALL REQUIRE AN ELECTRIC COMPANY THAT OWNS  
9 TRANSMISSION OR DISTRIBUTION FACILITIES IN THE STATE TO OFFER  
10 NONDISCRIMINATORY AFFILIATE WHEELING OF ELECTRICITY TO AN APPLICANT ON  
11 THE SAME TERMS AND CONDITIONS THAT THE ELECTRIC COMPANY USES THE  
12 TRANSMISSION OR DISTRIBUTION FACILITIES.

13 (B) (1) A TARIFF FOR THE AFFILIATE WHEELING OF ELECTRICITY SHALL BE  
14 FAIR, JUST, AND REASONABLE.

15 (2) THE TARIFF SHALL:

16 (I) BE UNIFORM FOR ALL AFFILIATE WHEELING WITHIN EACH  
17 ELECTRIC COMPANY'S DISTRIBUTION TERRITORY IN THE STATE; AND

18 (II) ADDRESS PRICING OF BOTH FIRM AND NONFIRM AFFILIATE  
19 WHEELING.

20 (C) (1) ON THE WRITTEN REQUEST OF AN APPLICANT OR BY ORDER OF THE  
21 COMMISSION, AN ELECTRIC COMPANY SHALL BE REQUIRED TO ESTABLISH TERMS  
22 AND CONDITIONS FOR PROVIDING AFFILIATE WHEELING.

23 (2) THE TERMS AND CONDITIONS SHALL PROVIDE FOR THE  
24 NONDISCRIMINATORY AFFILIATE WHEELING OF ELECTRICITY AND SHALL BE FILED  
25 WITH THE COMMISSION AS PUBLIC INFORMATION.

26 (D) (1) FOR PURPOSES OF THIS SUBSECTION:

27 (I) THE EMBEDDED COST OF SERVICE:

28 1. SHALL BE BASED ON THE DEPRECIATED FIXED COSTS OF  
29 THE CAPITAL INVESTMENT BY THE WHEELING COMPANY REQUIRED TO PROVIDE  
30 AFFILIATE WHEELING; AND

31 2. MAY NOT INCLUDE THE COST OF GENERATING  
32 FACILITIES; AND

33 (II) THE DEPRECIATED FIXED COST SHALL BE BASED ON THE  
34 RATIO OF THE CAPACITY DEMANDED, EXPRESSED IN KILOWATTS TO BE IMPOSED ON  
35 THE TRANSMISSION OR DISTRIBUTION FACILITIES OF THE WHEELING COMPANY, TO

1 THE TOTAL CAPACITY, EXPRESSED IN KILOWATTS, OF THE TRANSMISSION OR  
2 DISTRIBUTION FACILITIES OF THE WHEELING COMPANY.

3 (2) A TARIFF FOR AFFILIATE WHEELING OF ELECTRICITY SHALL BE  
4 BASED ON AND MAY NOT EXCEED:

5 (I) THE ELECTRIC COMPANY'S FULLY EMBEDDED COST OF  
6 TRANSMISSION OR DISTRIBUTION SERVICE;

7 (II) THE RETURN ON INVESTMENT COMPONENT THAT WAS  
8 AUTHORIZED BY THE COMMISSION IN THE WHEELING COMPANY'S LAST RATE  
9 PROCEEDING APPLIED ONLY ON THE CAPITAL INVESTMENT DEEMED USED AND  
10 USEFUL TO PROVIDE AFFILIATE WHEELING; AND

11 (III) OPERATING AND MAINTENANCE EXPENSES ALLOCABLE TO  
12 THE FACILITIES USED AND USEFUL TO PROVIDE AFFILIATE WHEELING.

13 (E) (1) A SURFACE CONTRACT ENTERED INTO ON A NONDISCRIMINATORY  
14 BASIS FOR THE AFFILIATE WHEELING OF ELECTRICITY SHALL BE FILED WITH THE  
15 COMMISSION.

16 (2) THE SERVICE CONTRACT MAY INCLUDE:

17 (I) TERMINATION PROVISIONS, INCLUDING CONDITIONS OF  
18 SERVICE;

19 (II) EXTENDED CONTRACT DURATION PROVISIONS;

20 (III) LIQUIDATED DAMAGES; AND

21 (IV) SPECIFIC RATE SCHEDULES APPLICABLE TO ALL WHEELING  
22 COMPANIES IN THE STATE.

