

SENATE BILL 767

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C5

1999 Regular Session
9r2589
CF 9r2592

By: **Senators Ferguson and Mooney (Frederick County Senators)**
Introduced and read first time: March 3, 1999
Assigned to: Rules

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 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.

17 BY adding to
18 Article - Public Utility Companies
19 Section 7-501 through 7-509, inclusive, to be under the new subtitle "Subtitle 5.
20 Affiliate Wheeling"
21 Annotated Code of Maryland
22 (1998 Volume)

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

25 **Article - Public Utility Companies**

26 **SUBTITLE 5. AFFILIATE WHEELING.**

27 7-501.

28 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
29 INDICATED.

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

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

4 (2) OWNS ELECTRICITY GENERATION FACILITIES;

5 (3) IS A WHOLESALE GENERATOR OF ELECTRICITY APPROVED BY THE
6 FEDERAL ENERGY REGULATORY COMMISSION; AND

7 (4) MAKES A WRITTEN REQUEST FOR AFFILIATE WHEELING UNDER
8 THIS SUBTITLE.

9 (C) "AFFILIATE WHEELING" MEANS WHEELING SUFFICIENT TO ENABLE AN
10 APPLICANT TO TRANSPORT ELECTRICITY TO SATISFY ITS OWN NEEDS OR THE NEEDS
11 OF AN AFFILIATE OR SUBSIDIARY, LIMITED TO THE TRANSMISSION AND
12 DISTRIBUTION SYSTEM ACCESS TO WHICH THE APPLICANT, THE APPLICANT'S
13 AFFILIATE, OR SUBSIDIARY IS ENTITLED UNDER EXISTING CONTRACTS OR TARIFFS.

14 (D) "AFFILIATE WHEELING ORDER" MEANS AN ORDER OF THE COMMISSION
15 THAT REQUIRES A WHEELING COMPANY TO PROVIDE AFFILIATE WHEELING OVER
16 AND THROUGH TRANSMISSION OR DISTRIBUTION FACILITIES LOCATED IN THE
17 STATE.

18 (E) "WHEEL" MEANS TO USE A TRANSMISSION OR DISTRIBUTION FACILITY OF
19 A WHEELING COMPANY TO TRANSMIT ELECTRICITY.

20 (F) "WHEELING COMPANY" MEANS AN INVESTOR-OWNED ELECTRIC
21 COMPANY THAT WHEELS ELECTRICITY TO A THIRD PARTY UNDER THIS SUBTITLE
22 FOR AN APPLICANT THAT THE ELECTRIC COMPANY DOES NOT OWN, CONTROL, OR
23 LEASE.

24 7-502.

25 THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THE PURPOSE OF THIS
26 SUBTITLE IS TO:

27 (1) MODIFY AND CLARIFY EXISTING LAW TO ESTABLISH THE RIGHT OF A
28 RETAIL ELECTRIC CUSTOMER TO OBTAIN ITS ELECTRICITY FROM AN AFFILIATE OR
29 SUBSIDIARY THAT IS NOT LOCATED ON THE SITE OF THE RETAIL ELECTRIC
30 CUSTOMER;

31 (2) CLARIFY THE AUTHORITY OF THE COMMISSION TO ORDER
32 AFFILIATE WHEELING OF ELECTRICITY; AND

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

1 7-503.

2 (A) THE COMMISSION SHALL REQUIRE WHEELING OF ELECTRICITY FOR THE
3 APPLICANT LIMITED TO THAT TRANSMISSION AND DISTRIBUTION CAPACITY TO
4 WHICH THE APPLICANT AND AN AFFILIATE OR SUBSIDIARY OF THE APPLICANT IS
5 ENTITLED UNDER A CONTRACT OR TARIFF WITH THE WHEELING COMPANY.

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

9 (2) THE TERMS AND CONDITIONS SHALL PROVIDE FOR THE
10 NONDISCRIMINATORY AFFILIATE WHEELING OF ELECTRICITY AND SHALL BE FILED
11 WITH THE COMMISSION AS PUBLIC INFORMATION.

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

15 (2) THE SERVICE CONTRACT MAY INCLUDE:

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

18 (II) EXTENDED CONTRACT DURATION PROVISIONS; AND

19 (III) SPECIFIC RATE SCHEDULES APPLICABLE TO ALL WHEELING
20 COMPANIES IN THE STATE.

