

BY: Delegate McMillan

AMENDMENTS TO SENATE BILL NO. 1102
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, after “Commission” insert “and Regulation of Electric Companies and Electricity Suppliers”; and in line 20, after “Commission;” insert “returning electric generation to the status of a utility service subject to regulation by the Public Service Commission; requiring a public service company to charge just and reasonable rates for its utility services; requiring a public service company to file a certain tariff schedule of certain rates and charges with the Commission; providing that a certain electric company or electricity supplier may apply to the Commission to adjust certain rates and charges; establishing certain procedures for the Commission to review, investigate, and adjust certain rates and charges in a certain manner; authorizing a certain electric company or electricity supplier to have a separately stated and zero-based fuel rate to charge for a certain cost of fuel; requiring the Commission to authorize a certain fuel rate adjustment only if certain circumstances are met; requiring a certain electric company or electricity supplier to file an application with the Commission to reduce a certain fuel rate under certain circumstances; authorizing an electric company or electricity supplier to defer certain costs as an operating expense and recover the costs in a base rate proceeding if certain circumstances are met; requiring the Commission to make certain findings and conclusions based on a certain determination in a certain investigation; authorizing the Commission to disallow certain increased costs under certain circumstances; requiring a certain applicant for a fuel rate adjustment to file certain proposed initial direct testimony and exhibits with a certain application; requiring the Commission to conduct, or direct another person to conduct, a certain annual audit of certain fuel procurement and purchasing practices of certain electric companies and electricity suppliers under certain circumstances; authorizing the Department of Legislative Services to conduct a certain audit and study of fuel procurement and purchasing practices and examine a certain audit under certain circumstances; requiring the Commission, in cooperation with the Secretary of Natural Resources, to assemble and evaluate annually certain long-range plans of certain electric companies regarding generating needs and the means to meet those needs; requiring the Commission to take final action on an application for a certificate of public convenience and necessity only after due consideration of the need to meet

(Over)

existing and future demand for electric service; repealing a provision that required the Commission to require functional, operational, structural, or legal separation between a certain electric company's regulated businesses and its nonregulated businesses or affiliates; repealing certain provisions relating to the capping of certain rates of an electric company by the Commission for a certain time period after the implementation of customer choice in certain territories; repealing certain provisions that authorized the Commission to approve a certain rate cap for a different time period under a certain settlement; repealing a provision that states that after a certain date, the generation, supply, and sale of electricity may not be regulated except under certain circumstances; repealing provisions that relate to the phased implementation of customer choice for electricity service; repealing provisions that relate to the requirement of an electric company to offer standard offer service electricity supply; repealing a provision that prohibits certain electricity suppliers from providing retail electricity supply service in the distribution territory of an unaffiliated electric company under certain circumstances; repealing certain provisions that relate to the recovery of certain costs by an electric company; authorizing an electric company to acquire or build a generating station in accordance with this Act; providing that an electric company may not pass on to ratepayers the cost of reacquiring certain electric generation assets; altering a certain definition; repealing certain obsolete provisions; providing that existing obligations or contract rights may not be impaired by this Act; making the provisions of this Act severable; providing for the effective dates of this Act;"; and in line 22, after "Commission" insert "and the regulation of electric companies and electricity suppliers".

On page 2, before line 1, insert:

"BY repealing and reenacting, without amendments,

Article - Public Utility Companies

Section 1-101(a)

Annotated Code of Maryland

(1998 Volume and 2005 Supplement)";

in line 3, after "Section" insert "1-101(h),"; in the same line, strike "and" and substitute a comma; in the same line, after "2-103" insert ", 4-201, 4-202, 4-402, 7-201, 7-207, 7-505, 7-507, and 7-512.1(b)"; and after line 5, insert:

"BY adding to

Article - Public Utility Companies

Section 4-403
Annotated Code of Maryland
(1998 Volume and 2005 Supplement)

BY repealing

Article - Public Utility Companies
Section 7-504, 7-509, 7-510, 7-512, 7-513, and 7-515
Annotated Code of Maryland
(1998 Volume and 2005 Supplement)".

AMENDMENT NO. 2

On page 2, after line 13, insert:

"1-101.

(a) In this article the following words have the meanings indicated.

(h) (1) "Electric company" [means a person who physically transmits or distributes electricity in the State to a retail electric customer] MEANS A PUBLIC SERVICE COMPANY THAT:

(I) OWNS AN ELECTRIC PLANT AND TRANSMITS, SELLS, OR DISTRIBUTES ELECTRICITY;

(II) GENERATES ELECTRICITY FOR DISTRIBUTION OR SALE; OR

(III) IS AUTHORIZED TO INSTALL OR MAINTAIN FACILITIES IN, OVER, OR UNDER STREETS FOR FURNISHING OR DISTRIBUTING ELECTRICITY.

(2) "ELECTRIC COMPANY" INCLUDES A MUNICIPAL CORPORATION THAT IS IN THE BUSINESS OF SUPPLYING ELECTRICITY FOR OTHER THAN MUNICIPAL PURPOSES.

(Over)

[(2)] (3) “Electric company” does not include[:
(i) the following persons who supply electricity and electricity supply services solely to occupants of a building for use by the occupants:

1. an owner/operator who holds ownership in and manages the internal distribution system serving the building; or

2. a lessee/operator who holds a leasehold interest in and manages the internal distribution system serving the building;

(ii) any person who generates on-site generated electricity; or

(iii) a person who transmits or distributes electricity within a site owned by the person or the person’s affiliate that is incidental to a primarily landlord-tenant relationship] A COMPANY THAT GENERATES OR TRANSMITS ELECTRICITY EXCLUSIVELY FOR ITS OWN USE.”.

On page 4, after line 15, insert:

“4-201.

In accordance with the provisions of this article, a public service company shall charge just and reasonable rates for the [regulated] UTILITY services that it renders.

4-202.

(a) A public service company shall file with the Commission a tariff schedule of its rates and charges [for its regulated services and for standard offer service as provided in § 7-505(b)(8) of this article].