23 (F) THE COMMISSION MAY IMPOSE TERMS AND CONDITIONS ON THE  
24 AFFILIATE WHEELING OF ELECTRICITY THAT THE COMMISSION CONSIDERS  
25 NECESSARY TO SAFEGUARD SYSTEM INTEGRITY.

26 7-504.

27 (A) AN ELECTRIC COMPANY MAY NOT IMPOSE OR ASSESS A PENALTY,  
28 ADDITIONAL CHARGE, OR AN EXIT OR ENTRY FEE ON A RETAIL ELECTRIC CUSTOMER  
29 IF THE RETAIL ELECTRIC CUSTOMER:

30 (1) RETURNS TO THE ELECTRIC COMPANY TO OBTAIN ELECTRICITY  
31 AFTER OBTAINING ELECTRICITY THROUGH AN AFFILIATE WHEELING  
32 ARRANGEMENT; OR

33 (2) CHOOSES TO LEAVE THE ELECTRIC COMPANY AND OBTAIN  
34 ELECTRICITY FROM ANOTHER SOURCE THROUGH AN AFFILIATE WHEELING  
35 ARRANGEMENT, IF THAT ELECTRICITY IS AVAILABLE.

1 (B) (1) THE COMMISSION MAY NOT ALLOW A WHEELING COMPANY TO  
2 IMPOSE UNDUE COSTS OR BURDENS UPON ANY NONWHEELING RETAIL ELECTRIC  
3 CUSTOMER WHO IS NOT DIRECTLY AN ECONOMIC BENEFICIARY OF AFFILIATE  
4 WHEELING.

5 (2) ANY REVENUE FOREGONE OR COST INCURRED BY AN APPLICANT  
6 ENGAGED IN AFFILIATE WHEELING MAY NOT BE RECOVERED FROM ANY OF THE  
7 WHEELING COMPANY'S REMAINING NONWHEELING RETAIL ELECTRIC CUSTOMERS,  
8 INCLUDING ANY COST ATTRIBUTABLE TO AN ASSET OF THE WHEELING COMPANY OR  
9 ELECTRIC COMPANY THAT IS IDLED BY AN AFFILIATE WHEELING ARRANGEMENT  
10 UNDER THIS SUBTITLE.

11 (C) A RETAIL ELECTRIC CUSTOMER WHO RETURNS TO THE ELECTRIC  
12 COMPANY'S SYSTEM SHALL HAVE THE SAME RIGHTS AND PRIVILEGES AS A NEW  
13 ELECTRICITY SUPPLY CUSTOMER.

14 7-505.

15 (A) AN ELECTRIC COMPANY OR WHEELING COMPANY MAY NOT FRUSTRATE  
16 OR OTHERWISE INTERFERE WITH THE IMPLEMENTATION OF THIS SUBTITLE, IN ANY  
17 MANNER, OR CONSTRAIN THE EFFECTS OF COMPETITION ARISING FROM THIS  
18 SUBTITLE TO SET THE PRICE OF ELECTRICITY AT MARKET PRICE LEVELS, INSTEAD  
19 OF REGULATED PRICE LEVELS.

20 (B) AN ELECTRIC COMPANY OR WHEELING COMPANY MAY NOT USE A  
21 COMMISSION-DESIGNATED DISTRIBUTION TERRITORY OR ORDER GRANTING A  
22 CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROHIBIT OR PREVENT  
23 AFFILIATE WHEELING UNDER THIS SUBTITLE.

24 7-506.

25 (A) AN APPLICANT MAY:

26 (1) APPEAL TO THE COMMISSION IF A WHEELING COMPANY DENIES A  
27 REQUEST FOR AFFILIATE WHEELING; AND

28 (2) REQUEST REASONABLE INFORMATION, AS DETERMINED BY THE  
29 COMMISSION, FROM THE POTENTIAL WHEELING COMPANY, INCLUDING  
30 INFORMATION ABOUT AVAILABLE CAPACITY AND RELIABILITY OF THE WHEELING  
31 COMPANY'S TRANSMISSION OR DISTRIBUTION SYSTEM UNDER VARIOUS  
32 ASSUMPTIONS AND SCENARIOS.

33 (B) (1) IF A WHEELING COMPANY DENIES A REQUEST FOR AFFILIATE  
34 WHEELING, THE COMMISSION, ON REQUEST OF THE APPLICANT, SHALL HOLD A  
35 PUBLIC HEARING ON THE FAIRNESS OR REASONABLENESS OF THE DENIAL.

