HB 703

Department of Legislative Services

Maryland General Assembly
1999 Session

FISCAL NOTE
Revised

House Bill 703 (Delegate Taylor, *et al.*)
Environmental Matters

Electric Utility Industry Restructuring

This bill generally provides for the restructuring of the electric utility industry in Maryland subject to the oversight of the Public Service Commission, for the stated purpose of: (1) establishing customer choice of electricity supply and electricity supply services; (2) creating competitive retail electricity supply and electricity supply services markets; (3) deregulating the generation, supply, and pricing of electricity; (4) providing economic benefits for all customer classes; and (5) ensuring compliance with federal and State environmental standards.

Fiscal Summary

State Effect: The bill authorizes the Governor to submit a budget amendment for FY 2000 transferring $6 million from the Revenue Stabilization Fund to educate consumers. General fund expenditures could increase by $33,500 in FY 2000 in order for the Consumer Protection Division to hire one complaint supervisor. Out-year projections reflect annualization, inflation, and ongoing operating expenses. The Public Service Commission and the Office of the People's Counsel and other affected agencies advise that they could handle the requirements of this bill with existing resources. Indeterminate effect on the State as a consumer of electricity.

(in dollars)	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004
GF Revenues	$0	$0	$0	$0	$0
GF Expenditures	33,500	45,000	46,500	48,000	49,600
Net Effect	($33,500)	($45,000)	($46,500)	($48,000)	($49,600)

Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential meaningful effect on local governments as "aggregators" of electricity consumers. Indeterminate effect on local governments as consumers of electricity.

Small Business Effect: Potential meaningful opportunity for small businesses to enter the electric utility industry. Indeterminate effect on small businesses as consumers of electricity.

Fiscal Analysis

Bill Summary: This bill generally provides for the restructuring of the electric utility industry in Maryland, subject to the oversight of the Public Service Commission. The primary provisions of the bill are summarized below.

- The bill's provisions are contingent on the enactment of related tax legislation.

- The bill requires the PSC to ensure the creation of competitive electricity supply and electricity supply services markets, with appropriate customer safeguards.

- The bill requires the PSC to unbundle electric utility rates, charges, and services into standardized categories.

- The bill requires the PSC to order: electric companies to implement a consumer education program informing customers of changes in the electric industry; an electric company to adopt policies and practices to prevent any self-dealing or practices that could result in noncompetitive electricity prices to customers; rebundled rates for billing purposes; electric companies and suppliers to provide certain customer information; the implementation of a universal service program on a statewide basis; electric companies and electricity suppliers to provide consumers information on available electric services including disclosure about the fuel mix of the electricity and the emissions of certain pollutants.

- The bill codifies several PSC orders relating to the time frame for retail choice implementation. Beginning on July 1, 2000, the PSC will phase-in one-third of all investor-owned utility customers each year for three years. The bill authorizes the PSC to accelerate or decelerate this schedule or alter the phase-in percentages if it determines that it is in the public interests to do so. The PSC may adopt a separate schedule for municipal electric utilities.

- The bill caps electric rates to retail electric consumers for four years following the initial implementation of consumer choice. As part of a settlement, the PSC may approve a cap for a different period of time or an alternative price protection plan that is equally protective of ratepayers.

- The bill generally requires the PSC to reduce residential rates for each investor-owned electric company between 3% and 7.5% of base rates. The reduction must begin on the initial implementation date and remain in effect for four years. The PSC is authorized to alter the actual rate reduction or allow the recovery of any extraordinary costs based on the circumstances of an individual electric company if it determines that the action is necessary and in the public interest.

- The bill requires the PSC to establish a universal service program to assist electric customers with annual incomes less than or equal to 150% of the federal poverty level. The PSC must contract with a for-profit or nonprofit Maryland corporation to administer the program, while continuing to oversee the program. Program funding is set at $34 million for the first three years. The industrial and commercial classes will contribute $24.4 million, and the residential class will contribute $9.6 million. The Department of Human Resources is responsible for administering the program through the Maryland Energy Assistance Program. The PSC must recommend the total amount of funds to be used for the program for each year thereafter.