(b) As ordered by the Commission, a public service company shall:

(1) plainly print the tariff schedule of its rates and charges [for its regulated services];

- (2) make available the tariff schedules for public inspection; and
- (3) post the tariff schedules to make the tariff schedules readily accessible to and convenient for inspection by the public.

4-402.

- (a) (1) This section applies to:
 - (i) THE electric fuel rate adjustment [clauses] CLAUSE OF EACH ELECTRIC COMPANY THAT IS NOT SUBJECT TO § 4-403 OF THIS SUBTITLE;
 - (ii) purchased power adjustment clauses; and
 - (iii) purchased gas adjustment clauses.
- (2) This section does not apply to a small rural electric cooperative.
- (b) A gas company or electric company that directly passes on to its customers changes in fuel costs, costs of purchased power, or costs of purchased gas shall verify and justify the adjusted costs to the Commission each month.
- (c) The Commission shall order a company to charge off and amortize, by means of a temporary decrease of rates, any charge the Commission finds is unjustified because:
 - (1) the company failed to show that the charges were based solely on increased costs of fuel, purchased power, or purchased gas;
 - (2) the company failed to follow competitive practices in procuring and purchasing fuel, power, or gas; or
 - (3) the company failed to show that its practices in procuring and purchasing fuel were reasonable.

(Over)

(d) At least once every 12 months, the Commission shall conduct a public evidentiary hearing on any changes in costs that a company directly passes on to its customers under this section.

4-403.

(A) THIS SECTION APPLIES ONLY TO:

(1) AN ELECTRIC COMPANY THAT PRODUCES OR GENERATES POWER WITH GROSS ANNUAL REVENUES THAT EXCEED \$25,000,000; AND

(2) AN ELECTRICITY SUPPLIER.

(B) AS PART OF ITS RATES TO ALL CUSTOMERS, AN ELECTRIC COMPANY AND ELECTRICITY SUPPLIER MAY HAVE A SEPARATELY STATED AND ZERO-BASED FUEL RATE TO CHARGE FOR THE ACTUAL COST OF FUEL THAT IS COMPUTED ON A KILOWATT-HOUR BASIS.

(C) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, ON APPLICATION TO THE COMMISSION BY AN ELECTRIC COMPANY OR ELECTRICITY SUPPLIER SUBJECT TO THIS SECTION TO ADJUST RATES AND CHARGES BASED SOLELY ON THE ACTUAL COST OF FUEL PER KILOWATT HOUR SOLD, THE COMMISSION MAY SUSPEND THE PROPOSED ADJUSTMENT FOR A PERIOD NOT EXCEEDING 30 DAYS AFTER THE DAY THE APPLICATION IS FILED.

(2) THE COMMISSION SHALL:

(I) PROMPTLY INVESTIGATE AN APPLICATION FILED UNDER THIS SUBSECTION; AND

(II) INSTITUTE EVIDENTIARY HEARINGS UNDER § 4-402(D) OF THIS SUBTITLE TO CONSIDER THE APPLICATION WITHIN 30 DAYS AFTER THE DAY THE APPLICATION IS FILED.

(3) THE COMMISSION SHALL BASE ITS ORDER ON THE RECORD DEVELOPED AT THE HEARING.

(4) THE COMMISSION SHALL ISSUE ITS FINAL ORDER PROMPTLY BUT NO LATER THAN 120 DAYS AFTER THE DAY THE APPLICATION IS FILED.

(5) IF A SUSPENSION PERIOD UNDER THIS SUBSECTION ENDS BEFORE THE COMMISSION ISSUES A FINAL ORDER, THE ORDER SHALL PROVIDE FOR A REFUND OF THE DIFFERENCE BETWEEN THE RATE CHARGED AND THE RATE SET BY THE FINAL ORDER.

(D) (1) THE COMMISSION MAY AUTHORIZE AN ELECTRIC COMPANY OR ELECTRICITY SUPPLIER TO ADJUST ITS FUEL RATE UNDER THIS SECTION ONLY IF THE CURRENTLY CALCULATED ACTUAL FUEL RATE OR THE ELECTRIC COMPANY OR ELECTRICITY SUPPLIER IS MORE THAN 5% ABOVE OR BELOW THE SUM OF THE COMPONENTS OF THE FUEL RATE THEN IN EFFECT.

(2) AN ELECTRIC COMPANY OR ELECTRICITY SUPPLIER THAT HAS A DECREASE OF MORE THAN 5% IN ITS FUEL RATE PROMPTLY SHALL FILE AN APPLICATION WITH THE COMMISSION TO REDUCE THE FUEL RATE.

(3) TO THE EXTENT THAT AN ELECTRIC COMPANY OR ELECTRICITY SUPPLIER DOES NOT RECOVER ITS ACTUAL ACCUMULATED FUEL COSTS UNDER THIS SECTION, THE ELECTRIC COMPANY OR ELECTRICITY SUPPLIER MAY DEFER THE COSTS AS AN OPERATING EXPENSE AND RECOVER THE COSTS IN A BASE RATE PROCEEDING IF:

(I) THE COMMISSION FINDS THAT THE COSTS WERE JUSTIFIED; AND

(II) RECOVERY OF THE COSTS IS CONSISTENT WITH THE RATE PROVISIONS OF THIS TITLE.

(E) IN ITS INVESTIGATION OF AN APPLICATION FOR A FUEL RATE ADJUSTMENT UNDER THIS SECTION, THE COMMISSION SHALL MAKE SPECIFIC

(Over)

FINDINGS OF FACT AND CONCLUSIONS BASED ON A DETERMINATION OF WHETHER THE APPLICANT HAS:

(1) INCLUDED ONLY CHANGES IN THE ACTUAL COSTS OF THE COMPONENTS OF THE FUEL RATE IN THE PROPOSED CHANGE;

(2) USED THE MOST ECONOMICAL MIX OF ALL TYPES OF GENERATION AND PURCHASES;

(3) MADE EVERY REASONABLE EFFORT TO MINIMIZE FUEL COSTS AND FOLLOWED COMPETITIVE PROCUREMENT PRACTICES, CONSIDERING THE RELIABILITY OF LOCAL TRANSPORTATION; AND

(4) FOR AN ELECTRIC COMPANY, MAINTAINED THE PRODUCTIVE CAPACITY OF ALL ITS GENERATING PLANTS AT A REASONABLE LEVEL.

