

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL NO. 1713
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and McHale” and substitute “, McHale, Doory, Moe, Burns, Conroy, Feldman, Harrison, Impallaria, Kirk, Krysiak, Love, Minnick, Parrott, Taylor, and Vaughn”; in line 11, strike “convenience, necessity, and interest” and substitute “interest, convenience, and necessity”; in line 12, after “Assembly;” insert “establishing an Office of Special Counsel; requiring the appointment of a special counsel for certain purposes relating to a certain proposed merger; authorizing the special counsel to employ certain staff and to retain certain consultants and experts; authorizing and requiring the special counsel to utilize the services of certain agencies to the extent practicable; requiring certain agencies to cooperate with the special counsel; providing that the special counsel is not subject to certain provisions of law concerning procurement; authorizing the Governor to transfer certain funds for certain purposes; establishing the duties, powers, and responsibilities of the special counsel; requiring the special counsel to investigate a certain proposed merger between certain companies; requiring the parties to the proposed merger to provide certain information to the special counsel; requiring the special counsel to examine and investigate certain information and undertake certain proceedings; requiring the special counsel to consider certain factors concerning the proposed merger; requiring the special counsel to make certain recommendations concerning approval or disapproval of the proposed merger to the General Assembly; reserving to the General Assembly the authority to approve or disapprove a certain proposed merger; prohibiting the Commission from approving a certain proposed merger before a certain date; authorizing the Commission to provide certain information and to conduct certain proceedings at the request of the special counsel; authorizing the special counsel to issue a subpoena enforceable in a certain manner; providing for certain reports by the special counsel to the presiding officers of the General Assembly, the Governor, and the Attorney General;”; in line 14, strike “a term” and substitute “certain terms”; in the same line, after “measure;” insert “providing for the termination of a portion of this Act;”; and after line 30, insert:

“BY adding to

(Over)

Article - State Government

Section 9-2701 through 9-2705, inclusive, to be under the new subtitle “Subtitle 27. Special Counsel”

Annotated Code of Maryland

(2004 Replacement Volume and 2005 Supplement)”.

AMENDMENT NO. 2

On page 4, in lines 9 and 20, in each instance, after “company” insert “OR OF A SUBSIDIARY OR AFFILIATE, AS DEFINED IN § 7-501 OF THIS ARTICLE, OF A PUBLIC SERVICE COMPANY”.

On page 8, in line 27, after “INTEREST” insert “, CONVENIENCE, AND NECESSITY”.

AMENDMENT NO. 3

On page 9, in line 3, after “RATES” insert “AND CHARGES”; in line 4, after “CUSTOMERS” insert “AND ON THE SERVICES AND CONDITIONS OF OPERATION OF THE PUBLIC SERVICE COMPANY”; after line 19, insert:

“(IX) THE USE OR PLEDGE OF UTILITY ASSETS FOR THE BENEFIT OF AN AFFILIATE;”;

in lines 20 and 21, strike “(IX)” and “(X)”, respectively, and substitute “(X)” and “(XI)”, respectively; in lines 22 and 23, strike “CONVENIENCE, NECESSITY, AND INTEREST” and substitute “INTEREST, CONVENIENCE, AND NECESSITY”; in lines 25 and 34 and 35, in each instance, strike “CONVENIENCE, NECESSITY, AND INTEREST” and substitute “INTEREST, CONVENIENCE, AND NECESSITY, AND PROVIDES A NET BENEFIT TO CONSUMERS”; and in line 31, strike “CONVENIENCE, NECESSITY, AND INTEREST” and substitute “INTEREST, CONVENIENCE, AND NECESSITY, OR THAT THE ACQUISITION WOULD NOT PROVIDE A NET BENEFIT TO CONSUMERS”.

AMENDMENT NO. 4

On page 10, in line 4, after “ENACTED,” insert “That the Laws of Maryland read as follows:

Article - State Government

SUBTITLE 27. SPECIAL COUNSEL.

9-2701.

IN THIS SUBTITLE, "AFFILIATE" HAS THE MEANING STATED IN § 7-501 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

9-2702.

(A) THERE IS AN OFFICE OF SPECIAL COUNSEL.

(B) THE OFFICE OF SPECIAL COUNSEL IS AN INDEPENDENT UNIT OF STATE GOVERNMENT.

