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EMERGENCY BILL

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

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 **Public Service Companies - Mergers, Acquisitions, and Financing**

3 FOR the purpose of altering certain provisions relating to acquisition and issuance of  
4 stock and debt by certain public service companies incorporated in the State to  
5 apply to public service companies operating in the State; prohibiting a person  
6 from acquiring certain public service companies without the prior approval of  
7 the Public Service Commission; providing for the application and review of  
8 certain proposed acquisitions; establishing certain factors that the Commission  
9 must consider in assessing a certain acquisition; providing that the Commission  
10 may only approve a certain acquisition if the acquisition is consistent with the  
11 public convenience, necessity, and interest; stating certain findings and  
12 declarations of the General Assembly; requiring the inclusion of certain  
13 conditions in any approval of a merger between two certain companies; defining  
14 a term; making this Act an emergency measure; and generally relating to public  
15 service companies, mergers, acquisitions, and financial structures.

16 BY repealing and reenacting, without amendments,  
17 Article - Public Utility Companies  
18 Section 2-113 and 5-104  
19 Annotated Code of Maryland  
20 (1998 Volume and 2005 Supplement)

21 BY repealing and reenacting, with amendments,  
22 Article - Public Utility Companies  
23 Section 5-203 and 6-101 through 6-103  
24 Annotated Code of Maryland  
25 (1998 Volume and 2005 Supplement)

26 BY adding to  
27 Article - Public Utility Companies  
28 Section 6-105  
29 Annotated Code of Maryland  
30 (1998 Volume and 2005 Supplement)

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

3 **Article - Public Utility Companies**

4 2-113.

5 (a) (1) The Commission shall:

6 (i) supervise and regulate the public service companies subject to  
7 the jurisdiction of the Commission to:

8 1. ensure their operation in the interest of the public; and

9 2. promote adequate, economical, and efficient delivery of  
10 utility services in the State without unjust discrimination; and

11 (ii) enforce compliance with the requirements of law by public  
12 service companies, including requirements with respect to financial condition,  
13 capitalization, franchises, plant, manner of operation, rates, and service.

14 (2) In supervising and regulating public service companies, the  
15 Commission shall consider the public safety, the economy of the State, the  
16 conservation of natural resources, and the preservation of environmental quality.

17 (b) The powers and duties listed in this title do not limit the scope of the  
18 general powers and duties of the Commission provided for by this article.

19 5-104.

20 (a) The Commission may authorize the acts described in §§ 5-202, 5-203, and  
21 5-205 of this title and § 6-101(a) of this article if it finds that the authorization is  
22 consistent with the public convenience and necessity.

23 (b) Authority that the Commission grants under §§ 5-202 and 5-203 of this  
24 title does not:

25 (1) revive a lapsed franchise;

26 (2) validate an invalid franchise;

27 (3) enlarge or add to the powers and privileges of a franchise; or

28 (4) waive a forfeiture.

29 5-203.

30 (a) Subject to § 6-101 of this article, without prior authorization of the  
31 Commission, a public service company may not purchase, acquire, take, or hold any  
32 part of the capital stock of another public service company [incorporated] THAT  
33 OPERATES in Maryland.

1 (b) (1) This subsection applies to corporations [incorporated] THAT  
2 OPERATE in Maryland.

3 (2) Without prior authorization of the Commission, a public service  
4 company may not:

5 (i) assume or guarantee an obligation or liability with respect to  
6 stocks, bonds, securities, notes, or other evidence of indebtedness that is payable as a  
7 whole or in part to any person more than 12 months after the date of issuance; or

8 (ii) issue stocks, bonds, securities, notes, or other evidence of  
9 indebtedness payable as a whole or in part more than 12 months after the date of  
10 issuance.

11 (3) Stocks, bonds, securities, notes, or other evidence of indebtedness  
12 described under paragraph (2)(ii) of this subsection shall be issued in accordance with  
13 §§ 6-102 and 6-103 of this article.

14 6-101.

15 (a) (1) This subsection applies only to [Maryland] corporations THAT  
16 OPERATE IN MARYLAND.

17 (2) A public service company shall obtain authorization from the  
18 Commission before the public service company:

19 (i) assumes or guarantees an obligation or liability with respect to  
20 stocks, bonds, securities, notes, or other evidence of indebtedness of any person that is  
21 payable wholly or partly more than 12 months after the date of the assumption or  
22 guarantee; or

23 (ii) issues stocks, bonds, securities, notes, or other evidence of  
24 indebtedness that is payable wholly or partly more than 12 months after the date  
25 issued.