(F) UNLESS CAUSE TO THE CONTRARY IS SHOWN, THE COMMISSION MAY DISALLOW ANY INCREASED COST THAT IT FINDS IS A RESULT OF THE APPLICANT'S FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION.

(G) AN APPLICANT FOR A FUEL RATE ADJUSTMENT SHALL FILE ITS PROPOSED INITIAL DIRECT TESTIMONY AND EXHIBITS WITH THE APPLICATION.

(H) (1) THE COMMISSION SHALL CONDUCT, OR DIRECT ANOTHER PERSON TO CONDUCT, AN ANNUAL AUDIT OF THE FUEL PROCUREMENT AND PURCHASING PRACTICES OF EACH ELECTRIC COMPANY AND ELECTRICITY SUPPLIER SUBJECT TO THIS SECTION.

(2) THE DEPARTMENT OF LEGISLATIVE SERVICES MAY:

(I) CONDUCT AN AUDIT AND STUDY OF THE FUEL PROCUREMENT AND PURCHASING PRACTICES OF AN ELECTRIC COMPANY OR ELECTRICITY SUPPLIER; AND

(II) EXAMINE AN AUDIT ISSUED BY OR GENERATED AT THE

DIRECTION OF THE COMMISSION UNDER THIS SUBSECTION.

7-201.

(a) IN COOPERATION WITH THE SECRETARY OF NATURAL RESOURCES AS PROVIDED UNDER § 3-304 OF THE NATURAL RESOURCES ARTICLE, THE COMMISSION SHALL ASSEMBLE AND EVALUATE EACH YEAR THE LONG-RANGE PLANS OF THE STATE'S ELECTRIC COMPANIES REGARDING GENERATING NEEDS AND THE MEANS TO MEET THOSE NEEDS.

(B) (1) Annually, the Chairman of the Commission shall forward to the Secretary of Natural Resources a 10-year plan listing possible and proposed sites, including the associated transmission routes, for the construction of electric plants within the State.

(2) (i) The Chairman shall delete from the 10-year plan any site that the Secretary of Natural Resources identifies as unsuitable in accordance with the requirements of § 3-304 of the Natural Resources Article.

(ii) The Chairman may include a site deleted from a 10-year plan under subparagraph (i) of this paragraph in a subsequent 10-year plan.

(3) The Chairman shall include information in the annual 10-year plan on current and projected efforts by electric companies and the Commission to moderate overall electrical generation demand and peak demand through the electric companies' promotion of energy conservation by customers and through the electric companies' use of alternative energy sources, including cogeneration.

(4) To the extent that the Commission requires an electric company to report the information described in paragraph (3) of this subsection, a small rural electric cooperative described in § 7-502(a) of this title may satisfy the requirement by submitting to the Commission a copy of the power requirement study that the small rural electric cooperative submits to the rural utilities service.

[(b)] (C) (1) The Commission shall evaluate the cost-effectiveness of the investments by electric companies in energy conservation to reduce electrical demand and in

(Over)

renewable energy sources to help meet electrical demand.

(2) The evaluation of investments shall include:

(i) the electric companies' promotion and conduct of a building audit and weatherization program, including low-interest or no-interest electric company financing for the installation of energy conservation materials and renewable energy devices;

(ii) utilization of renewable energy sources;

(iii) promotion and utilization of electricity from cogeneration and wastes;

and

(iv) widespread public promotion of energy conservation programs.

7-207.

(a) (1) In this section and § 7-208 of this subtitle, "construction" means:

(i) any physical change at a site, including fabrication, erection, installation, or demolition; or

(ii) the entry into a binding agreement or contractual obligation to purchase equipment exclusively for use in construction in the State or to undertake a program of actual construction in the State which cannot be canceled or modified without substantial loss to the owner or operator of the proposed generating station.

(2) "Construction" does not include a change that is needed for the temporary use of a site or route for nonutility purposes or for use in securing geological data, including any boring that is necessary to ascertain foundation conditions.

(b) (1) (i) Unless a certificate of public convenience and necessity for the construction is first obtained from the Commission, a person may not begin construction in the State of a generating station.

(ii) If a person obtains Commission approval for construction under §

7-207.1 of this subtitle, the Commission shall exempt a person from the requirement to obtain a certificate of public convenience and necessity under this section.

(2) Unless a certificate of public convenience and necessity for the construction is first obtained from the Commission, and the Commission has found that the capacity is necessary to ensure a sufficient supply of electricity to customers in the State, a person may not exercise a right of condemnation in connection with the construction of a generating station.

(3) Unless a certificate of public convenience and necessity for the construction is first obtained from the Commission, an electric company may not begin construction of an overhead transmission line that is designed to carry a voltage in excess of 69,000 volts or exercise a right of condemnation with the construction.

(c) (1) On receipt of an application for a certificate of public convenience and necessity under this section, the Commission shall provide notice to the Department of Planning and to all other interested persons.

(2) The Department of Planning shall forward the application to each appropriate State unit and unit of local government for review, evaluation, and comment regarding the significance of the proposal to State, area-wide, and local plans or programs.

(d) (1) The Commission shall provide an opportunity for public comment and hold a public hearing on the application for a certificate of public convenience and necessity in each county and municipal corporation in which any portion of the construction of a generating station or of an overhead transmission line designed to carry a voltage in excess of 69,000 volts is proposed to be located.

(2) The Commission shall hold the public hearing jointly with the governing body of the county or municipal corporation in which any portion of the construction of the generating station or overhead transmission line is proposed to be located, unless the governing body declines to participate in the hearing.

(3) Once in each of the 4 successive weeks immediately before the hearing date,

(Over)

the Commission shall provide weekly notice of the public hearing and an opportunity for public comment by advertisement in a newspaper of general circulation in the county or municipal corporation affected by the application.

