
By: Delegates D. Davis and McHale, McHale, Doory, Moe, Burns, Conroy, Feldman, Harrison, Impallaria, Kirk, Krysiak, Love, Minnick, Parrott, Taylor, and Vaughn Vaughn, and Hubbard Hubbard, Benson, Gaines, Howard, James, McDonough, and McMillian

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CHAPTER _____

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~~ interest, convenience, and necessity;
12 stating certain findings and declarations of the General Assembly; establishing
13 an Office of Special Counsel; requiring the appointment of a special counsel for
14 certain purposes relating to a certain proposed merger; authorizing the special
15 counsel to employ certain staff and to retain certain consultants and experts;
16 authorizing and requiring the special counsel to utilize the services of certain
17 agencies to the extent practicable; requiring certain agencies to cooperate with
18 the special counsel; providing that the special counsel is not subject to certain
19 provisions of law concerning procurement; authorizing the Governor to transfer
20 certain funds for certain purposes; establishing the duties, powers, and
21 responsibilities of the special counsel; requiring the special counsel to
22 investigate a certain proposed merger between certain companies; requiring the
23 parties to the proposed merger to provide certain information to the special
24 counsel; requiring the special counsel to examine and investigate certain

1 information and undertake certain proceedings; requiring the special counsel to
2 consider certain factors concerning the proposed merger; requiring the special
3 counsel to make certain recommendations concerning approval or disapproval of
4 the proposed merger to the General Assembly; making the special counsel and
5 Office of Special Counsel subject to certain ethics restrictions relating to public
6 service companies; reserving to the General Assembly the authority to approve
7 or disapprove a certain proposed merger; prohibiting the Commission from
8 approving a certain proposed merger before a certain date; authorizing the
9 Commission to provide certain information and to conduct certain proceedings
10 at the request of the special counsel; authorizing the special counsel to issue a
11 subpoena enforceable in a certain manner; providing for certain reports by the
12 special counsel to the presiding officers of the General Assembly, the Governor,
13 and the Attorney General; requiring the inclusion of certain conditions in any
14 approval of a merger between two certain companies; defining a term certain
15 terms; making this Act an emergency measure; providing for the termination of
16 a portion of this Act; and generally relating to public service companies,
17 mergers, acquisitions, and financial structures.

18 BY repealing and reenacting, without amendments,
19 Article - Public Utility Companies
20 Section 2-113 and 5-104
21 Annotated Code of Maryland
22 (1998 Volume and 2005 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - Public Utility Companies
25 Section ~~5-203~~ 2-303, 5-203, and 6-101 through 6-103
26 Annotated Code of Maryland
27 (1998 Volume and 2005 Supplement)

28 BY adding to
29 Article - Public Utility Companies
30 Section 6-105
31 Annotated Code of Maryland
32 (1998 Volume and 2005 Supplement)

33 BY adding to
34 Article - State Government
35 Section 9-2701 through 9-2705, inclusive, to be under the new subtitle "Subtitle
36 27. Special Counsel"
37 Annotated Code of Maryland
38 (2004 Replacement Volume and 2005 Supplement)

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

Article - Public Utility Companies

1
2 2-113.

3 (a) (1) The Commission shall:

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

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

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

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

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

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

17 2-303.

18 (a) This section applies to each individual subject to § 2-302 of this subtitle
19 and to:

20 (1) THE SPECIAL COUNSEL APPOINTED UNDER TITLE 9, SUBTITLE 27 OF
21 THIS ARTICLE;

22 [(1)] (2) each spouse, dependent child, parent, brother, or sister of each
23 commissioner, the People's Counsel, the General Counsel, THE SPECIAL COUNSEL,
24 and a hearing examiner; and

25 [(2)] (3) each spouse or dependent child of each other officer or employee
26 of the Commission [or], Office of People's Counsel, OR OFFICE OF SPECIAL COUNSEL.

27 (b) An individual subject to this section may not:

28 (1) hold an official relation to or connection with a public service
29 company; or

30 (2) have a pecuniary interest in a public service company as the holder of
31 stock or other securities or otherwise.

1 5-104.

2 (a) The Commission may authorize the acts described in §§ 5-202, 5-203, and
3 5-205 of this title and § 6-101(a) of this article if it finds that the authorization is
4 consistent with the public convenience and necessity.