- The bill requires the PSC to consult with the Consumer Protection Division of the Office of the Attorney General before issuing regulations designed to protect consumers.

- Except for electric companies providing standard offer service and municipal electric utilities serving customers solely in its distribution territory, electric suppliers must obtain a license issued by the commission. The PSC must adopt any requirements it finds to be in the public interest, and it may suspend or revoke a license, impose a civil penalty, order a refund or credit to a customer or impose a moratorium for just cause (i.e., engaging in fraud or deceptive practices, slamming, failing to pay taxes, violating a PSC regulation or order, violating an applicable consumer protection law).

- The bill provides for a "standard offer service," defined as electric supply purchased from a customer's electric company, and available to specified customers (i.e., customers not yet phased-in to customer choice, and customers that do not choose an electricity supplier). The standard offer service begins on the initial implementation date and terminates on July 1, 2003, subject to specified exceptions. The PSC is required to establish procedures for the competitive selection of electricity suppliers to provide standard offer service to customers of electric companies.

- The bill requires the PSC, in consultation with the Maryland Energy Administration, to report to the General Assembly on the status of programs and services to encourage and promote the efficient use and conservation of energy and to recommend the appropriate funding level to adequately fund these programs and services.

- The bill requires the PSC to assess the amount of electricity generated in Maryland and the amount of electricity imported from other states in order to determine whether a sufficient supply of electricity is available to customers in Maryland. Before January 1, 2001, 2003, 2005, and 2007, the PSC must report to the General Assembly on its assessment and any recommendations for legislation which may be needed to ensure an adequate supply of electricity for Maryland customers.

- The bill requires the PSC, in consultation with the Maryland Energy Administration, to report to the Governor and the General Assembly on the feasibility of requiring a renewables portfolio standard and the estimated costs and benefits of establishing this requirement.

- The bill requires the PSC, in consultation with the Department of the Environment, to adopt appropriate measures to maintain environmental standards, adapt existing programs, and develop new programs as appropriate to ensure that federal and State environmental protection standards are not compromised in a competitive electricity market. The bill also requires electric companies in Maryland to conduct a study that tracks shifts in generation and emissions as a result of restructuring.

- The bill provides that electric utility companies must have a fair opportunity to recover their transition costs, and the PSC may not order or prohibit divestiture of a generation asset. The bill authorizes an electric company to transfer generation facilities and assets to an affiliate.

- The bill requires the PSC to ensure that reliability is maintained in assessing and approving an electric company's restructuring plan, and overseeing the transition process of the restructured electric utility industry.

- The bill requires the PSC to consider functional, operational, structural, or legal separation between an electric company's regulated business and its non-regulated businesses or affiliates.

- The bill provides that an electricity supplier that also provides distribution service, or has an affiliate that provides distribution service, in Pennsylvania, Delaware, West Virginia, Virginia, or the District of Columbia may not provide retail electricity supply service through an aggregator, marketer, or broker in the distribution territory of an unaffiliated electric company unless there is electricity supply competition in at least a portion of the distribution service area of the electricity supplier.

- The bill prohibits a person other than an electric company or a municipal electric utility from engaging in the business of competitive billing services in a local jurisdiction that assesses a local energy tax, unless the person holds a license by that jurisdiction.

- The bill prohibits a person or governmental unit from changing the electricity supplier for a customer or adding a new charge for a new or existing service or option without the customer's permission.

- The bill continues the Environmental Trust Fund. The bill extends the sunset for the surcharge assessment from fiscal 2000 to fiscal 2005 and makes the current surcharge apply to electricity distributed.

- The bill authorizes the Governor to submit a budget amendment for fiscal 2000 transferring $6 million from the Revenue Stabilization Fund to be used for the purpose of educating consumers on electric utility industry restructuring. The PSC is required to recommend funding to the Governor and the General Assembly for fiscal 2001 and fiscal 2002.

- The bill clarifies that State and federal consumer protection and antitrust laws continue to apply to electric companies, affiliates, and electricity suppliers.

State Effect: This bill would affect the State administratively and as a consumer of electricity. It is unclear whether utility rates charged to the State will increase or decrease in the future, as discussed in the Small Business section of this fiscal note.