(4) (i) The Commission shall ensure presentation and recommendations from each interested State unit, and shall allow representatives of each State unit to sit during hearing of all parties.

(ii) The Commission shall allow each State unit 15 days after the conclusion of the hearing to modify the State unit's initial recommendations.

(e) The Commission shall take final action on an application for a certificate of public convenience and necessity only after due consideration of:

(1) the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station or overhead transmission line is proposed to be located; [and]

(2) THE NEED TO MEET EXISTING AND FUTURE DEMAND FOR ELECTRIC SERVICE; AND

(3) the effect of the generating station or overhead transmission line on:

(i) the stability and reliability of the electric system;

(ii) economics;

(iii) esthetics;

(iv) historic sites;

(v) aviation safety as determined by the Maryland Aviation Administration and the administrator of the Federal Aviation Administration;

(vi) when applicable, air and water pollution; and

(vii) the availability of means for the required timely disposal of wastes produced by any generating station.

(f) [For the construction of an overhead transmission line, in addition to the considerations listed in subsection (e) of this section, the Commission shall take final action on an application for a certificate of public convenience and necessity only after due consideration of the need to meet existing and future demand for electric service.

(g)] (1) The Commission may not authorize, and an electric company may not undertake, the construction of an overhead transmission line that is aligned with and within 1 mile of either end of a public airport runway, unless:

(i) the Federal Aviation Administration determines that the construction of an overhead transmission line will not constitute a hazard to air navigation; and

(ii) the Maryland Aviation Administration concurs in that determination.

(2) A privately owned airport runway shall qualify as a public airport runway under this subsection only if the runway has been on file with the Federal Aviation Administration for at least 2 years as being open to the public without restriction.

[7-504.

The General Assembly finds and declares that the purpose of this subtitle is to:

- (1) establish customer choice of electricity supply and electricity supply services;
- (2) create competitive retail electricity supply and electricity supply services markets;
- (3) deregulate the generation, supply, and pricing of electricity;

(Over)

- (4) provide economic benefits for all customer classes; and
- (5) ensure compliance with federal and State environmental standards.]

7-505.

(a) [(1) In assessing and approving each electric company's restructuring plan, and overseeing the transition process and regulation of the restructured electric industry, the] THE Commission shall provide that the [transition to a competitive] electricity supply and electricity supply services market shall be [orderly] RELIABLE, maintain electric system reliability, and ensure compliance with federal and State environmental regulations, be fair to customers, electric company investors, customers of municipal electric utilities, electric companies, and electricity suppliers, and provide economic benefits to all customer classes.

[(2) The Commission shall consider the restructuring plans of municipal electric utilities, as specified under § 7-510 of this subtitle.]

(b) (1) The Commission shall issue the orders or adopt the regulations required under this subsection before the implementation of customer choice.

(2) The Commission shall order a universal service program, to be made available on a statewide basis, to benefit low-income customers, in accordance with § 7-512.1 of this subtitle.

(3) The Commission shall order an electric company to adopt policies and practices reasonably designed to prevent:

(i) discrimination against a person, locality, or particular class of service or giving undue or unreasonable preference in favor of the electric company's own electricity supply, other services, divisions, or affiliates, if any; and

(ii) any other forms of self-dealing [or practices that could result in noncompetitive electricity prices to customers].

(4) (i) The Commission shall, by regulation or order, require each electric company and electricity supplier to provide adequate and accurate information to each customer on

the available electric services of the electric company or electricity supplier, including disclosure, every 6 months, of a uniform common set of information about:

1. the fuel mix of the electricity purchased by customers, including categories of electricity from coal, natural gas, nuclear, oil, hydroelectric, solar, biomass, wind, and other resources, or disclosure of a regional fuel mix average; and

2. the emissions, on a pound per megawatt-hour basis, of pollutants identified by the Commission, or disclosure of a regional fuel mix average.

(ii) The Commission may require an electric company or an electricity supplier to provide documentation supporting the disclosures required under subparagraph (i) of this paragraph.

(5) (i) The Commission shall, by regulation or order, require the unbundling of electric company rates, charges, and services into standardized categories determined by the Commission.

(ii) The Commission shall, by regulation or order, require that customers' bills for electricity service indicate charges for:

1. distribution and transmission;
2. transition charge or credit;
3. universal service program charges;
4. customer charges;
5. taxes; and
6. other charges identified by the Commission.

(6) The Commission shall issue orders or regulations to prevent an electric company and an electricity supplier from disclosing a retail electric customer's billing, payment, and credit information without the retail electric customer's consent, except as allowed by the Commission for bill collection or credit rating reporting purposes.

(7) An electricity supplier may not engage in marketing, advertising, or trade practices that are unfair, false, misleading, or deceptive.

(8) The Commission shall determine the terms, conditions, and rates [of standard offer service] in accordance with[:

(i)] Title 4 of this article[; or

(ii) as applicable, § 7-510(c)(3)(ii) of this subtitle].

(9) In connection with § 7-513 of this subtitle, the Commission may not require an electric company to divest itself of a generation asset or prohibit an electric company from divesting itself voluntarily of a generation asset.

(10) (i) On or before July 1, 2000, the Commission shall issue orders or adopt regulations reasonably designed to ensure the creation of competitive electricity supply and electricity supply services markets, with appropriate customer safeguards.

(ii) On or before July 1, 2000, the Commission shall require:

1. an appropriate code of conduct between the electric company and an affiliate providing electricity supply and electricity supply services in the State;

2. access by electricity suppliers and customers to the electric company's transmission and distribution system on a nondiscriminatory basis;

3. appropriate complaint and enforcement procedures; and

4. any other safeguards deemed necessary by the Commission to ensure the creation and maintenance of a competitive electricity supply and electricity supply

services market.

[(iii) On or before July 1, 2000, the Commission shall require, among other factors, functional, operational, structural, or legal separation between the electric company's regulated businesses and its nonregulated businesses or nonregulated affiliates.]