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

- 7 (1) revive a lapsed franchise;
- 8 (2) validate an invalid franchise;
- 9 (3) enlarge or add to the powers and privileges of a franchise; or
- 10 (4) waive a forfeiture.

11 5-203.

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

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

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

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

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

26 (3) Stocks, bonds, securities, notes, or other evidence of indebtedness
27 described under paragraph (2)(ii) of this subsection shall be issued in accordance with
28 §§ 6-102 and 6-103 of this article.

29 6-101.

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

32 (2) A public service company shall obtain authorization from the
33 Commission before the public service company:

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

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

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

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

14 (2) Authorization under this subsection does not:

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

17 (ii) waive a forfeiture.

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

21 (2) In this subsection, a company controlling a public service company is
22 deemed a public service company of the same class as the controlled public service
23 company.

24 (3) Without prior authorization of the Commission, a public service
25 company may not take, hold, or acquire any part of the capital stock of a public service
26 company OR OF A SUBSIDIARY OR AFFILIATE, AS DEFINED IN § 7-501 OF THIS
27 ARTICLE, OF A PUBLIC SERVICE COMPANY that [is]:

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

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

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

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

35 2. the Commission approves the acquisition.

1 (ii) The Commission may authorize a public service company of the
2 same class to take, hold, or acquire more than 10% of the total capital stock of a public
3 service company OR OF A SUBSIDIARY OR AFFILIATE, AS DEFINED IN § 7-501 OF THIS
4 ARTICLE, OF A PUBLIC SERVICE COMPANY [incorporated] THAT OPERATES in
5 Maryland.

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

8 6-102.

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

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

15 (1) acquire property;

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

17 (3) discharge or lawfully refund its obligations;

18 (4) maintain or improve service; or

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

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

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

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

30 (2) An order of the Commission authorizing an issuance under
31 paragraph (1)(ii) of this subsection shall state that:

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

35 (ii) a sum equal to the amount to be transferred has been expended
36 from income or other money in the treasury of the public service company not secured

1 by, obtained from, or reimbursed by the issuance of stocks, bonds, notes, or other
2 evidence of indebtedness of the public service company for a purpose described in
3 subsection (b)(1), (2), or (3) of this section.

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

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

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

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

11 (2) The order shall specify:

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

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

15 (e) (1) Notwithstanding subsections (b), (c), (d), and (g) of this section, the
16 Commission may approve the issuance of stocks, bonds, securities, notes, or other
17 evidence of indebtedness in connection with the organization of a new public service
18 company by the purchaser of the franchise or property of a public service company
19 sold under judicial proceedings, mortgage, or deed of trust.

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

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

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

29 (i) for proper corporate purposes;

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

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

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

1 6-103.

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

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

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

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

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

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

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

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

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

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

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

30 6-105.

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

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

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

1 (II) EXISTING LEGISLATION REQUIRES THE APPROVAL BY THE
2 COMMISSION OF THE ACQUISITION BY ONE PUBLIC SERVICE COMPANY OF ANOTHER
3 PUBLIC SERVICE COMPANY'S STOCKS AND OBLIGATIONS, BUT DOES NOT REQUIRE
4 THE COMMISSION'S APPROVAL OF THESE ACQUISITIONS BY PERSONS NOT ENGAGED
5 IN THE PUBLIC UTILITY BUSINESS IN THE STATE; AND

6 (III) AN ATTEMPT BY A PERSON NOT ENGAGED IN THE PUBLIC
7 UTILITY BUSINESS IN THE STATE TO ACQUIRE THE POWER TO EXERCISE ANY
8 SUBSTANTIAL INFLUENCE OVER THE POLICIES AND ACTIONS OF A PUBLIC SERVICE
9 COMPANY THAT PROVIDES ELECTRICITY OR GAS IN THE STATE COULD RESULT IN
10 HARM TO THE CUSTOMERS OF THE PUBLIC SERVICE COMPANY, INCLUDING THE
11 DEGRADATION OF UTILITY SERVICES, HIGHER RATES, WEAKENED FINANCIAL
12 STRUCTURE, AND DIMINUTION OF UTILITY ASSETS.