36 (2) THE HEARING SHALL BE HELD WITHIN 60 DAYS AFTER THE  
37 COMMISSION RECEIVES THE REQUEST FROM THE APPLICANT.

1 (3) IF, AFTER PUBLIC HEARING, THE COMMISSION DETERMINES THAT  
2 THE DENIAL OF AN APPLICATION FOR AFFILIATE WHEELING WAS UNFAIR OR  
3 UNREASONABLE, THE COMMISSION SHALL ISSUE AN AFFILIATE WHEELING ORDER  
4 THAT SHALL BE EFFECTIVE IMMEDIATELY.

5 (4) THE COMMISSION MAY NOT SUSPEND THE OPERATION OF AN  
6 AFFILIATE WHEELING ORDER FOR MORE THAN 30 DAYS.

7 (C) ALL REASONABLE INFORMATION REQUESTED UNDER SUBSECTION (A) OF  
8 THIS SECTION SHALL BE PROVIDED TO THE APPLICANT BY THE WHEELING  
9 COMPANY:

10 (1) WITHIN 30 DAYS AFTER THE WHEELING COMPANY RECEIVES THE  
11 APPLICANT'S REQUEST FOR INFORMATION; AND

12 (2) IN WRITTEN FORM AND AT NO COST TO THE APPLICANT.

13 (D) (1) A WHEELING COMPANY MAY NOT:

14 (I) FAIL TO RESPOND TO A REASONABLE INFORMATION REQUEST  
15 BY AN APPLICANT WITHIN 30 DAYS AFTER RECEIVING THE REQUEST; OR

16 (II) PROVIDE INFORMATION THAT IS INACCURATE OR MISLEADING  
17 TO AN APPLICANT.

18 (2) A WHEELING COMPANY THAT VIOLATES THIS SUBSECTION IS  
19 SUBJECT TO A CIVIL PENALTY NOT EXCEEDING \$10,000 AS DETERMINED BY THE  
20 COMMISSION.

21 (3) EACH DAY THAT A VIOLATION CONTINUES IS A SEPARATE  
22 VIOLATION.

23 (E) A WHEELING COMPANY BEARS THE BURDEN OF PROVING BY CLEAR AND  
24 CONVINCING EVIDENCE TO THE COMMISSION:

25 (1) THAT THERE IS A LACK OF TRANSMISSION OR DISTRIBUTION  
26 FACILITY CAPACITY;

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

29 (3) ANY OTHER FACTOR RELATING TO THE WHEELING COMPANY'S  
30 INABILITY TO PROVIDE AFFILIATE WHEELING.

31 (F) THERE IS A REBUTTABLE PRESUMPTION UNDER THIS SUBTITLE THAT AN  
32 ELECTRIC COMPANY'S TRANSMISSION OR DISTRIBUTION FACILITY HAS THE  
33 CAPACITY TO PROVIDE FOR AFFILIATE WHEELING TO AN EXISTING CUSTOMER OR  
34 LOAD.

1 7-507.

2 (A) AN APPLICANT AND A WHEELING COMPANY SHALL MAKE THEIR SYSTEM  
3 INTERCONNECTION UNDER AN AGREEMENT APPROVED BY THE COMMISSION.

4 (B) IF THE APPLICANT AND THE WHEELING COMPANY ARE UNABLE TO  
5 REACH AGREEMENT ON THE INTERCONNECTION, THE APPLICANT MAY PETITION  
6 THE COMMISSION FOR AN ORDER STATING THE TERMS OF INTERCONNECTION.

7 (C) THE TERMS OF THE INTERCONNECTION ORDER MAY NOT:

8 (1) BE ARBITRARY OR CAPRICIOUS;

9 (2) INTERFERE WITH THE IMPLEMENTATION OF THIS SUBTITLE; OR

10 (3) EXCEED THE REQUIREMENTS OF THE NATIONAL ELECTRICAL  
11 SAFETY CODE.

12 7-508.

13 (A) A RETAIL ELECTRIC CUSTOMER WHO CHOOSES TO LEAVE AN ELECTRIC  
14 COMPANY AND OBTAIN ELECTRICITY FROM ANOTHER SOURCE THROUGH AN  
15 AFFILIATE WHEELING ARRANGEMENT RETAINS ALL RIGHTS AND OBLIGATIONS TO  
16 TRANSMISSION OR DISTRIBUTION CAPACITY AND FACILITIES ALLOCATED TO THAT  
17 CUSTOMER BY THE ELECTRIC COMPANY BEFORE IMPLEMENTATION OF AN  
18 AFFILIATE WHEELING ARRANGEMENT.