(11) Nothing in this title may be construed as preventing the application of State and federal consumer protection and antitrust laws to electric companies and their affiliates, and to electricity suppliers.

(12) The Commission, in consultation with the Department of the Environment, shall adopt appropriate measures to maintain environmental standards, adapt existing programs, and develop new programs as appropriate to ensure compliance with federal and State environmental protection standards.

(13) (i) An electric company shall comply with all requirements of the Commission in conducting regulated operations in compliance with this article.

(ii) The Commission shall require each electric company to adopt a code of conduct to be approved by the Commission by a date to be determined by the Commission to prevent regulated service customers from subsidizing the services of unregulated businesses or affiliates of the electric company.

(c) (1) Notwithstanding any other provision of law[, including subsection (d) of this section,] the Commission may regulate [the regulated services of] an electric company through alternative forms of regulation.

(2) The Commission may adopt an alternative form of regulation under this section if the Commission finds, after notice and hearing, that the alternative form of regulation:

(i) protects consumers;

(ii) ensures the quality, availability, and reliability of regulated electric services; and

(Over)

(iii) is in the interest of the public, including shareholders of the electric company.

(3) Alternative forms of regulation may include:

(i) price regulation, including price freezes or caps;

(ii) revenue regulation;

(iii) ranges of authorized return;

(iv) rate of return;

(v) categories of services; or

(vi) price-indexing.

(d) [(1) The Commission shall cap, for 4 years after initial implementation of customer choice in the electric company's distribution territory, the total of the rates of an electric company charged to a retail electric customer at the actual level of the rates in effect or authorized by the Commission on the date immediately preceding the initial implementation of customer choice in the electric company's distribution territory.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, the cap required under paragraph (1) of this subsection does not apply to the recovery of costs added after January 1, 2000, in accordance with § 7-512(c) of this subtitle.

(ii) The cap required under paragraph (1) of this subsection applies to the recovery of:

1. any transition costs under § 7-513 of this subtitle;
2. any costs included in rates on January 1, 2000, in accordance with § 7-512(c) of this subtitle; and

3. costs for the universal service program established under § 7-512.1 of this subtitle.

(3) As part of a settlement, the Commission may approve a cap for a different time period or an alternative price protection plan that the Commission determines is equally protective of ratepayers.

(4) (i) 1. Subject to the provisions of paragraph (5) of this subsection, the Commission shall reduce residential rates for each investor-owned electric company by an amount between 3% and 7.5% of base rates, as measured on June 30, 1999.

2. The reduction required under sub-subparagraph 1 of this subparagraph shall begin on the initial implementation date and remain in effect for 4 years.

3. The Commission shall determine the allocation of the rate reduction among the generation, transmission, and distribution residential rate components.

(ii) In achieving the rate reduction required under subparagraph (i) of this paragraph, the Commission shall consider:

1. the expiration of any surcharge;
2. changes in the electric company's tax liability;
3. cost of service determinations ordered by the Commission;
4. net transition costs or benefits;
5. the effect on the competitive electricity supply market;
6. whether the rate reduction and rate cap will unduly impair the electric company's financial condition;

(Over)

7. the costs associated with the universal service program; and
8. the interests of the public, including shareholders of the electric company.

(iii) The Commission may, within the parameters provided in subparagraph (i) of this paragraph, increase or decrease the actual rate reduction required.

(iv) The Commission may allow the recovery of any extraordinary costs based on the circumstances of an individual electric company if the Commission determines that the action is necessary and in the public interest.

(v) In determining the rate reduction required under subparagraph (i) of this paragraph, the Commission may not increase rates for nonresidential customers.

(5) The requirements of paragraph (4) of this subsection do not apply to an electric company if the Commission approves or has in effect a settlement that the Commission determines is equally protective of ratepayers.

(e) (1) The Commission shall assess the amount of electricity generated in Maryland as well as the amount of electricity imported from other states in order to determine whether a sufficient supply of electricity is available to customers in the State.

(2) On or before January 1 in 2001, 2003, 2005, and 2007, the Commission shall report to the General Assembly in accordance with § 2-1246 of the State Government Article on its assessment under this subsection, and any recommendations for legislation which may be needed to ensure an adequate supply of electricity for customers in the State.

7-507.

(a) A person, other than [an electric company providing standard offer service under § 7-510(c) of this subtitle or] a municipal electric utility serving customers solely in its distribution territory, may not engage in the business of an electricity supplier in the State unless the person holds a license issued by the Commission.

- (b) An application for an electricity supplier license shall:
- (1) be made to the Commission in writing on a form adopted by the Commission;
 - (2) be verified by oath or affirmation; and
 - (3) contain information that the Commission requires, including:
 - (i) proof of technical and managerial competence;
 - (ii) proof of compliance with all applicable requirements of the Federal Energy Regulatory Commission, and any independent system operator or regional or system transmission operator to be used by the licensee;
 - (iii) a certification of compliance with applicable federal and State environmental laws and regulations that relate to the generation of electricity; and
 - (iv) payment of the applicable licensing fee.
- (c) The Commission shall, by regulation or order:
- (1) require proof of financial integrity;
 - (2) require a licensee to post a bond or other similar instrument, if, in the Commission's judgment, the bond or similar instrument is necessary to insure an electricity supplier's financial integrity;
 - (3) require a licensee to:
 - (i) provide proof that it is qualified to do business in the State with the Department of Assessments and Taxation; and

(ii) agree to be subject to all applicable taxes; and
(4) adopt any other requirements it finds to be in the public interest, which may include different requirements for:

(i) electricity suppliers that serve only large customers; and

(ii) the different categories of electricity suppliers.

(d) A license issued under this section may not be transferred without prior Commission approval.