(C) THE OFFICE OF SPECIAL COUNSEL IS ESTABLISHED FOR THE LIMITED PURPOSES SET FORTH IN § 9-2705 OF THIS SUBTITLE.

9-2703.

(A) (1) THE SPECIAL COUNSEL SHALL BE APPOINTED ON OR BEFORE MAY 15, 2006, BY THE ATTORNEY GENERAL AND SHALL ASSUME THE DUTIES OF OFFICE BY JUNE 1, 2006.

(2) THE SPECIAL COUNSEL MAY BE REMOVED FROM OFFICE BY THE ATTORNEY GENERAL FOR MISCONDUCT IN OFFICE, PERSISTENT FAILURE TO PERFORM THE DUTIES OF OFFICE, OR CONDUCT PREJUDICIAL TO THE PROPER ADMINISTRATION OF JUSTICE.

(B) A PERSON APPOINTED AS SPECIAL COUNSEL:

(1) SHALL EXECUTE AN AFFIDAVIT UNDER OATH THAT THE PERSON WILL NOT ACCEPT APPOINTMENT TO, OR BE A CANDIDATE FOR, ANY STATE OR LOCAL OFFICE, WHETHER APPOINTIVE OR ELECTIVE, DURING THAT PERSON'S SERVICE AS SPECIAL COUNSEL AND FOR A 3-YEAR PERIOD AFTER THE PERSON LAST SERVES AS SPECIAL COUNSEL; AND

(2) MAY NOT BE A STATE EMPLOYEE OR A STATE PUBLIC OFFICIAL BEFORE APPOINTMENT.

(Over)

(C) THE SPECIAL COUNSEL SHALL RECEIVE THE SALARY AS ALLOWED BY THE STATE BUDGET.

9-2704.

(A) (1) THE SPECIAL COUNSEL MAY APPOINT AND EMPLOY THE PROFESSIONAL, INVESTIGATIVE, AND CLERICAL STAFF AS ALLOWED BY THE STATE BUDGET.

(2) THE SPECIAL COUNSEL MAY RETAIN CONSULTANTS AND EXPERTS INCLUDING ECONOMISTS, COST OF CAPITAL EXPERTS, ENGINEERS, AND LAWYERS.

(B) (1) TO THE EXTENT PRACTICABLE, THE SPECIAL COUNSEL SHALL UTILIZE THE SERVICES AND PERSONNEL OF THE OFFICE OF THE ATTORNEY GENERAL, THE PUBLIC SERVICE COMMISSION, THE TECHNICAL STAFF OF THE COMMISSION, THE OFFICE OF PEOPLE'S COUNSEL, AND OTHER STATE AND LOCAL AGENCIES.

(2) THE OFFICE OF THE ATTORNEY GENERAL, THE PUBLIC SERVICE COMMISSION, THE TECHNICAL STAFF OF THE COMMISSION, THE OFFICE OF PEOPLE'S COUNSEL, AND OTHER STATE AND LOCAL AGENCIES SHALL COOPERATE WITH THE OFFICE OF SPECIAL COUNSEL.

(C) WITH RESPECT TO ENTERING INTO CONTRACTS FOR THE PROCUREMENT OF SUPPLIES AND SERVICES AND OBTAINING SUPPLIES AND SERVICES, THE OFFICE OF SPECIAL COUNSEL IS NOT SUBJECT TO THE PROVISIONS OF DIVISION II OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(D) (1) IN CONSULTATION WITH THE LEGISLATIVE POLICY COMMITTEE, THE GOVERNOR MAY TRANSFER ALL FUNDS THAT THE SPECIAL COUNSEL REQUIRES FOR THE INVESTIGATION UNDER THIS SUBTITLE FROM OTHER AGENCY FUNDS AS THE GOVERNOR CONSIDERS APPROPRIATE IN ACCORDANCE WITH § 7-209(E)(2)(IV) OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(2) THE PARTIES TO THE PROPOSED MERGER INVESTIGATED UNDER THIS SUBTITLE SHALL REIMBURSE THE STATE FOR THE EXPENSES OF THE INVESTIGATION OF THE MERGER.

9-2705.