26 (3) An issuance under paragraph (2)(ii) of this subsection shall conform  
27 to §§ 6-102 and 6-103 of this subtitle.

28 (b) (1) Subject to the requirements of subsection (c) of this section, the  
29 Commission may authorize an act described under subsection (a)(2) of this section if  
30 the Commission finds that the act is consistent with the public convenience and  
31 necessity.

32 (2) Authorization under this subsection does not:

33 (i) revive a lapsed franchise, validate an invalid franchise, or add  
34 to the powers and privileges in a franchise; or

35 (ii) waive a forfeiture.

1 (c) (1) This subsection does not apply to the formation of a holding company  
2 by a public service company in a corporate reorganization that involves an exchange  
3 of stock of the public service company for stock in the holding company.

4 (2) In this subsection, a company controlling a public service company is  
5 deemed a public service company of the same class as the controlled public service  
6 company.

7 (3) Without prior authorization of the Commission, a public service  
8 company may not take, hold, or acquire any part of the capital stock of a public service  
9 company that [is]:

10 (i) [incorporated] OPERATES in Maryland; and

11 (ii) IS of the same class as the acquiring company.

12 (4) (i) Except as provided in subparagraph (ii) of this paragraph, a  
13 stock corporation may not take, hold, or acquire more than 10% of the total capital  
14 stock of a public service company [incorporated] THAT OPERATES in Maryland  
15 unless:

16 1. the stock is acquired as collateral security; and

17 2. the Commission approves the acquisition.

18 (ii) The Commission may authorize a public service company of the  
19 same class to take, hold, or acquire more than 10% of the total capital stock of a public  
20 service company [incorporated] THAT OPERATES in Maryland.

21 (5) A public service company may not be a party to a violation of this  
22 subsection.

23 6-102.

24 (a) This section applies only to public service companies that [are] OPERATE  
25 IN Maryland [corporations].

26 (b) The Commission shall authorize a public service company to issue stocks,  
27 bonds, securities, notes, or other evidence of indebtedness, payable wholly or partly  
28 more than 12 months after the date of issuance, if the Commission finds that the  
29 issuance is reasonably required for the public service company to:

30 (1) acquire property;

31 (2) construct, complete, extend, or improve its facilities;

32 (3) discharge or lawfully refund its obligations;

33 (4) maintain or improve service; or

1 (5) reimburse money, not secured by or obtained from the issuance, that  
2 is expended for a purpose described in item (1), (2), or (3) of this subsection within 5  
3 years before the filing of an application with the Commission for the reimbursement.

4 (c) (1) The Commission may authorize a public service company to issue  
5 stocks, bonds, securities, notes, or other evidence of indebtedness, payable wholly or  
6 partly more than 12 months after the date of issuance, for the public service company  
7 to:

8 (i) conform the aggregate capitalization of the public service  
9 company to the value of its property; or

10 (ii) subject to paragraph (2) of this subsection, pay a dividend in  
11 shares of the public service company's own stock.

12 (2) An order of the Commission authorizing an issuance under  
13 paragraph (1)(i) of this subsection shall state that:

14 (i) concurrently with the issuance, the public service company  
15 shall transfer from surplus to capital an amount that the Commission determines  
16 under paragraph (3) of this subsection; and

17 (ii) a sum equal to the amount to be transferred has been expended  
18 from income or other money in the treasury of the public service company not secured  
19 by, obtained from, or reimbursed by the issuance of stocks, bonds, notes, or other  
20 evidence of indebtedness of the public service company for a purpose described in  
21 subsection (b)(1), (2), or (3) of this section.

22 (3) The amount that the Commission determines under paragraph (2)(i)  
23 of this subsection may not be less than:

24 (i) the aggregate par value of the stock whose issuance is to be  
25 authorized; or

26 (ii) if the stock has no par value, the capital value of the stock.

27 (d) (1) An authorization by the Commission under subsection (b) or (c) of  
28 this section shall be by order.

29 (2) The order shall specify:

30 (i) the amount of the issuance authorized; and

31 (ii) the purpose under subsection (b) or (c) of this section for which  
32 the issuance is reasonably required.