13 (2) THE GENERAL ASSEMBLY DECLARES THAT IT IS THE POLICY OF THE
14 STATE TO REGULATE ACQUISITIONS BY PERSONS THAT ARE NOT ENGAGED IN THE
15 PUBLIC UTILITY BUSINESS IN THE STATE OF THE POWER TO EXERCISE ANY
16 SUBSTANTIAL INFLUENCE OVER THE POLICIES AND ACTIONS OF A PUBLIC SERVICE
17 COMPANY THAT PROVIDES ELECTRICITY OR GAS IN THE STATE IN ORDER TO
18 PREVENT UNNECESSARY AND UNWARRANTED HARM TO THE CUSTOMERS OF THE
19 PUBLIC SERVICE COMPANY.

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

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

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

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

30 (2) THE BACKGROUND OF THE KEY PERSONNEL ASSOCIATED WITH THE
31 APPLICANT;

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

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

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

1 (6) ALL DOCUMENTS RELATING TO THE TRANSACTION GIVING RISE TO
2 THE APPLICATION;

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

5 (8) THE APPLICANT'S PLAN FOR OPERATING THE PUBLIC SERVICE
6 COMPANY;

7 (9) HOW THE ACQUISITION WILL SERVE THE CUSTOMERS OF THE
8 PUBLIC SERVICE COMPANY IN THE PUBLIC INTEREST, CONVENIENCE, AND
9 NECESSITY; AND

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

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

13 (I) EXAMINE AND INVESTIGATE EACH APPLICATION RECEIVED
14 UNDER THIS SECTION; AND

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

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

20 (I) THE POTENTIAL IMPACT OF THE ACQUISITION ON RATES AND
21 CHARGES PAID BY CUSTOMERS AND ON THE SERVICES AND CONDITIONS OF
22 OPERATION OF THE PUBLIC SERVICE COMPANY;

23 (II) THE POTENTIAL IMPACT OF THE ACQUISITION ON CONTINUING
24 INVESTMENT NEEDS FOR THE MAINTENANCE OF UTILITY SERVICES, PLANT, AND
25 RELATED INFRASTRUCTURE;

26 (III) THE PROPOSED CAPITAL STRUCTURE THAT WILL RESULT
27 FROM THE ACQUISITION, INCLUDING ALLOCATION OF EARNINGS FROM THE PUBLIC
28 SERVICE COMPANY;

29 (IV) THE POTENTIAL EFFECTS ON EMPLOYMENT BY THE PUBLIC
30 SERVICE COMPANY;

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

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

35 (VII) THE POTENTIAL IMPACT OF THE ACQUISITION ON COMMUNITY
36 INVESTMENT;

1 (VIII) AFFILIATE AND CROSS-SUBSIDIZATION ISSUES;
 2 (IX) THE USE OR PLEDGE OF UTILITY ASSETS FOR THE BENEFIT OF
 3 AN AFFILIATE;
 4 ~~(IX)~~ (X) JURISDICTIONAL AND CHOICE-OF-LAW ISSUES; AND
 5 ~~(X)~~ (XI) ANY OTHER ISSUES THE COMMISSION CONSIDERS
 6 RELEVANT TO THE ASSESSMENT OF ACQUISITION IN RELATION TO THE PUBLIC
 7 ~~CONVENIENCE, NECESSITY, AND INTEREST~~ INTEREST, CONVENIENCE, AND
 8 NECESSITY.

9 (3) (I) IF THE COMMISSION FINDS THAT THE ACQUISITION IS
 10 CONSISTENT WITH THE PUBLIC ~~CONVENIENCE, NECESSITY, AND INTEREST~~
 11 INTEREST, CONVENIENCE, AND NECESSITY, AND PROVIDES A NET BENEFIT TO
 12 CONSUMERS, THE COMMISSION SHALL ISSUE AN ORDER GRANTING THE
 13 APPLICATION.

14 (II) THE COMMISSION MAY CONDITION AN ORDER AUTHORIZING
 15 THE ACQUISITION ON THE APPLICANT'S SATISFACTORY PERFORMANCE OR
 16 ADHERENCE TO SPECIFIC REQUIREMENTS.