(A) THE SPECIAL COUNSEL HAS THE DUTIES, POWERS, AND RESPONSIBILITIES SET FORTH IN THIS SECTION.

(B) THE SPECIAL COUNSEL SHALL INVESTIGATE ALL ASPECTS OF THE PROPOSED MERGER BETWEEN FPL GROUP, INC. AND CONSTELLATION ENERGY GROUP, INC.

(C) (1) IN THIS SUBSECTION, "PARTY" INCLUDES AN AFFILIATE OF A PARTY TO THE PROPOSED MERGER.

(2) TO FACILITATE THE REVIEW OF THE PROPOSED MERGER, THE PARTIES TO THE PROPOSED MERGER AND AFFILIATES OF THE PARTIES SHALL PROVIDE THE FOLLOWING DETAILED INFORMATION TO THE SPECIAL COUNSEL:

(I) THE PARTIES' IDENTITY AND FINANCIAL ABILITY;

(II) THE BACKGROUND OF THE KEY PERSONNEL ASSOCIATED WITH THE PARTIES;

(III) THE SOURCE AND AMOUNTS OF FUNDS OR OTHER CONSIDERATION TO BE USED IN THE PROPOSED MERGER;

(IV) THE PARTIES' COMPLIANCE WITH FEDERAL LAW IN CARRYING OUT THE PROPOSED MERGER;

(V) WHETHER THE PARTIES OR THE KEY PERSONNEL ASSOCIATED WITH THE PARTIES HAVE VIOLATED ANY STATE OR FEDERAL

(Over)

STATUTES REGULATING THE ACTIVITIES OF PUBLIC SERVICE COMPANIES;

(VI) ALL DOCUMENTS RELATING TO THE TRANSACTION GIVING RISE TO THE PROPOSED MERGER;

(VII) THE PARTIES' EXPERIENCE IN OPERATING PUBLIC SERVICE COMPANIES PROVIDING ELECTRICITY;

(VIII) THE PARTIES' PLAN FOR OPERATING THE PUBLIC SERVICE COMPANY IN THE STATE;

(IX) HOW THE PROPOSED MERGER WILL SERVE THE CUSTOMERS OF THE PUBLIC SERVICE COMPANY OPERATING IN THE STATE IN THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY; AND

(X) ANY OTHER INFORMATION THAT THE SPECIAL COUNSEL MAY REQUEST.

(D) (1) THE SPECIAL COUNSEL PROMPTLY SHALL:

(I) EXAMINE AND INVESTIGATE THE INFORMATION PROVIDED UNDER SUBSECTION (C) OF THIS SECTION; AND

(II) UNDERTAKE ANY ACTIONS AND PROCEEDINGS NECESSARY OR CONVENIENT TO REVIEW THE PROPOSED MERGER AND MAKE RECOMMENDATIONS CONCERNING THE PROPOSED MERGER.

(2) THE SPECIAL COUNSEL SHALL CONSIDER THE FOLLOWING FACTORS IN CONSIDERING THE PROPOSED MERGER:

(I) THE POTENTIAL IMPACT OF THE MERGER ON RATES AND CHARGES PAID BY CUSTOMERS AND ON THE SERVICES AND CONDITIONS OF OPERATION OF THE PUBLIC SERVICE COMPANY OPERATING IN THE STATE;

(II) THE POTENTIAL IMPACT OF THE MERGER ON CONTINUING INVESTMENT NEEDS FOR THE MAINTENANCE OF UTILITY SERVICES, PLANT, AND

RELATED INFRASTRUCTURE;

(III) THE PROPOSED CAPITAL STRUCTURE THAT WILL RESULT FROM THE MERGER, INCLUDING ALLOCATION OF EARNINGS FROM THE PUBLIC SERVICE COMPANY OPERATING IN THE STATE;

(IV) THE POTENTIAL EFFECTS ON EMPLOYMENT BY THE PUBLIC SERVICE COMPANY OPERATING IN THE STATE;

(V) THE PROJECTED ALLOCATION OF ANY SAVINGS BETWEEN STOCKHOLDERS AND RATE PAYERS;

(VI) ISSUES OF RELIABILITY, QUALITY OF SERVICE, AND QUALITY OF CUSTOMER SERVICE;