33 (e) (1) Notwithstanding subsections (b), (c), (d), and (g) of this section, the  
34 Commission may approve the issuance of stocks, bonds, securities, notes, or other  
35 evidence of indebtedness in connection with the organization of a new public service

1 company by the purchaser of the franchise or property of a public service company  
2 sold under judicial proceedings, mortgage, or deed of trust.

3 (2) An issuance that the Commission approves under this subsection  
4 shall be in the amount that the Commission considers necessary fully to protect the  
5 rights and equities of the holders of the securities of the predecessor company.

6 (f) A public service company's application for authorization under this section  
7 of long-term debt in excess of \$1,000,000 shall include a copy of any restrictive  
8 covenant attached to the debt.

9 (g) (1) Except as provided in paragraph (2) of this subsection, this section  
10 does not prevent a public service company from issuing, without the prior consent of  
11 the Commission, notes that are:

12 (i) for proper corporate purposes;

13 (ii) not otherwise in violation of the law; and

14 (iii) payable at periods totaling not more than 12 months after the  
15 date of issuance.

16 (2) Except as authorized under subsection (b) or (c) of this section, notes  
17 issued under paragraph (1) of this subsection may not be refunded directly or  
18 indirectly, wholly or partly, by an evidence of indebtedness running for more than 12  
19 months.

20 6-103.

21 (a) This section applies only to public service companies that [are] OPERATE  
22 IN Maryland [corporations].

23 (b) (1) A public service company may not:

24 (i) capitalize or issue bonds against or as lien on a contract for  
25 consolidation, merger, or lease; or

26 (ii) except as provided in paragraph (2) of this subsection, capitalize  
27 a franchise or the right to own a franchise.

28 (2) A public service company may capitalize a franchise or right to own a  
29 franchise in an amount not exceeding the amount, exclusive of any tax or annual  
30 charge, actually paid to the State or a political subdivision as consideration for the  
31 grant of the franchise or right.

32 (c) The stated capital, as determined under Title 2, Subtitle 3 of the  
33 Corporations and Associations Article, of a public service company formed by a  
34 merger or consolidation of corporations may not exceed, solely by virtue of the merger  
35 or consolidation, the stated capital of the corporations merged or consolidated plus  
36 any additional sum paid in cash.

1 (d) (1) This subsection does not apply to the capitalization of a franchise to  
2 be a public service company.

3 (2) Notwithstanding any other provision of this article, the Commission  
4 may approve the capitalization of tangible and intangible property of:

5 (i) a newly chartered public service company; or

6 (ii) a public service company organized or reorganized by the  
7 purchaser of the franchise and property of its predecessor at a sale under judicial  
8 proceedings, mortgage, or deed of trust.

9 (3) Capitalization under paragraph (2) of this subsection shall be in the  
10 amount and form that the Commission considers reasonably necessary to enable the  
11 public service company to obtain the capital necessary to establish itself as a going  
12 concern.

13 6-105.

14 (A) IN THIS SECTION, "AFFILIATE" HAS THE MEANING STATED IN § 7-501 OF  
15 THIS ARTICLE.

16 (B) (1) THE GENERAL ASSEMBLY FINDS THAT:

17 (I) THE PROTECTION OF CUSTOMERS OF ELECTRIC COMPANIES  
18 AND GAS COMPANIES IS A MATTER OF FUNDAMENTAL STATEWIDE CONCERN;

19 (II) EXISTING LEGISLATION REQUIRES THE APPROVAL BY THE  
20 COMMISSION OF THE ACQUISITION BY ONE PUBLIC SERVICE COMPANY OF ANOTHER  
21 PUBLIC SERVICE COMPANY'S STOCKS AND OBLIGATIONS, BUT DOES NOT REQUIRE  
22 THE COMMISSION'S APPROVAL OF THESE ACQUISITIONS BY PERSONS NOT ENGAGED  
23 IN THE PUBLIC UTILITY BUSINESS IN THE STATE; AND

24 (III) AN ATTEMPT BY A PERSON NOT ENGAGED IN THE PUBLIC  
25 UTILITY BUSINESS IN THE STATE TO ACQUIRE THE POWER TO EXERCISE ANY  
26 SUBSTANTIAL INFLUENCE OVER THE POLICIES AND ACTIONS OF A PUBLIC SERVICE  
27 COMPANY THAT PROVIDES ELECTRICITY OR GAS IN THE STATE COULD RESULT IN  
28 HARM TO THE CUSTOMERS OF THE PUBLIC SERVICE COMPANY, INCLUDING THE  
29 DEGRADATION OF UTILITY SERVICES, HIGHER RATES, WEAKENED FINANCIAL  
30 STRUCTURE, AND DIMINUTION OF UTILITY ASSETS.

