

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1711
Economic Matters

(Delegates McHale and D. Davis)

Electric Companies - Acquisition or Merger and Generating Assets

This emergency bill establishes specified requirements regarding an acquisition or merger involving an electric company.

The bill also requires the Public Service Commission (PSC), in conjunction with the Department of Natural Resources (DNR), to annually evaluate the long-range plans of the State's electric companies and electric suppliers regarding generation needs and the means to meet those needs. Prior to final action on an application for construction of a generating station, PSC must consider the need to meet existing and future demand for electric service.

Finally, the bill repeals the requirement that there be functional, operational, structural, or legal separation between an electric company's regulated and unregulated businesses. This allows an electric company to own the generating plants in its service territory and to build, maintain, and own additional generating plants or make contracts with other generating entities. Pursuant to uncodified bill language, any cost of asset reacquisition may not be passed on to the ratepayers.

Fiscal Summary

State Effect: The bill's requirements could be handled with existing budgeted resources.

Local Effect: Local government would not be directly affected.

Small Business Effect: None.

Analysis

Bill Summary: If a person acquires or merges with an electric company or a person who owns or controls an electric company: (1) the electric company shall remain a separate legal entity under federal and State law from the person acquiring or merging with the electric company; (2) the electric company and the person acquiring or merging with the electric company must maintain separate boards of directors and balance sheets; and (3) PSC must review the acquisition or merger to ensure that the electric company remains a separate legal entity and that the acquisition or merger serves the public convenience and necessity. No more than two members of the board of directors of the electric company may be employees or members of the board of directors of the person who acquired or merged with the electric company.

Current Law: Functional, operational, structural, or legal separation must exist between an electric company's regulated and unregulated businesses. As a result, all investor owned electric companies are required to separate from the portion of their businesses that generates electricity because electric generation is unregulated and electricity distribution is regulated.

Electric Utility Merger

PSC's authority to oversee mergers and purchases of public service companies operating in the State is a part of its general, supervisory, and regulatory powers under the Public Utilities Article. Certain provisions explicitly require public service companies to seek permission from PSC prior to undertaking specified activities.

Long-range Electric Generation Facility Planning

PSC must annually forward to DNR a 10-year plan listing possible and proposed sites, including the associated transmission routes, for the construction of electric plants in the State. PSC must delete from the plan any site that DNR identifies as unsuitable. The annual 10-year plan must include information on current and projected efforts by electric companies to moderate overall electrical generation demand and peak demand through the electric companies' promotion of energy conservation by customers and through the use of alternative energy sources, including cogeneration.

Background: On December 19, 2005, FPL Group, Inc. and Constellation Energy Group, Inc. announced the signing of a definitive agreement to create the nation's largest competitive energy supplier. Constellation Energy is the parent company of Baltimore Gas & Electric (BGE) which supplies electricity to more than \$1 million residential and business customers in the State and supplies gas to over 600,000 gas customers in 10

counties and Baltimore City. On January 23, 2006, BGE submitted a petition to PSC with respect to the proposed merger resulting in PSC opening Case No. 9054. Subsequently, Constellation Energy Group has challenged PSC's jurisdiction over the matter. The Federal Energy Regulatory Commission (FERC) is also conducting a separate proceeding to consider the matter.

FERC has power under the Federal Power Act to review mergers. It must approve a merger if it finds that the consolidation will be consistent with the public interest. The analysis under its merger policy statement of whether a consolidation is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Natural Resources, Comptroller's Office, Public Service Commission, Office of People's Counsel, Office of the Attorney General, Department of Legislative Services

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