(VII) THE POTENTIAL IMPACT OF THE MERGER ON COMMUNITY INVESTMENT;

(VIII) AFFILIATE AND CROSS-SUBSIDIZATION ISSUES;

(IX) THE USE OR PLEDGE OF UTILITY ASSETS FOR THE BENEFIT OF AN AFFILIATE;

(X) THE VALUATION OF ASSETS HELD BY AN AFFILIATE OF THE PUBLIC SERVICE COMPANY OPERATING IN THE STATE, INCLUDING GENERATION ASSETS AND REAL PROPERTY, AT THE TIME OF TRANSFER OF THOSE ASSETS TO THE AFFILIATE AND AT THE TIME OF THE PROPOSED MERGER;

(XI) JURISDICTIONAL AND CHOICE-OF-LAW ISSUES; AND

(XII) ANY OTHER ISSUES THE SPECIAL COUNSEL CONSIDERS RELEVANT TO THE ASSESSMENT OF THE PROPOSED MERGER IN RELATION TO THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY.

(Over)

(3) (I) IF THE SPECIAL COUNSEL FINDS THAT THE MERGER IS CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY, AND PROVIDES A NET BENEFIT TO CONSUMERS, THE SPECIAL COUNSEL SHALL RECOMMEND THAT THE GENERAL ASSEMBLY APPROVE THE MERGER.

(II) THE SPECIAL COUNSEL MAY RECOMMEND APPROVAL OF THE MERGER CONDITIONED ON THE PARTIES' SATISFACTORY PERFORMANCE OR ADHERENCE TO SPECIFIC REQUIREMENTS.

(4) IF THE SPECIAL COUNSEL DOES NOT FIND THAT THE MERGER IS CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY, OR THAT THE MERGER WOULD NOT PROVIDE A NET BENEFIT TO CONSUMERS, THE SPECIAL COUNSEL SHALL RECOMMEND THAT THE GENERAL ASSEMBLY DISAPPROVE THE MERGER.

(5) THE PARTIES TO THE PROPOSED MERGER BEAR THE BURDEN OF SHOWING THAT APPROVING THE MERGER IS CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY AND PROVIDES A NET BENEFIT TO THE CONSUMER.

(E) (1) THE GENERAL ASSEMBLY RESERVES THE AUTHORITY TO APPROVE OR DISAPPROVE THE PROPOSED MERGER BY LAW AFTER CONSIDERATION OF THE RECOMMENDATIONS OF THE SPECIAL COUNSEL PROVIDED IN ACCORDANCE WITH THIS SUBTITLE.

(2) THE PUBLIC SERVICE COMMISSION:

(I) MAY NOT APPROVE OR DISAPPROVE THE PROPOSED MERGER IF THE GENERAL ASSEMBLY EXERCISES ITS AUTHORITY UNDER PARAGRAPH (1) OF THIS SUBSECTION; AND

(II) MAY NOT ISSUE AN ORDER APPROVING OR DISAPPROVING THE PROPOSED MERGER BEFORE APRIL 10, 2007.

(3) THE PUBLIC SERVICE COMMISSION AND THE TECHNICAL STAFF OF THE COMMISSION SHALL PROVIDE INFORMATION AND RECOMMENDATIONS TO THE SPECIAL COUNSEL ON REQUEST CONCERNING THE PROPOSED MERGER.

(4) AS REQUESTED BY THE SPECIAL COUNSEL, THE PUBLIC SERVICE COMMISSION SHALL CONDUCT PROCEEDINGS AS NEEDED TO INVESTIGATE THE PROPOSED MERGER AND PROVIDE INFORMATION CONCERNING THE MERGER TO THE SPECIAL COUNSEL AND THE GENERAL ASSEMBLY.

(5) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED TO PROHIBIT THE PUBLIC SERVICE COMMISSION FROM CONDUCTING ITS OWN PROCEEDINGS ON THE PROPOSED MERGER IN COORDINATION WITH THE SPECIAL COUNSEL.

(F) (1) THE PUBLIC SERVICE COMMISSION SHALL PROVIDE THE SPECIAL COUNSEL WITH ALL OF THE INFORMATION RELATED TO THE PROCEEDINGS THAT IS REQUESTED BY THE SPECIAL COUNSEL.

