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By: **Delegates McHale and D. Davis**

Introduced and read first time: March 6, 2006

Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Electric Companies - Acquisition or Merger and Generating Assets**

3 FOR the purpose of requiring an electric company to remain a separate legal entity  
4 from a person that acquires or merges with the electric company or a person  
5 that owns or controls the electric company under certain circumstances;  
6 requiring an electric company and a person acquiring or merging with the  
7 electric company to maintain separate boards of directors and balance sheets  
8 under certain circumstances; requiring the Public Service Commission to review  
9 a certain acquisition or merger of a certain electric company or a person that  
10 owns or controls an electric company to ensure that the electric company  
11 remains a separate entity from the person merging with or acquiring the electric  
12 company or a person that owns or controls the electric company and that the  
13 acquisition or merger serves the public convenience and necessity based on a  
14 preponderance of the evidence; prohibiting more than a certain number of  
15 members of the board of directors of a certain electric company to be employees  
16 or directors of a certain person that acquires or merges with the electric  
17 company; returning electric generation to the status of a utility service subject  
18 to regulation by the Commission; requiring the Commission, in cooperation with  
19 the Secretary of Natural Resources, to assemble and evaluate annually certain  
20 long-range plans of certain electric companies regarding generating needs and  
21 the means to meet those needs; requiring the Commission to take final action on  
22 an application for a certificate of public convenience and necessity only after due  
23 consideration of the need to meet existing and future demand for electric  
24 service; repealing a provision that required the Commission to require  
25 functional, operational, structural, or legal separation between a certain electric  
26 company's regulated businesses and its nonregulated businesses or affiliates;  
27 authorizing an electric company to acquire or build a generating station in  
28 accordance with this Act; providing that an electric company may not pass on to  
29 ratepayers the cost of reacquiring certain electric generation assets; making the  
30 provisions of this Act severable; making this Act an emergency measure; and  
31 generally relating to the acquisition or merger of electric companies and  
32 generating assets of electric companies.

33 BY repealing and reenacting, with amendments,  
34 Article - Public Utility Companies

1 Section 4-201, 7-201, 7-207, and 7-505(b)(10)  
2 Annotated Code of Maryland  
3 (1998 Volume and 2005 Supplement)

4 BY adding to  
5 Article - Public Utility Companies  
6 Section 7-106  
7 Annotated Code of Maryland  
8 (1998 Volume and 2005 Supplement)

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

11 **Article - Public Utility Companies**

12 4-201.

13 In accordance with the provisions of this article, a public service company shall  
14 charge just and reasonable rates for the [regulated] UTILITY services that it renders.  
15 7-106.

16 (A) IF A PERSON ACQUIRES OR MERGES WITH AN ELECTRIC COMPANY OR A  
17 PERSON WHO OWNS OR CONTROLS AN ELECTRIC COMPANY:

18 (1) THE ELECTRIC COMPANY SHALL REMAIN A SEPARATE LEGAL  
19 ENTITY UNDER FEDERAL AND STATE LAW FROM THE PERSON ACQUIRING OR  
20 MERGING WITH THE ELECTRIC COMPANY;

21 (2) THE ELECTRIC COMPANY AND THE PERSON ACQUIRING OR  
22 MERGING WITH THE ELECTRIC COMPANY SHALL MAINTAIN SEPARATE:

23 (I) BOARDS OF DIRECTORS FOR EACH ENTITY; AND

24 (II) BALANCE SHEETS; AND

25 (3) THE COMMISSION SHALL REVIEW THE ACQUISITION OR MERGER TO  
26 ENSURE:

27 (I) THAT THE ELECTRIC COMPANY REMAINS A SEPARATE LEGAL  
28 ENTITY FROM THE PERSON WHO IS ACQUIRING OR MERGING WITH THE ELECTRIC  
29 COMPANY OR THE PERSON THAT OWNS OR CONTROLS THE ELECTRIC COMPANY; AND

30 (II) THAT THE ACQUISITION OR MERGER SERVES THE PUBLIC  
31 CONVENIENCE AND NECESSITY BASED ON A PREPONDERANCE OF THE EVIDENCE.

32 (B) WHEN A PERSON ACQUIRES OR MERGES WITH AN ELECTRIC COMPANY OR  
33 A PERSON WHO OWNS OR CONTROLS AN ELECTRIC COMPANY UNDER THIS SECTION,  
34 NO MORE THAN TWO MEMBERS OF THE BOARD OF DIRECTORS OF THE ELECTRIC

1 COMPANY MAY BE EMPLOYEES OR MEMBERS OF THE BOARD OF DIRECTORS OF THE  
2 PERSON WHO ACQUIRED OR MERGED WITH THE ELECTRIC COMPANY.

3 7-201.

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

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

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

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

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

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

28 [(b)] (C) (1) The Commission shall evaluate the cost-effectiveness of the  
29 investments by electric companies in energy conservation to reduce electrical demand  
30 and in renewable energy sources to help meet electrical demand.

31 (2) The evaluation of investments shall include:

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

36 (ii) utilization of renewable energy sources;

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

1 (iv) widespread public promotion of energy conservation programs.

2 7-207.

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

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

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

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

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

17 (ii) If a person obtains Commission approval for construction under  
18 § 7-207.1 of this subtitle, the Commission shall exempt a person from the  
19 requirement to obtain a certificate of public convenience and necessity under this  
20 section.

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

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

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

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

37 (d) (1) The Commission shall provide an opportunity for public comment  
38 and hold a public hearing on the application for a certificate of public convenience and

1 necessity in each county and municipal corporation in which any portion of the  
2 construction of a generating station or of an overhead transmission line designed to  
3 carry a voltage in excess of 69,000 volts is proposed to be located.

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

8           (3)       Once in each of the 4 successive weeks immediately before the  
9 hearing date, the Commission shall provide weekly notice of the public hearing and  
10 an opportunity for public comment by advertisement in a newspaper of general  
11 circulation in the county or municipal corporation affected by the application.

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

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

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

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

22           (2)       **THE NEED TO MEET EXISTING AND FUTURE DEMAND OF ELECTRIC**  
23 **SERVICE; AND**

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

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

26                   (ii)       economics;

27                   (iii)       esthetics;

28                   (iv)       historic sites;

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

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

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

34       (f)       [For the construction of an overhead transmission line, in addition to the  
35 considerations listed in subsection (e) of this section, the Commission shall take final

1 action on an application for a certificate of public convenience and necessity only after  
2 due consideration of the need to meet existing and future demand for electric service.

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

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

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

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

15 7-505.

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

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

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

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

26 3. appropriate complaint and enforcement procedures; and

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

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

34 SECTION 2. AND BE IT FURTHER ENACTED, That an electric company may  
35 acquire or build a generating station in accordance with this Act, but may not pass on  
36 to ratepayers the cost of reacquiring any generation assets that the electric company  
37 previously transferred to an affiliated company or sold.

1 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this  
2 Act or the application thereof to any person or circumstance is held invalid for any  
3 reason in a court of competent jurisdiction, the invalidity does not affect other  
4 provisions or any other application of this Act which can be given effect without the  
5 invalid provision or application, and for this purpose the provisions of this Act are  
6 declared severable.

7 SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an  
8 emergency measure, is necessary for the immediate preservation of the public health  
9 or safety, has been passed by a ye and nay vote supported by three-fifths of all the  
10 members elected to each of the two Houses of the General Assembly, and shall take  
11 effect from the date it is enacted.