The Public Service Commission and the Office of the People's Counsel (OPC): This bill generally provides for the restructuring of the electric utility industry in Maryland, subject to PSC oversight. The PSC has already issued several orders setting forth plans for retail electric competition beginning in July 2000. This bill largely clarifies the PSC's authority to proceed with deregulation. Accordingly, the PSC advises that it could handle the requirements of this bill with existing budgeted resources. Similarly, the Office of the People's Counsel advises that it could handle the bill's requirements with existing resources.

Maryland Energy Administration (MEA): The bill requires the PSC, in consultation with the Maryland Energy Administration, to report to the General Assembly on the status of programs and services to encourage and promote the efficient use and conservation of energy and to recommend the appropriate funding level to adequately fund these programs and services. Moreover, the bill could indirectly affect the agency. For example, the bill could require a more complex system to monitor energy reliability and related supply issues. Furthermore, MEA may have to develop a system to track the effects on different customer classes, particularly low-income customers. Finally, it may increase the need for conservation efforts as demand-side management programs continue to be phased-out by the utilities.

The Department of Natural Resources (DNR): The bill continues the Environmental Trust Fund from fiscal 2000 to fiscal 2005 and makes the current surcharge apply to electricity that is distributed. Under current law, electric companies that produce and sell electricity in Maryland are assessed an environmental surcharge on the electricity they generate. This surcharge is deposited in the Environmental Trust Fund. The trust fund is currently used to support activities associated with the assessment and management of the cultural, economic, and environmental effects of electric power and electric power facilities in Maryland. These activities are coordinated through the Power Plant Research Program of the Department of Natural Resources. In fiscal 1998 total trust fund revenues totaled $8.2 million, of which $6.9 million came from the environmental surcharge. Expenditures for fiscal 1998 were $7.7 million. Absent any information from DNR, the Department of Legislative Services assumes that the bill would not affect the trust fund balance.

Department of the Environment: The bill requires the PSC to consult with the Department of the Environment to adopt appropriate measures to maintain environmental standards, adapt existing programs, and develop new programs as appropriate to ensure that federal and State environmental protection standards are not compromised in a competitive market. The Department of the Environment could handle this responsibility with existing resources.

Office of the Attorney General: As a part of the consumer education program, the bill requires the Division of Consumer Protection of the Office of the Attorney General to develop and maintain information relating to rates and services of the electricity suppliers licensed in Maryland to serve small commercial and residential electric customers. In order to fulfill its obligations under the bill, the Consumer Protection Division would have to hire a complaint supervisor.

Department of Human Resources: The bill requires the PSC to establish a universal service program to assist electric customers with an annual income level at or below 150% of the federal poverty level. The Department of Human Resources is responsible for administering the program through the Maryland Energy Assistance Program, and the PSC is responsible for overseeing the program. The bill requires all customers to contribute to the funding of this program through a systems benefit surcharge collected by each electric company from within its distribution territory. Absent any information from the Department of Human

Resources, it is assumed that the department could administer this program with existing budgeted resources.

Universal Service Program: The bill requires the PSC to establish a universal service program to assist electric customers with annual incomes less than or equal to 150% of the federal poverty level. The PSC must contract with a for-profit or nonprofit Maryland corporation to administer the program. Program funding is set at $34 million for the first three years. The bill requires the PSC to recommend funding for future years. The bill provides that customers will contribute to the program funding though a charge collected by each electric company. The industrial and commercial classes will contribute $24.4 million annually and the residential class will contribute $9.6 million annually. As a result, this program would not affect State finances.

Consumer Education: The bill requires the PSC to order the implementation of a consumer education program. The bill authorizes the Governor to submit a budget amendment for fiscal 2000 transferring $6 million from the Revenue Stabilization Fund to be used for the purpose of educating consumers on electric utility restructuring. The PSC is required to recommend funding to the Governor and the General Assembly for fiscal 2001 and fiscal 2002, and the bill specifies that the funding would be between $3 million and $6 million. The bill requires the costs to be funded by a surcharge or other cost recovery mechanism. However, an electric company may not recover the costs of a consumer education program except by law, regulation, or order for fiscal 2000.