(2) THE SPECIAL COUNSEL IS A CUSTODIAN OF INFORMATION SUBJECT TO THE PROVISIONS OF THE PUBLIC INFORMATION ACT.

(G) (1) (I) THE SPECIAL COUNSEL MAY ISSUE A SUBPOENA TO A PERSON TO REQUIRE THE APPEARANCE OF THE PERSON OR THE PRODUCTION OF TELEPHONE, BUSINESS, PERSONAL, GOVERNMENTAL, OR CORPORATE RECORDS OR DOCUMENTS.

(II) THE SPECIAL COUNSEL MAY ADMINISTER OATHS AND AFFIRMATIONS.

(2) (I) A SUBPOENA ISSUED UNDER THIS SUBSECTION MAY BE SERVED IN THE SAME MANNER AS IF ISSUED FROM A CIRCUIT COURT.

(II) IF ANY PERSON FAILS TO OBEY A SUBPOENA LAWFULLY SERVED UNDER THIS SUBSECTION, THE SPECIAL COUNSEL, OR THE ATTORNEY

GENERAL ON BEHALF OF THE SPECIAL COUNSEL, IMMEDIATELY MAY REPORT THE DISOBEDIENCE AND PROVIDE A COPY OF THE SUBPOENA AND PROOF OF SERVICE TO A CIRCUIT COURT.

(III) THE CIRCUIT COURT SHALL CONDUCT A HEARING AND MAY GRANT APPROPRIATE RELIEF AFTER PROVIDING THE PERSON WHO ALLEGEDLY FAILED TO COMPLY WITH A SUBPOENA AN OPPORTUNITY TO BE HEARD AND BE REPRESENTED BY COUNSEL.

(3) THIS SUBSECTION IS NOT INTENDED TO ALLOW THE CONTRAVENTION, DENIAL, OR ABROGATION OF ANY PRIVILEGE OR RIGHT RECOGNIZED BY LAW.

(H) (1) DURING THE COURSE OF THE INVESTIGATION, AS THE ATTORNEY GENERAL OR SPECIAL COUNSEL CONSIDERS APPROPRIATE, THE SPECIAL COUNSEL SHALL SUBMIT A REPORT OF THE INVESTIGATION AND RECOMMENDATIONS TO THE PRESIDING OFFICERS OF THE GENERAL ASSEMBLY, THE GOVERNOR, AND THE ATTORNEY GENERAL.

(2) ON OR BEFORE JANUARY 10, 2007, AND AT THE COMPLETION OF THE INVESTIGATION BY THE SPECIAL COUNSEL, THE SPECIAL COUNSEL SHALL SUBMIT A COMPLETE REPORT OF THE INVESTIGATION, INCLUDING ALL THE FINDINGS AND RECOMMENDATIONS, TO THE PRESIDING OFFICERS OF THE GENERAL ASSEMBLY, THE GOVERNOR, AND THE ATTORNEY GENERAL.

(I) (1) IN ADDITION TO THE SPECIFIC INVESTIGATION OF THE PROPOSED MERGER UNDER THIS SUBTITLE, THE SPECIAL COUNSEL MAY STUDY AND EVALUATE THE STATUS OF ELECTRIC RESTRUCTURING IN THE STATE AS IT PERTAINS TO THE AVAILABILITY OF COMPETITIVE GENERATION TO RESIDENTIAL CUSTOMERS AND THE STRUCTURE, PROCUREMENT, AND TERMS AND CONDITIONS OF STANDARD OFFER SERVICE FOR RESIDENTIAL CUSTOMERS.

(2) ON OR BEFORE JUNE 30, 2007, THE SPECIAL COUNSEL SHALL REPORT ANY FINDINGS AND RECOMMENDATIONS UNDER THIS SUBSECTION, INCLUDING SUGGESTED LEGISLATIVE AND REGULATORY CHANGES, TO THE

PRESIDING OFFICERS OF THE GENERAL ASSEMBLY, THE GOVERNOR, AND THE ATTORNEY GENERAL.

SECTION 3. AND BE IT FURTHER ENACTED.”;

after line 24, insert:

“SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall remain effective through June 30, 2007, and, at the end of June 30, 2007, with no further action required by the General Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.”;

and in line 25, strike “3.” and substitute “5.”.