17 (4) IF THE COMMISSION DOES NOT FIND THAT THE ACQUISITION IS
 18 CONSISTENT WITH THE PUBLIC ~~CONVENIENCE, NECESSITY, AND INTEREST~~
 19 INTEREST, CONVENIENCE, AND NECESSITY, OR THAT THE ACQUISITION WOULD NOT
 20 PROVIDE A NET BENEFIT TO CONSUMERS, THE COMMISSION SHALL ISSUE AN ORDER
 21 DENYING THE APPLICATION.

22 (5) THE APPLICANT BEARS THE BURDEN OF SHOWING THAT GRANTING
 23 THE ACQUISITION IS CONSISTENT WITH THE PUBLIC ~~CONVENIENCE, NECESSITY,~~
 24 ~~AND INTEREST~~ INTEREST, CONVENIENCE, AND NECESSITY, AND PROVIDES A NET
 25 BENEFIT TO CONSUMERS.

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

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

31 Article - State Government

32 SUBTITLE 27. SPECIAL COUNSEL.

33 9-2701.

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

1 9-2702.

2 (A) THERE IS AN OFFICE OF SPECIAL COUNSEL.

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

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

7 9-2703.

8 (A) (1) THE SPECIAL COUNSEL SHALL BE APPOINTED ON OR BEFORE MAY
9 15, 2006, BY THE ATTORNEY GENERAL AND SHALL ASSUME THE DUTIES OF OFFICE BY
10 JUNE 1, 2006.

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

15 (B) A PERSON APPOINTED AS SPECIAL COUNSEL:

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

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

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

25 9-2704.

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

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

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

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

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

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

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

17 9-2705.

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

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

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

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

28 (I) THE PARTIES' IDENTITY AND FINANCIAL ABILITY;

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

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

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

35 (V) WHETHER THE PARTIES OR THE KEY PERSONNEL ASSOCIATED
36 WITH THE PARTIES HAVE VIOLATED ANY STATE OR FEDERAL STATUTES
37 REGULATING THE ACTIVITIES OF PUBLIC SERVICE COMPANIES;

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

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

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

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

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

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

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

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

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

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

23 (II) THE POTENTIAL IMPACT OF THE MERGER ON CONTINUING
24 INVESTMENT NEEDS FOR THE MAINTENANCE OF UTILITY SERVICES, PLANT, AND
25 RELATED INFRASTRUCTURE;

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

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

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

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

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

- 1 (VIII) AFFILIATE AND CROSS-SUBSIDIZATION ISSUES;
- 2 (IX) THE USE OR PLEDGE OF UTILITY ASSETS FOR THE BENEFIT OF
3 AN AFFILIATE;
- 4 (X) THE VALUATION OF ASSETS HELD BY AN AFFILIATE OF THE
5 PUBLIC SERVICE COMPANY OPERATING IN THE STATE, INCLUDING GENERATION
6 ASSETS AND REAL PROPERTY, AT THE TIME OF TRANSFER OF THOSE ASSETS TO THE
7 AFFILIATE AND AT THE TIME OF THE PROPOSED MERGER;
- 8 (XI) JURISDICTIONAL AND CHOICE-OF-LAW ISSUES; AND
- 9 (XII) ANY OTHER ISSUES THE SPECIAL COUNSEL CONSIDERS
10 RELEVANT TO THE ASSESSMENT OF THE PROPOSED MERGER IN RELATION TO THE
11 PUBLIC INTEREST, CONVENIENCE, AND NECESSITY.
- 12 (3) (I) IF THE SPECIAL COUNSEL FINDS THAT THE MERGER IS
13 CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY, AND
14 PROVIDES A NET BENEFIT TO CONSUMERS, THE SPECIAL COUNSEL SHALL
15 RECOMMEND THAT THE GENERAL ASSEMBLY APPROVE THE MERGER.
- 16 (II) THE SPECIAL COUNSEL MAY RECOMMEND APPROVAL OF THE
17 MERGER CONDITIONED ON THE PARTIES' SATISFACTORY PERFORMANCE OR
18 ADHERENCE TO SPECIFIC REQUIREMENTS.
- 19 (4) IF THE SPECIAL COUNSEL DOES NOT FIND THAT THE MERGER IS
20 CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY, OR THAT
21 THE MERGER WOULD NOT PROVIDE A NET BENEFIT TO CONSUMERS, THE SPECIAL
22 COUNSEL SHALL RECOMMEND THAT THE GENERAL ASSEMBLY DISAPPROVE THE
23 MERGER.
- 24 (5) THE PARTIES TO THE PROPOSED MERGER BEAR THE BURDEN OF
25 SHOWING THAT APPROVING THE MERGER IS CONSISTENT WITH THE PUBLIC
26 INTEREST, CONVENIENCE, AND NECESSITY AND PROVIDES A NET BENEFIT TO THE
27 CONSUMER.
- 28 (E) (1) THE GENERAL ASSEMBLY RESERVES THE AUTHORITY TO APPROVE
29 OR DISAPPROVE THE PROPOSED MERGER BY LAW AFTER CONSIDERATION OF THE
30 RECOMMENDATIONS OF THE SPECIAL COUNSEL PROVIDED IN ACCORDANCE WITH
31 THIS SUBTITLE.
- 32 (2) THE PUBLIC SERVICE COMMISSION:
- 33 (I) MAY NOT APPROVE OR DISAPPROVE THE PROPOSED MERGER IF
34 THE GENERAL ASSEMBLY EXERCISES ITS AUTHORITY UNDER PARAGRAPH (1) OF
35 THIS SUBSECTION; AND
- 36 (II) MAY NOT ISSUE AN ORDER APPROVING OR DISAPPROVING THE
37 PROPOSED MERGER BEFORE APRIL 10, 2007.