(e) The Commission shall adopt regulations or issue orders to:

(1) protect consumers, electric companies, and electricity suppliers from anticompetitive and abusive practices;

(2) require each electricity supplier to provide, in addition to the requirements under § 7-505(b)(5) of this subtitle, adequate and accurate customer information to enable customers to make informed choices regarding the purchase of any electricity services offered by the electricity supplier;

(3) establish reasonable restrictions on telemarketing;

(4) establish procedures for contracting with customers;

(5) establish requirements and limitations relating to deposits, billing, collections, and contract cancellations; AND

(6) [establish provisions providing for the referral of a delinquent account by an electricity supplier to the standard offer service under § 7-510(c) of this subtitle; and

(7)] establish procedures for dispute resolution.

(f) In accordance with regulations or orders of the Commission, electricity bills, for competitive and regulated electric services, provided to consumers may provide, in addition to the

requirements of § 7-505(b)(5) of this subtitle and subsection (e)(2) of this section, the following information:

- (1) the identity and phone number of the electricity supplier of the service;
- (2) sufficient information to evaluate prices and services; and
- (3) information identifying whether the price is regulated or competitive.

(g) (1) An electricity supplier or any person or governmental unit may not, without first obtaining the customer's permission:

- (i) make any change in the electricity supplier for a customer; or
- (ii) add a new charge for a new or existing service or option.

(2) The Commission shall adopt regulations or issue orders establishing procedures to prevent the practices prohibited under paragraph (1) of this subsection.

(h) (1) An electricity supplier may not discriminate against any customer based wholly or partly on race, color, creed, national origin, or sex of an applicant for service or for any arbitrary, capricious, or unfairly discriminatory reason.

(2) An electricity supplier may not refuse to provide service to a customer except by the application of standards that are reasonably related to the electricity supplier's economic and business purposes.

(i) An electricity supplier shall be subject to all applicable federal and State environmental laws and regulations.

(j) An electricity supplier shall post on the Internet information that is readily understandable about its services and rates for small commercial and residential electric customers.

(Over)

(k) (1) The Commission may revoke or suspend the license of an electricity supplier, impose a civil penalty or other remedy, order a refund or credit to a customer, or impose a moratorium on adding or soliciting additional customers by the electricity supplier, for just cause on the Commission's own investigation or on complaint of the Office of People's Counsel, the Attorney General, or an affected party.

(2) A civil penalty may be imposed in addition to the Commission's decision to revoke, suspend, or impose a moratorium.

(3) Just cause includes:

(i) intentionally providing false information to the Commission;

(ii) switching, or causing to be switched, the electricity supply for a customer without first obtaining the customer's permission;

(iii) failing to provide electricity for its customers;

(iv) committing fraud or engaging in deceptive practices;

(v) failing to maintain financial integrity;

(vi) violating a Commission regulation or order;

(vii) failing to pay, collect, remit, or calculate accurately applicable State or local taxes;

(viii) violating a provision of this article or any other applicable consumer protection law of the State;

(ix) conviction of a felony by the licensee or principal of the licensee or any crime involving fraud, theft, or deceit; and

(x) suspension or revocation of a license by any State or federal authority.

(1) (1) An electricity supplier or person selling or offering to sell electricity in the State in violation of this section, after notice and an opportunity for a hearing, is subject to:

(i) a civil penalty of not more than \$10,000 for the violation; or

(ii) license revocation or suspension.

(2) Each day a violation continues is a separate violation.

(3) The Commission shall determine the amount of any civil penalty after considering:

(i) the number of previous violations of any provision of this article;

(ii) the gravity of the current violation; and

(iii) the good faith of the electricity supplier or person charged in attempting to achieve compliance after notification of the violation.

(m) In connection with a consumer complaint or Commission investigation under this section, an electricity supplier shall provide to the Commission access to any accounts, books, papers, and documents which the Commission considers necessary to resolve the matter at issue.

(n) The Commission may order the electricity supplier to cease adding or soliciting additional customers or to cease serving customers in the State.

(o) The Commission shall consult with the Consumer Protection Division of the Office of the Attorney General before issuing regulations designed to protect consumers.

(p) The People's Counsel shall have the same authority in licensing, complaint, and dispute resolution proceedings as it has in Title 2 of this article.

(q) Nothing in this subtitle may be construed to affect the authority of the Division of

(Over)

Consumer Protection in the Office of the Attorney General to enforce violations of Titles 13 and 14 of the Commercial Law Article or any other applicable State law or regulation in connection with the activities of electricity suppliers.

[7-509.

(a) (1) On and after the initial implementation date, the generation, supply, and sale of electricity, including all related facilities and assets, may not be regulated as an electric company service or function except to:

(i) establish the price for standard offer service under § 7-510(c) of this subtitle; and

(ii) review and approve transfers of generation assets under § 7-508 of this subtitle.

(2) This subsection does not apply to:

(i) regulation of an electricity supplier under § 7-507 of this subtitle; or

(ii) the costs of nuclear generation facilities or purchased power contracts that, as part of a settlement approved by the Commission, remain regulated or are recovered through the distribution function.

(b) (1) Subject to paragraph (2) of this subsection, this section does not apply to an investor-owned electric company until the electric company:

(i) transfers generation facilities and generation assets to an affiliate of the electric company, and the affiliate operates the facilities and assets; or

(ii) sells the generation facilities and generation assets to a nonaffiliate.

(2) (i) Notwithstanding the provisions of paragraph (1) of this subsection, this section applies to an investor-owned electric company that does not transfer its generation facilities and generation assets to an affiliate or sell its generation facilities and generation assets to a

nonaffiliate if, on January 1, 1999, the retail peak load of the investor-owned electric company in the State was less than 1,000 megawatts.

(ii) An investor-owned electric company to which this section applies through subparagraph (i) of this paragraph shall, by January 1, 2001:

1. transfer its generation facilities and generation assets to an affiliate of the investor-owned electric company that operates the facilities and assets; or

2. sell the generation facilities and generation assets to a nonaffiliate.

(c) The exceptions in subsection (a)(1) of this section as to any electric company shall remain in effect until the later of:

(1) the date when all customers of that electric company are eligible for customer choice under § 7-510 of this subtitle;

(2) the date when the amount of transition costs or benefits arising from the generation that is deregulated has been finally determined by the Commission under § 7-513(a) through (c) of this subtitle; or

(3) if, under § 7-510(c)(3)(ii) of this subtitle, the Commission extends the obligation to provide standard offer service, the date on which the Commission terminates that obligation.]