Local Effect: This bill provides local governments an opportunity to act as an "aggregator" of utility consumers. Furthermore, the bill would affect local government finances as consumers of electricity. It is unclear whether utility rates charged to these governments will increase or decrease in the future, as discussed in the Small Business section of this fiscal note.

Although the bill does not specifically include local governments or municipalities as potential aggregators of electricity, it is likely that some of them will do so. Currently, there are several municipal utilities in Maryland, such as Easton and Hagerstown. Under the current regulatory framework, these municipal utilities purchase electricity on the wholesale market and deliver it to their customers.

The bill authorizes the PSC to set the initial implementation date or dates for municipal utilities. These municipal utilities may choose to continue providing standard offer service in their respective distribution territories, or cease offering that service after notifying the PSC one year in advance. These municipal utilities are exempt from the requirement to begin competitive billing on July 1, 2000 and to begin competitive metering on January 1, 2002 for large customers and on July 1, 2002 for all customers.

Small Business Effect: This bill has two primary effects on small business finances. First, the electric utility rates paid by small businesses could change in the long run under a deregulated environment. Second, deregulation could provide additional business opportunities for small businesses seeking to enter the electric utility industry.

Small businesses as consumers of electricity: The bill caps total electric rates to small businesses for four years following the initial implementation of customer choice and allows these businesses to shop for lower generation rates. The bill provides that small business consumers who do not wish to change their electricity provider or who are not eligible to choose their electricity provider will receive "standard offer service" under procedures established by the PSC. If a supplier fails to deliver electricity, the standard offer automatically supplies replacement power. As a result, the bill could result in lower electric utility bills for small businesses during this period. However, the standard offer extended to small business consumers terminates on July 1, 2003. The PSC may, however, extend the termination date for one year if it determines that the market is not competitive. In any case, the standard offer service terminates when all customers of an electric company are eligible for customer choice and the amount of transition costs has been determined. At this time, rates for generation are subject to competitive market forces.

In the long run, it is unclear whether rates will increase or decrease for small business consumers of electricity. This determination is largely contingent on the value assigned to "transition costs." The term "transition costs" refers to the difference between the book value of a utility asset and the market value. Under a regulated environment, rates are set in an administrative rate-making proceeding to allow companies an opportunity to recover their operating expenses, depreciation expenses, and a reasonable rate of return. Because rates are cost-based, there are no transition costs. However, in a competitive environment, the market may cause prices to decline and thus cause the rate of return on existing assets to also decline. Transition costs arise when the electric utility cannot recover an asset's fixed costs out of the market price of electricity. One of the most difficult tasks that regulators have confronted in promoting competition in the electric power industry has been determining how to measure these transition costs.

The bill requires electric utility companies to have a fair opportunity to recover "all prudently incurred and verifiable net transition costs, subject to full mitigation." The bill also prohibits the PSC from ordering or prohibiting divestiture of a generation asset. Accordingly, the value of transition costs would be determined in an administrative proceeding. In October 1998 transition costs filings totaling $1.9 billion were made by the utilities. Administrative valuation uses an estimate of what future market prices would be in a competitive environment based on assumptions regarding fuel prices, demand growth, load shapes, and technological advancements. This type of valuation could cause an increase in electric utility costs for small businesses to the extent that this administrative value turns out to be more than the actual market value of the assets.

Assuming that the administrative valuation of stranded costs does not exceed the market value of the stranded costs, small business consumers of electricity could benefit from deregulation. Competition will encourage innovation and efficiency in the industry which could result in downward pressure on price. Furthermore, the bill contemplates the "aggregation" of individuals or entities that act on behalf of a customer to purchase electricity. As a result, small businesses may "aggregate" with other consumers of electricity to increase their bargaining position in contracting for utility rates.

Potential Business Opportunity for Small Businesses to Enter Electric Utility Industry: Under a regulated electric utility environment, only public service companies may supply electricity. This bill would allow small businesses to enter the electric utility industry as brokers, marketers, or billing service providers. Of course, any small business that entered the market would have to comply with the bill's licensing requirements.

Information Sources: Public Service Commission, Office of the People's Counsel, Maryland Energy Administration

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