31 (2) THE GENERAL ASSEMBLY DECLARES THAT IT IS THE POLICY OF THE  
32 STATE TO REGULATE ACQUISITIONS BY PERSONS THAT ARE NOT ENGAGED IN THE  
33 PUBLIC UTILITY BUSINESS IN THE STATE OF THE POWER TO EXERCISE ANY  
34 SUBSTANTIAL INFLUENCE OVER THE POLICIES AND ACTIONS OF A PUBLIC SERVICE  
35 COMPANY THAT PROVIDES ELECTRICITY OR GAS IN THE STATE IN ORDER TO  
36 PREVENT UNNECESSARY AND UNWARRANTED HARM TO THE CUSTOMERS OF THE  
37 PUBLIC SERVICE COMPANY.

1 (C) THIS SECTION APPLIES TO THE ACQUISITION OF AN ELECTRIC COMPANY  
2 OR A GAS COMPANY.

3 (D) WITHOUT PRIOR AUTHORIZATION FROM THE COMMISSION, A PERSON  
4 MAY NOT ACQUIRE, DIRECTLY OR INDIRECTLY, THE POWER TO EXERCISE ANY  
5 SUBSTANTIAL INFLUENCE OVER THE POLICIES AND ACTIONS OF AN ELECTRIC  
6 COMPANY OR GAS COMPANY, IF THE PERSON WOULD BECOME AN AFFILIATE OF THE  
7 ELECTRIC COMPANY OR GAS COMPANY AS A RESULT OF THE ACQUISITION.

8 (E) THE APPLICATION REQUIRED BY SUBSECTION (D) OF THIS SECTION MUST  
9 INCLUDE DETAILED INFORMATION REGARDING:

10 (1) THE APPLICANT'S IDENTITY AND FINANCIAL ABILITY;

11 (2) THE BACKGROUND OF THE KEY PERSONNEL ASSOCIATED WITH THE  
12 APPLICANT;

13 (3) THE SOURCE AND AMOUNTS OF FUNDS OR OTHER CONSIDERATION  
14 TO BE USED IN THE ACQUISITION;

15 (4) THE APPLICANT'S COMPLIANCE WITH FEDERAL LAW IN CARRYING  
16 OUT THE ACQUISITION;

17 (5) WHETHER THE APPLICANT OR THE KEY PERSONNEL ASSOCIATED  
18 WITH THE APPLICANT HAVE VIOLATED ANY STATE OR FEDERAL STATUTES  
19 REGULATING THE ACTIVITIES OF PUBLIC SERVICE COMPANIES;

20 (6) ALL DOCUMENTS RELATING TO THE TRANSACTION GIVING RISE TO  
21 THE APPLICATION;

22 (7) THE APPLICANT'S EXPERIENCE IN OPERATING PUBLIC SERVICE  
23 COMPANIES PROVIDING ELECTRICITY;

24 (8) THE APPLICANT'S PLAN FOR OPERATING THE PUBLIC SERVICE  
25 COMPANY;

26 (9) HOW THE ACQUISITION WILL SERVE THE CUSTOMERS OF THE  
27 PUBLIC SERVICE COMPANY IN THE PUBLIC INTEREST; AND

28 (10) ANY OTHER INFORMATION THAT THE COMMISSION MAY SPECIFY BY  
29 REGULATION OR ORDER.

30 (F) (1) THE COMMISSION PROMPTLY SHALL:

31 (I) EXAMINE AND INVESTIGATE EACH APPLICATION RECEIVED  
32 UNDER THIS SECTION; AND

33 (II) UNDERTAKE ANY PROCEEDINGS NECESSARY OR CONVENIENT  
34 TO REVIEW THE APPLICATION IN ACCORDANCE WITH TITLE 3 OF THIS ARTICLE AND  
35 ISSUE AN ORDER CONCERNING THE ACQUISITION.

