

SENATE BILL 767

Unofficial Copy
C5

1999 Regular Session
9r2589
CF 9r2592

By: Senators Ferguson and Mooney (Frederick County Senators) and
Senators Bromwell, Astle, Dorman, Exum, Hafer, Hooper, Kelley,
Madden, Roesser, and Teitelbaum

Introduced and read first time: March 3, 1999
Assigned to: Rules
Re-referred to: Finance, March 11, 1999

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: April 9, 1999

CHAPTER _____

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; providing that the
16 provisions of this Act do not apply to a certain applicant if a certain agreement
17 on a contractual revision is approved or accepted for filing by the Public Service
18 Commission by a certain time under certain circumstances; and generally
19 relating to affiliate wheeling of electricity.

20 BY adding to
21 Article - Public Utility Companies
22 Section ~~7-501 through 7-509~~ 7-601 through 7-608, inclusive, to be under the
23 new subtitle "Subtitle ~~5.~~ 6. Affiliate Wheeling"
24 Annotated Code of Maryland

1 (1998 Volume)

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

4 **Article - Public Utility Companies**

5 SUBTITLE ~~5.~~ 6. AFFILIATE WHEELING.

6 ~~7-501.~~ 7-601.

7 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
8 INDICATED.

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

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

12 (2) OWNS ELECTRICITY GENERATION FACILITIES;

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

15 (4) USES FACILITIES OWNED BY ITSELF TO GENERATE ELECTRICITY TO
16 BE SUPPLIED TO ITSELF OR AN AFFILIATE OR SUBSIDIARY PURSUANT TO THE
17 PROVISIONS OF THIS SUBTITLE; AND

18 ~~(4)~~ (5) MAKES A WRITTEN REQUEST FOR AFFILIATE WHEELING
19 UNDER THIS SUBTITLE.

20 (C) "AFFILIATE WHEELING" MEANS WHEELING SUFFICIENT TO ENABLE AN
21 APPLICANT TO ~~TRANSPORT~~ OBTAIN ACCESS TO ELECTRICITY TO SATISFY ITS OWN
22 NEEDS OR THE NEEDS OF AN AFFILIATE OR SUBSIDIARY, LIMITED TO THE
23 ~~TRANSMISSION AND DISTRIBUTION SYSTEM ACCESS STATE JURISDICTIONAL~~
24 SYSTEM FACILITIES TO WHICH THE APPLICANT, THE APPLICANT'S AFFILIATE, OR
25 SUBSIDIARY IS ENTITLED UNDER EXISTING CONTRACTS OR TARIFFS.

26 (D) "AFFILIATE WHEELING ORDER" MEANS AN ORDER OF THE COMMISSION
27 THAT REQUIRES A WHEELING COMPANY TO PROVIDE AFFILIATE WHEELING OVER
28 AND THROUGH STATE JURISDICTIONAL TRANSMISSION OR DISTRIBUTION
29 FACILITIES LOCATED IN THE STATE.

30 (E) "RETAIL ELECTRIC CUSTOMER" MEANS A CUSTOMER THAT, AS OF JULY 1,
31 1999;

32 (1) HAS REGISTERED A DEMAND OF AT LEAST 250 MEGAWATTS IN AT
33 LEAST 1 HOUR DURING THE PRECEDING 12 MONTHS; AND

1 (2) DOES NOT HAVE ANY OPERATIONAL ON-SITE GENERATION
2 CAPACITY.

3 ~~(E)~~ (F) "WHEEL" MEANS TO USE A STATE JURISDICTIONAL TRANSMISSION
4 OR DISTRIBUTION FACILITY OF A WHEELING COMPANY TO TRANSMIT ELECTRICITY.

5 ~~(F)~~ (G) "WHEELING COMPANY" MEANS AN INVESTOR-OWNED ELECTRIC
6 COMPANY THAT WHEELS ELECTRICITY TO A ~~THIRD PARTY~~ RETAIL ELECTRIC
7 CUSTOMER UNDER THIS SUBTITLE FOR AN APPLICANT THAT THE ELECTRIC
8 COMPANY DOES NOT OWN, CONTROL, OR LEASE.

9 ~~7-502; 7-602.~~

10 THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THE PURPOSE OF THIS
11 SUBTITLE IS TO:

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

16 (2) CLARIFY THE AUTHORITY OF THE COMMISSION TO ORDER
17 AFFILIATE WHEELING OF ELECTRICITY; AND

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

20 ~~7-503; 7-603.~~

21 (A) THE COMMISSION SHALL REQUIRE WHEELING OF ELECTRICITY FOR THE
22 APPLICANT LIMITED TO THAT STATE JURISDICTIONAL TRANSMISSION AND
23 DISTRIBUTION CAPACITY TO WHICH THE APPLICANT AND AN AFFILIATE OR
24 SUBSIDIARY OF THE APPLICANT IS ENTITLED UNDER A CONTRACT OR TARIFF WITH
25 THE WHEELING COMPANY AND ONLY DURING THOSE PERIODS WHEN THE ELECTRIC
26 COMPANY IS PURCHASING POWER TO SUPPLEMENT ITS EXISTING GENERATION DUE
27 TO A SHORTAGE OF GENERATING CAPACITY DEDICATED TO SERVING REGULATED
28 LOAD.

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 (D) 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. 7-604.~~

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

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

20 (2) CHOOSES TO ~~LEAVE THE ELECTRIC COMPANY EXERCISE THE~~
21 PROVISIONS OF THIS SUBTITLE AND OBTAIN ELECTRICITY FROM ANOTHER SOURCE
22 THROUGH AN AFFILIATE WHEELING ARRANGEMENT, IF THAT ELECTRICITY IS
23 AVAILABLE.

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

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

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

1 ~~7-505.~~ 7-605.

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.~~ 7-606.

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 STATE JURISDICTIONAL TRANSMISSION OR DISTRIBUTION SYSTEM
19 UNDER VARIOUS 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 STATE JURISDICTIONAL TRANSMISSION
32 OR DISTRIBUTION 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 STATE JURISDICTIONAL TRANSMISSION OR DISTRIBUTION
3 FACILITY HAS THE CAPACITY TO PROVIDE FOR AFFILIATE WHEELING TO AN
4 EXISTING CUSTOMER OR LOAD.

5 ~~7-507. 7-607.~~

6 ~~(A) A RETAIL ELECTRIC CUSTOMER WHO CHOOSES TO LEAVE AN ELECTRIC
7 COMPANY EXERCISE THE PROVISIONS OF THIS SUBTITLE AND OBTAIN ELECTRICITY
8 FROM ANOTHER SOURCE THROUGH AN AFFILIATE WHEELING ARRANGEMENT
9 RETAINS ALL RIGHTS AND OBLIGATIONS TO TRANSMISSION OR DISTRIBUTION
10 CAPACITY AND FACILITIES ALLOCATED TO THAT CUSTOMER BY THE ELECTRIC
11 COMPANY BEFORE IMPLEMENTATION OF AN 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. 7-608.~~

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 the provisions of this Act
6 do not apply to an applicant and the applicant's affiliate or subsidiary that is a retail
7 electric customer described under Section 1 of this Act if a revised contract or
8 agreement between the retail electric customer and an electric company allowing
9 affiliate wheeling is approved or accepted for filing by the Public Service Commission
10 on or before the effective date of this Act.

11 SECTION ~~3.~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
12 effect July 1, 1999. It shall remain effective for a period of 4 years and 3 months 1
13 year and 6 months and, at the end of ~~September 30, 2003~~ December 31, 2000, with no
14 further action required by the General Assembly, this Act shall be abrogated and of no
15 further force and effect.