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

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

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

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

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

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

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

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

24 (II) IF ANY PERSON FAILS TO OBEY A SUBPOENA LAWFULLY
25 SERVED UNDER THIS SUBSECTION, THE SPECIAL COUNSEL, OR THE ATTORNEY
26 GENERAL ON BEHALF OF THE SPECIAL COUNSEL, IMMEDIATELY MAY REPORT THE
27 DISOBEDIENCE AND PROVIDE A COPY OF THE SUBPOENA AND PROOF OF SERVICE TO
28 A CIRCUIT COURT.

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

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

36 (H) (1) DURING THE COURSE OF THE INVESTIGATION, AS THE ATTORNEY
37 GENERAL OR SPECIAL COUNSEL CONSIDERS APPROPRIATE, THE SPECIAL COUNSEL
38 SHALL SUBMIT A REPORT OF THE INVESTIGATION AND RECOMMENDATIONS TO THE

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

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

8 (1) (1) IN ADDITION TO THE SPECIFIC INVESTIGATION OF THE PROPOSED
9 MERGER UNDER THIS SUBTITLE, THE SPECIAL COUNSEL MAY STUDY AND EVALUATE
10 THE STATUS OF ELECTRIC RESTRUCTURING IN THE STATE AS IT PERTAINS TO THE
11 AVAILABILITY OF COMPETITIVE GENERATION TO RESIDENTIAL CUSTOMERS AND
12 THE STRUCTURE, PROCUREMENT, AND TERMS AND CONDITIONS OF STANDARD
13 OFFER SERVICE FOR RESIDENTIAL CUSTOMERS.

14 (2) ON OR BEFORE JUNE 30, 2007, THE SPECIAL COUNSEL SHALL REPORT
15 ANY FINDINGS AND RECOMMENDATIONS UNDER THIS SUBSECTION, INCLUDING
16 SUGGESTED LEGISLATIVE AND REGULATORY CHANGES, TO THE PRESIDING
17 OFFICERS OF THE GENERAL ASSEMBLY, THE GOVERNOR, AND THE ATTORNEY
18 GENERAL.

19 SECTION 3. AND BE IT FURTHER ENACTED, That any approval by the
20 Public Service Commission of a merger between FPL Group, Inc., and Constellation
21 Energy Group, Inc., pending as of the effective date of this Act must include the
22 following conditions:

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

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

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

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

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

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

5 SECTION 5. AND BE IT FURTHER ENACTED, That each individual subject to
6 the requirements of § 2-303 of the Public Utility Companies Article as a result of this
7 Act shall comply with those requirements on or before December 31, 2006.

8 SECTION ~~3-5~~ 6, AND BE IT FURTHER ENACTED, That this Act is an
9 emergency measure, is necessary for the immediate preservation of the public health
10 or safety, has been passed by a yea and nay vote supported by three-fifths of all the
11 members elected to each of the two Houses of the General Assembly, and shall take
12 effect from the date it is enacted.