21 (D) THE COMMISSION MAY IMPOSE TERMS AND CONDITIONS ON THE
22 AFFILIATE WHEELING OF ELECTRICITY THAT THE COMMISSION CONSIDERS
23 NECESSARY TO SAFEGUARD SYSTEM INTEGRITY.

24 7-504.

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

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

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

35 (B) (1) THE COMMISSION MAY NOT ALLOW A WHEELING COMPANY TO
36 IMPOSE UNDUE COSTS OR BURDENS ON ANY NONWHEELING RETAIL ELECTRIC

1 CUSTOMER WHO IS NOT A DIRECT ECONOMIC BENEFICIARY OF AFFILIATE
2 WHEELING.

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

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

12 7-505.

13 AN ELECTRIC COMPANY OR WHEELING COMPANY MAY NOT:

14 (1) FRUSTRATE OR OTHERWISE INTERFERE WITH THE
15 IMPLEMENTATION OF THIS SUBTITLE, IN ANY MANNER, OR CONSTRAIN THE
16 EFFECTS OF COMPETITION ARISING FROM THIS SUBTITLE TO SET THE PRICE OF
17 ELECTRICITY AT MARKET PRICE LEVELS RATHER THAN REGULATED PRICE LEVELS;
18 OR

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

22 7-506.

23 (A) AN APPLICANT MAY:

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

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

31 (B) IF A WHEELING COMPANY DENIES A REQUEST FOR AFFILIATE WHEELING,
32 THE COMMISSION, ON REQUEST OF THE APPLICANT, SHALL HOLD AN EVIDENTIARY
33 HEARING ON THE FAIRNESS OR REASONABLENESS OF THE DENIAL.

34 (C) ALL REASONABLE INFORMATION REQUESTED UNDER SUBSECTION (A) OF
35 THIS SECTION SHALL BE PROVIDED TO THE APPLICANT BY THE WHEELING
36 COMPANY:

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

3 (2) IN WRITTEN FORM.

4 (D) A WHEELING COMPANY BEARS THE BURDEN OF PROVING BY CLEAR AND
5 CONVINCING EVIDENCE TO THE COMMISSION:

6 (1) THAT THERE IS A LACK OF TRANSMISSION OR DISTRIBUTION
7 FACILITY CAPACITY;

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

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

12 (E) THERE IS A REBUTTABLE PRESUMPTION UNDER THIS SUBTITLE THAT AN
13 ELECTRIC COMPANY'S TRANSMISSION OR DISTRIBUTION FACILITY HAS THE
14 CAPACITY TO PROVIDE FOR AFFILIATE WHEELING TO AN EXISTING CUSTOMER OR
15 LOAD.

16 7-507.

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

23 (B) THE COMMISSION SHALL ORDER THE CONSTRUCTION OF NEW
24 TRANSMISSION OR DISTRIBUTION FACILITIES OR APPROPRIATE MODIFICATIONS OF
25 EXISTING TRANSMISSION OR DISTRIBUTION FACILITIES THAT THE COMMISSION
26 CONSIDERS SUFFICIENT AND NECESSARY TO FACILITATE AFFILIATE WHEELING.

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

32 7-508.

33 (A) A RETAIL ELECTRIC CUSTOMER WHO CHOOSES TO CEASE PURCHASING OF
34 ELECTRICITY FROM AN ELECTRIC COMPANY AND REPLACE THAT PURCHASE OF
35 ELECTRICITY WITH AN AFFILIATE WHEELING ARRANGEMENT SHALL NOTIFY THE
36 ELECTRIC COMPANY IN WRITING UP TO 6 MONTHS BEFOREHAND, OR AS SPECIFIED
37 IN A WRITTEN CONTRACT BETWEEN THE ELECTRIC COMPANY AND THE RETAIL
38 ELECTRIC CUSTOMER, WHICHEVER IS GREATER.

1 (B) THE NOTIFICATION PERIOD OF SUBSECTION (A) OF THIS SECTION MAY BE
2 SUPERSEDED BY LEGISLATION ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING
3 THAT SPECIFIES STANDARD NOTIFICATION PERIODS FOR CHANGING ELECTRICITY
4 SUPPLIERS.

5 (C) NOTIFICATION GIVEN UNDER SUBSECTION (A) OF THIS SECTION MAY NOT
6 ABROGATE AN EXISTING CONTRACT BETWEEN A RETAIL ELECTRIC CUSTOMER AND
7 AN ELECTRIC COMPANY.

8 7-509.

9 THIS SUBTITLE MAY BE REFERRED TO AS THE AFFILIATE WHEELING ACT OF
10 1999.

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

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