1 (2) THE COMMISSION SHALL CONSIDER THE FOLLOWING FACTORS IN  
2 CONSIDERING AN ACQUISITION UNDER THIS SECTION:

3 (I) THE POTENTIAL IMPACT OF THE ACQUISITION ON RATES PAID  
4 BY CUSTOMERS;

5 (II) THE POTENTIAL IMPACT OF THE ACQUISITION ON CONTINUING  
6 INVESTMENT NEEDS FOR THE MAINTENANCE OF UTILITY SERVICES, PLANT, AND  
7 RELATED INFRASTRUCTURE;

8 (III) THE PROPOSED CAPITAL STRUCTURE THAT WILL RESULT  
9 FROM THE ACQUISITION, INCLUDING ALLOCATION OF EARNINGS FROM THE PUBLIC  
10 SERVICE COMPANY;

11 (IV) THE POTENTIAL EFFECTS ON EMPLOYMENT BY THE PUBLIC  
12 SERVICE COMPANY;

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

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

17 (VII) THE POTENTIAL IMPACT OF THE ACQUISITION ON COMMUNITY  
18 INVESTMENT;

19 (VIII) AFFILIATE AND CROSS-SUBSIDIZATION ISSUES;

20 (IX) JURISDICTIONAL AND CHOICE-OF-LAW ISSUES; AND

21 (X) ANY OTHER ISSUES THE COMMISSION CONSIDERS RELEVANT  
22 TO THE ASSESSMENT OF ACQUISITION IN RELATION TO THE PUBLIC CONVENIENCE,  
23 NECESSITY, AND INTEREST.

24 (3) (I) IF THE COMMISSION FINDS THAT THE ACQUISITION IS  
25 CONSISTENT WITH THE PUBLIC CONVENIENCE, NECESSITY, AND INTEREST, THE  
26 COMMISSION SHALL ISSUE AN ORDER GRANTING THE APPLICATION.

27 (II) THE COMMISSION MAY CONDITION AN ORDER AUTHORIZING  
28 THE ACQUISITION ON THE APPLICANT'S SATISFACTORY PERFORMANCE OR  
29 ADHERENCE TO SPECIFIC REQUIREMENTS.

30 (4) IF THE COMMISSION DOES NOT FIND THAT THE ACQUISITION IS  
31 CONSISTENT WITH THE PUBLIC CONVENIENCE, NECESSITY, AND INTEREST, THE  
32 COMMISSION SHALL ISSUE AN ORDER DENYING THE APPLICATION.

33 (5) THE APPLICANT BEARS THE BURDEN OF SHOWING THAT GRANTING  
34 THE ACQUISITION IS CONSISTENT WITH THE PUBLIC CONVENIENCE, NECESSITY,  
35 AND INTEREST.

1 (G) NOTHING IN THIS SECTION PROHIBITS DISSEMINATION BY ANY PARTY OF  
2 INFORMATION CONCERNING THE ACQUISITION IF THE DISSEMINATION DOES NOT  
3 OTHERWISE CONFLICT WITH FEDERAL OR STATE LAW.

4 SECTION 2. AND BE IT FURTHER ENACTED, That any approval by the  
5 Public Service Commission of a merger between FPL Group, Inc., and Constellation  
6 Energy Group, Inc., pending as of the effective date of this Act must include the  
7 following conditions:

8 (1) the transaction may not allow the transfer of facilities between  
9 Florida Power & Light Company or Baltimore Gas and Electric Company and an  
10 associate company;

11 (2) the transaction may not allow the new issuances of securities by  
12 Florida Power & Light Company or Baltimore Gas and Electric Company for the  
13 benefit of an associate company;

14 (3) the transaction may not allow new pledges or encumbrances of assets  
15 of Florida Power & Light Company or Baltimore Gas and Electric Company for the  
16 benefit of an associate company;

17 (4) the transaction may not allow new affiliate contracts between  
18 nonutility associate companies and Florida Power & Light Company or Baltimore Gas  
19 and Electric Company, other than goods and services subject to review under §§ 205  
20 and 206 of the Federal Power Act; and

21 (5) any savings realized as a result of the merger must be applied in part  
22 to the elimination of carrying charges and the delay of increases in residential electric  
23 rates in a plan for rate stabilization or minimization approved by the Public Service  
24 Commission in Case No. 9052.

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency  
26 measure, is necessary for the immediate preservation of the public health or safety,  
27 has been passed by a yea and nay vote supported by three-fifths of all the members  
28 elected to each of the two Houses of the General Assembly, and shall take effect from  
29 the date it is enacted.