[7-510.

(a) (1) Subject to subsection (b) of this section, the phased implementation of customer choice shall be implemented as follows:

(i) on July 1, 2000, one-third of the residential class in the State of each electric company shall have the opportunity for customer choice;

(Over)

(ii) on January 1, 2001, the entire industrial class and the entire commercial class in the State of each electric company shall have the opportunity for customer choice;

(iii) on July 1, 2001, two-thirds of the residential class in the State of each electric company shall have the opportunity for customer choice;

(iv) on July 1, 2002, all customers of each electric company shall have the opportunity for customer choice; and

(v) by July 1, 2003, under a separate schedule adopted by the Commission, all customers of each electric cooperative shall have the opportunity for customer choice.

(2) (i) In accordance with this paragraph, the Commission may adopt a separate schedule for municipal electric utilities for the implementation of customer choice.

(ii) A municipal electric utility may not be required to make its service territory available for customer choice unless it elects to do so.

(iii) If a municipal electric utility elects to allow customer choice, the municipal electric utility shall file a proposed plan and schedule with the Commission.

(iv) The Commission may approve each municipal electric utility plan and schedule after considering the features that distinguish the municipal electric utility from other electric companies.

(v) Nothing in this subtitle may be construed to require the functional, operational, structural, or legal separation of the regulated and nonregulated operations of the municipal electric utility.

(3) On or before October 1, 2003, each municipal electric utility shall report, subject to § 2-1246 of the State Government Article, to the General Assembly on the status of the opportunity for customer choice in its service territory, including:

(i) if the service territory of the municipal electric utility is available for customer choice, its experience, through July 1, 2003, with the transition to customer choice; or

(ii) if the service territory of the municipal electric utility is not available for customer choice as of July 1, 2003, its proposed intention to make customer choice available in the future.

(4) If a municipal electric utility serves customers outside its distribution territory, electricity suppliers licensed under § 7-507 of this subtitle may serve the customers in the distribution territory of the municipal electric utility.

(b) For good cause shown and if the Commission finds the action to be in the public interest, the Commission may:

(1) accelerate or delay the initial implementation date of July 1, 2000 by up to 3 months; or

(2) accelerate any of the other implementation dates and phase-in percentages in subsection (a) of this section.

(c) (1) Beginning on the initial implementation date, an electric company's obligation to provide electricity supply and electricity supply service is stated by this subsection.

(2) Electricity supply purchased from a customer's electric company is known as standard offer service. A customer is considered to have chosen the standard offer service if the customer:

(i) is not allowed to choose an electricity supplier under the phase in of customer choice in subsection (a) of this section;

(ii) contracts for electricity with an electricity supplier and it is not delivered;

(Over)

(iii) cannot arrange for electricity from an electricity supplier;

(iv) does not choose an electricity supplier;

(v) chooses the standard offer service; or

(vi) has been denied service or referred to the standard offer service by an electricity supplier in accordance with § 7-507(e)(6) of this subtitle.

(3) Any obligation of an electric company to provide standard offer service shall cease on July 1, 2003, except that:

(i) electric cooperatives and municipal electric utilities may choose to continue providing standard offer service in their respective distribution territories, and may cease offering that service after notifying the Commission at least 12 months in advance; and

(ii) 1. if the Commission finds that the electricity supply market is not competitive or that no acceptable competitive proposal has been received to supply electricity to those customers described under paragraph (2) of this subsection, the Commission shall extend the obligation to provide standard offer service to residential and small commercial customers at a market price that permits recovery of the verifiable, prudently incurred costs to procure or produce the electricity plus a reasonable return.

2. The Commission shall reexamine the finding made under this subparagraph at least annually.

(4) On or before July 1, 2001, the Commission shall adopt regulations or issue orders to establish procedures for the competitive selection of electricity suppliers, including an affiliate of an electric company, to provide standard offer service to customers of electric companies under paragraph (2) of this subsection, except for customers of electric cooperatives and municipal electric utilities. Unless delayed by the Commission, the competitive selection shall take effect no later than July 1, 2003.

(5) An electric company may procure the electricity needed to meet its standard offer service electricity supply obligation from any electricity supplier, including an affiliate of the electric company.

(d) Notwithstanding the dates set forth in this section or any other law, customer choice may not commence until legislation is enacted by the General Assembly to restructure Maryland taxes to address the State and local tax implications of restructuring the electric utility industry.

(e) The Commission shall, by regulation or order, adopt procedures to implement this section, including the allocation of any unused opportunity for customer choice among customer classes.

(f) A county or municipal corporation may not act as an aggregator unless the Commission determines there is not sufficient competition within the boundaries of the county or municipal corporation.]

7-512.1.

(b) (1) All customers shall contribute to the funding of the electric universal service program through a charge collected by each electric company.

(2) The Commission shall determine a fair and equitable allocation for collecting the charges among all customer classes pursuant to subsection (e) of this section.

(3) In accordance with subsection (f)(6) of this section, any unexpended bill assistance and arrearage retirement funds returned to customers under subsection (f) of this section shall be returned to each customer class as a credit in the same proportion that the customer class contributed charges to the fund.

(4) An electric company shall recover electric universal service program costs [in accordance with § 7-512 of this subtitle].

(5) The Commission shall determine the allocation of the electric universal service charge among the generation, transmission, and distribution rate components of all classes.

(6) The Commission may not assess the electric universal service surcharge on a

(Over)

per kilowatt-hour basis.

[7-515.

An electricity supplier that also provides distribution service, or that 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, directly, indirectly, or 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 or affiliate.]

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article - Public Utility Companies

[7-512.

(a) This section and § 7-513 of this subtitle apply to an entity that was regulated as an electric company on June 30, 1999, whether or not the entity or any of its businesses, services, or assets continues to be regulated under this article after that date.

(b) An electric company may recover costs under this section to the extent that the Commission finds costs to be just and reasonable.

