June 22, 2006

The Honorable Thomas V. Mike Miller, Jr.
Senate President
State House
Annapolis, MD 21401

Dear Mr. President:

In accordance with Article II, Section 17 of the Maryland Constitution, today I have vetoed Senate Bill 1 – *Public Service Commission – Electric Industry Restructuring*.

My consideration of Senate Bill 1 has been comprehensive in nature, including Tuesday's public hearing with members of my Cabinet at which all Marylanders were invited to testify. We heard from dozens of witnesses and listened to more than six hours of testimony. I appreciate everyone who came to Annapolis to testify or sent me correspondence either for or against the bill. This testimony was invaluable in helping me make my decision.

It is essential that substantial relief be made available to our citizens subjected to recent price spikes in the costs of energy, and I am committed to ensuring that this is accomplished in an expeditious manner. Please know there are aspects of this legislation with which I agree, including making the standard offer service permanent, encouraging energy efficiency and conservation, and providing flexibility in the bidding methods used by electricity suppliers to obtain electricity. A comprehensive study of State energy policy is needed, and in fact is currently being conducted by the Public Service Commission (PSC).

I also concur with the concept of enhanced energy assistance to low-income individuals. Accordingly, my Administration has increased financial assistance by 85% in fiscal 2007 over fiscal 2005 to nearly $127 million, and has extended this service to households with incomes up to 200% of the federal poverty level. This means that a family of four with an income of up to $40,000 is eligible for energy assistance.

There are, however, negative aspects to Senate Bill 1 necessitating my veto. First, the bill eliminates consumer choice. Specifically, Baltimore Gas and Electric Company (BGE) customers are provided no choice as to whether they want to participate in the rate stabilization plan. Consumers value choice, and, accordingly, view this issue as essential to a balanced legislative remedy. In this respect, you may recall that under the PSC plan more than 134,000 BGE customers (12% of the customer base) chose, over a ten day period from June 5 to June 14, to forego participation in the rate subsidy plan. Yet, under Senate Bill 1, you require everyone to participate, including those 134,000 customers who previously chose to opt out of such a plan.

Second, Senate Bill 1 requires all BGE customers to pay at least $109 million in interest over ten years. Incidentally, repayment of principle and interest applies to persons who move into the BGE region after June 1 of next year who never receive the benefit of rate deferral, while at the same time persons who obtained the deferral but move out of the area after June 1, 2007 will remain liable for these costs. These persons will likely avoid repayment, thus adding to the "uncollectibles" that will have to be paid by other customers through increased rates.

Lack of consumer choice and a forced credit plan fail to afford BGE ratepayers the same protections I negotiated for PEPCO and Delmarva Power customers who have a choice on whether to participate on an interest-free basis. Forced interest charges were a consistent complaint throughout the public hearing. As People's Counsel Patricia Smith testified, other deferral plans did not include interest payments and that such provisions are contrary to the interests of consumers. I agree with Ms. Smith's assessment, and respectfully suggest that you follow this model in crafting a new, more meaningful rate stabilization plan.

Third, Senate Bill 1 provides $386 million for rate relief. This $386 million was also included as part of my $600 million rate relief plan, and is no way dependent upon passage of this bill. Members of the General Assembly and BGE ratepayers have knowledge of additional concessions to be provided by the electric companies, particularly if the proposed merger between Constellation Energy Group and Florida Power & Light occurs. My plan proposed that $600 million be made available if the merger occurs. Simply put, Senate Bill 1 allows Constellation to pocket nearly $220 million that would have been available to offset interest charges.

Fourth, Senate Bill 1 eliminates the People's Counsel, Patricia Smith. Ms. Smith has been a public interest attorney for decades. She is a tireless advocate for the State's consumers. In reviewing the hundreds of comments received by my office, <u>not</u> <u>one</u> person raised objection to Ms. Smith's efforts on behalf of consumers. There is absolutely no valid reason to terminate her from her position, when her sole mission has been to work on behalf of her clients, the State's utility customers. Resorting to this degree of overreaching only strengthens the public's cynical attitude toward your handling of this issue over the past several years.

Fifth, Senate Bill 1 seeks to remove all members of the PSC and requires on a one-time basis that I appoint new members from a list of names provided by the Speaker of the House and the President of the Senate. As you well know, the PSC followed the deregulation law enacted by the General Assembly in 1999 and procedures established by prior PSC members in 2003. The competitive bidding process transpired in accordance with the law. The PSC was in constant contact with the General Assembly and the fact that there would be a dramatic increase in rates was made known to the General Assembly's Leadership on many occasions prior to the 2006 session. Yet, the General Assembly continues to use the PSC as a scapegoat for the failure of the 1999 deregulation law. Despite the opinion of the General Assembly's lawyer to the contrary, this provision is in all likelihood unconstitutional. Further, it is unsettling to the State's regulatory climate for the General Assembly to eliminate the members of a quasi-judicial agency with nearly a century of independence when the General Assembly disagrees with an opinion of the agency. Such action will only lead to major regulatory uncertainty, less competition, and higher costs for consumers.

There are other troubling issues raised during the public hearing. Senate Bill 1 allows BGE to borrow money and charge its customers for the full interest on the loan, but then in turn allows BGE to lend money to its parent company, Constellation, at below market rates. Moreover, the bill allows BGE with PSC approval to negotiate directly with Constellation for energy procurement, rather than using competitive wholesale procurements. This has the potential for insider dealing and favoritism, and will allow Constellation to sell power to BGE at a higher cost, even if there is lower cost power available from another company. These anti-consumer provisions will force BGE customers to pay increased rates that serve to benefit BGE and Constellation, with no benefit of any kind for the customer.

We can work together to craft a more balanced, pro-consumer solution. Only days ago we negotiated an historic sexual predator bill to better protect our children. Presently, the General Assembly continues in the Special Session that I convened last week. Accordingly, I request the Members return to work immediately on an alternative solution that will prove more consumer friendly and will not discriminate against BGE customers. Specifically, the bill should contain:

- consumer choice for BGE ratepayers;
- no interest for BGE ratepayers;
- additional concessions from the electric companies; and
- no replacement of the People's Counsel.

Further, while I remain willing to examine issues relating to the appointment and tenure of the PSC that are consistent with the Maryland Constitution and help promote regulatory certainty, there should be no wholesale elimination of all of the commissioners.

For the foregoing reasons, I have decided to veto Senate Bill 1. In doing so, I do not reject the central purpose of the legislation. To the contrary, I support such legislation so long as consumers who need rate relief are given the best relief possible, while those who wish to decline are not forced to participate in such a plan. I look forward to working with you and the members of the General Assembly to establish such a plan. I believe that with good faith efforts we can accomplish this goal by the end of next week with the result that the people of the State will be the real winners.

Very truly yours,

Robert L. Ehrlich, Jr.
Governor