19 (B) (1) THE COMMISSION SHALL ORDER THE CONSTRUCTION OF NEW  
20 TRANSMISSION OR DISTRIBUTION FACILITIES OR APPROPRIATE MODIFICATIONS OF  
21 EXISTING TRANSMISSION OR DISTRIBUTION FACILITIES THAT THE COMMISSION  
22 CONSIDERS SUFFICIENT AND NECESSARY TO FACILITATE AFFILIATE WHEELING.

23 (2) THE NET INCREMENTAL COST ATTRIBUTABLE TO THE  
24 CONSTRUCTION OR MODIFICATION SHALL BE BORNE BY THE APPLICANT. IF THE  
25 CONSTRUCTION OR MODIFICATION OF TRANSMISSION OR DISTRIBUTION FACILITIES  
26 CREATES ANY BENEFIT TO OTHER CUSTOMERS, THE OTHER CUSTOMERS SHALL  
27 SHARE WITH THE APPLICANT IN THE COST OF CONSTRUCTION OR MODIFICATION IN  
28 PROPORTION TO THE RELATIVE BENEFITS OF THE CONSTRUCTION OR  
29 MODIFICATION.

30 (C) THE COMMISSION SHALL DETERMINE THE APPROPRIATE ALLOCATION OF  
31 THE COST OF ANY NEW TRANSMISSION OR DISTRIBUTION FACILITIES, TAKING INTO  
32 CONSIDERATION THE USE, PURPOSE, AND TIME NECESSARY TO PLACE NEW  
33 TRANSMISSION OR DISTRIBUTION FACILITIES IN COMMERCIAL OPERATION AND BE  
34 MADE AVAILABLE BY THE WHEELING COMPANY FOR USE BY THE APPLICANT.

35 7-509.

36 A RETAIL ELECTRIC CUSTOMER WHO CHOOSES TO CEASE PURCHASING OF  
37 ELECTRICITY FROM AN ELECTRIC COMPANY AND REPLACE THAT PURCHASE OF

1 ELECTRICITY WITH AN AFFILIATE WHEELING ARRANGEMENT SHALL NOTIFY THE  
2 ELECTRIC COMPANY IN WRITING UP TO 6 MONTHS BEFOREHAND, OR AS SPECIFIED  
3 IN A WRITTEN CONTRACT BETWEEN THE ELECTRIC COMPANY AND THE RETAIL  
4 ELECTRIC CUSTOMER, WHICHEVER IS GREATER.

5 7-510.

6 AN ELECTRIC COMPANY UNDER THE JURISDICTION OF THE COMMISSION THAT  
7 CHOOSES TO FOREGO AFFILIATE WHEELING AS AN ALTERNATIVE TO MAKING  
8 ADDITIONAL CAPITAL INVESTMENTS MAY HAVE ITS COST OF INVESTING IN NEW  
9 GENERATION, TRANSMISSION, OR DISTRIBUTION FACILITIES WHOLLY OR PARTLY  
10 DISALLOWED IF THE COMMISSION RULES OR ORDERS THAT AFFILIATE WHEELING  
11 ARRANGEMENTS WOULD HAVE, IN THE ALTERNATIVE, RESULTED IN A MORE  
12 PRUDENT COST-EFFECTIVE METHOD TO OBTAIN ELECTRICITY.

13 7-511.

14 A WHEELING COMPANY UNDER THE JURISDICTION OF THE COMMISSION SHALL  
15 USE FULLY THE BENEFITS OFFERED FROM AFFILIATE WHEELING ARRANGEMENTS  
16 BEFORE INVESTING IN EXPANDING GENERATION, DISTRIBUTION, OR TRANSMISSION  
17 FACILITIES TO COMPLY WITH OR ACHIEVE DIRECTIVES OR GOALS SET BY THE  
18 COMMISSION ON DEMAND-SIDE MANAGEMENT OR INTEGRATED RESOURCE  
19 PLANNING.

20 7-512.

21 THIS SUBTITLE MAY BE REFERRED TO AS THE AFFILIATE WHEELING ACT OF  
22 1999.

23 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this  
24 Act or the application thereof to any person or circumstance is held invalid for any  
25 reason in a court of competent jurisdiction, the invalidity does not affect other  
26 provisions or any other application of this Act which can be given effect without the  
27 invalid provision or application, and for this purpose the provisions of this Act are  
28 declared severable.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 July 1, 1999.