(c) (1) An electric company shall be provided a fair opportunity to recover fully all costs that have been or will be incurred by the electric company under public purpose programs established by law or ordered by the Commission.

(2) (i) Except as provided in paragraph (3) of this subsection, the costs subject to this subsection shall be funded by a surcharge or other cost recovery mechanism collected on a statewide basis that:

1. fully recovers from customers the costs of the plans and programs; and

2. subject to subparagraph (ii) of this paragraph, with respect to any of these costs not included in rates on January 1, 2000, is not subject to any otherwise applicable cap.

(ii) The recovery by an electric company of costs for a universal service program is subject to any applicable cap regardless of when the costs are included in rates.

(3) During the fiscal year ending June 30, 2000, an electric company may not, under paragraph (2) of this subsection, recover costs of a consumer education program established by law, regulation, or order.]

[7-513.

(a) (1) In accordance with this subsection, an electric company shall be provided a fair opportunity to recover all of its prudently incurred and verifiable net transition costs, subject to full mitigation, following the Commission's determination under subsection (b) of this section.

(2) A competitive transition charge, or other appropriate mechanism that the Commission determines, may be included for customers who access the transmission or distribution system of the electric company in whose distribution territory the customer is located. The costs authorized by the Commission to be recovered shall be allocated to customer classes in a manner that, as nearly as reasonably possible, does not exceed the cost of providing the service to those classes of customers, avoiding where reasonably possible any interclass or intraclass cross subsidy.

(3) (i) The competitive transition charge may be included on bills to customers for a period determined by the Commission.

(ii) The Commission may establish recovery periods of different lengths for each electric company and for different categories of transition costs.

(4) A competitive transition charge, or other appropriate mechanism determined by the Commission, may not apply to any on-site generated electricity to the extent of:

(Over)

- (i) the existing facilities' installed generating capacity as of January 1, 1999;
- (ii) the generating capacity of an existing facility to be installed under a legally binding contract:
 - 1. executed on or before January 1, 1999; or
 - 2. executed on or before September 29, 1999, if the Commission, on a case by case review of the evidence, determines that negotiations in good faith concerning the contract were ongoing as of January 1, 1999; or
- (iii) for a facility with a capacity of 500 kilowatts or less:
 - 1. the first 80 megawatts of the aggregate statewide generating capacity of on-site generating facilities;
 - 2. the generating capacity of the facility if the facility:
 - A. is installed between January 1, 2000 and December 31, 2003;
 - B. derives electricity from fuel cells, photovoltaics, wind machines, or microturbines; and
 - C. has an energy conversion efficiency greater than 40%; or
 - 3. the generating capacity of the facility if the facility:
 - A. is installed after January 1, 2004;
 - B. derives electricity from fuel cells, photovoltaics, wind machines, or microturbines; and
 - C. has an energy conversion efficiency greater than 50%.

(b) The Commission shall determine the transition costs and the amounts of the transition costs that an electric company shall be provided an opportunity to recover under its restructuring plan through the competitive transition charge or other appropriate mechanism.

(c) (1) After July 1, 1999, an electric company may apply to the Commission for a qualified rate order for some or all of its transition costs.

(2) If the Commission issues a qualified rate order and the transition bonds approved by that order are successfully issued:

(i) the electric company shall impose and collect, through its customer bills, the intangible transition charges approved by the qualified rate order; and

(ii) at the same time, the electric company's competitive transition charge shall be reduced by an amount equal to that portion of the competitive transition charge related to the transition costs for which transition bonds have been successfully issued, together with any costs of capital related to the transition costs for which recovery was provided in the competitive transition charge, as provided in the qualified rate order.

(d) (1) The Commission shall establish procedures for the annual review of the competitive transition charge for each electric company to reconcile the annual revenues received from the charge with the annual amortization of transition costs approved by the Commission under this section to take account of actual kilowatt-hour sales in the prior year compared with previously estimated kilowatt-hour sales. The Commission shall adjust the competitive transition charge based on any under recovery or over recovery with respect to the authorized amortization amount.

(2) Nothing in this subtitle may be construed as preventing the Commission from approving for an investor-owned electric company:

(i) an adjustment mechanism proposed by the investor-owned electric company in its initial restructuring proposal filed prior to January 1, 1999, that takes into account differences other than differences in kilowatt-hour sales, taking into consideration any requirements related to any transition bonds;

(Over)

(ii) an adjustment that takes into account generation asset sales by an electric company or an affiliate to a nonaffiliate that are consummated on or before June 30, 2005; or

(iii) any other mechanism as part of a settlement.

(e) (1) In determining the appropriate transition costs or benefits for each electric company's generation-related assets, the Commission shall:

(i) conduct public hearings; and

(ii) consider, in addition to other appropriate evidence of value:

1. book value and fair market value;

2. auctions and sales of comparable assets;

3. appraisals;

4. the revenue the company would receive under rate-of-return regulation;

5. the revenue the company would receive in a restructured electricity supply market; and

6. computer simulations provided to the Commission.

(2) The Commission shall determine any equitable allocation of costs or benefits between shareholders and ratepayers. In determining the allocation of transition costs or benefits, the Commission shall consider the following factors:

(i) the prudence and verifiability of the original investment;

(ii) whether the investment continues to be used and useful;

(iii) whether the loss is one of which investors can be said to have reasonably borne the risk; and

(iv) whether investors have already been compensated for the risk.1”; in line 16, strike “2.” and substitute “3.”; after line 29, insert:

“SECTION 4. AND BE IT FURTHER ENACTED, That an electric company may acquire or build a generating station in accordance with this Act, but may not pass on to ratepayers the cost of reacquiring any generation assets that the electric company previously transferred to an affiliated company or sold.

SECTION 5. AND BE IT FURTHER ENACTED, That a presently existing obligation or contract right may not be impaired in any way by this Act.

SECTION 6. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 7. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect January 1, 2010.”.

On page 5, in line 10, strike “3.” and substitute “8.”; and in line 13, after “and” insert “, except as provided in Section 7 of this Act”.