

CHAPTER 549

(Senate Bill 400)

AN ACT concerning

Electric Industry Restructuring – Proceedings – Review and Evaluation

FOR the purpose of requiring the Public Service Commission to initiate new proceedings to review and evaluate certain requirements under a certain Act ~~beginning on a certain date~~; requiring the Commission to conduct certain hearings which include the use of certain experts and consultants; repealing certain provisions relating to a certain merger and certain reporting requirements; altering certain considerations that the Commission is required to review in a certain study; prohibiting the Commission from approving an opt-out aggregation program under certain circumstances; requiring the Commission to identify the implications of certain aspects of an opt-out aggregation program; providing that certain requirements may not be construed to interfere with the development and implementation of certain programs and services; requiring the Commission to make certain determinations in its study of establishing a certain long-term goal; *requiring the Commission to convene one or more workgroups to study and make recommendations on certain matters concerning the availability of adequate generation and transmission assets in the State*; requiring the Commission to provide a certain interim report by a certain date; requiring the Commission to provide a certain final report by a certain date; providing that certain hearings are not required to be evidentiary proceedings; providing that certain unexpended funds shall be considered encumbered and may not be deducted from certain appropriations; allowing the Commission to impose on certain persons up to a certain amount as a special assessment, *subject to certain limitations*; allowing certain funds to be expended for certain purposes in accordance with an approved budget amendment; specifying the calculation of certain bills sent to certain electric companies and electricity suppliers; allowing the Commission to use a certain procurement process under certain circumstances; making stylistic changes; making this Act an emergency measure; and generally relating to *the status of the restructured electric utility industry and* the Public Service Commission.

BY repealing and reenacting, with amendments,
Chapter 5 of the Acts of the General Assembly of the ~~First~~ Special Session of
2006
Section 5 and 7

BY repealing and reenacting, without amendments,
Chapter 5 of the Acts of the General Assembly of the ~~First~~ Special Session of
2006
Section 18(a)(2) and (3), (b), and (c)

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

Chapter 5 of the Acts of the ~~First~~ Special Session of 2006

SECTION 5. AND BE IT FURTHER ENACTED, That:

[(a) The Public Service Commission may not take final action to approve or disapprove a merger between FPL Group, Inc., and Constellation Energy Group, Inc., pending as of the effective date of this Act until five members of the Commission have been appointed and qualified in accordance with Section 12 or Section 22 of this Act.

(b)] The Public Service Commission [appointed in accordance with Section 12 or Section 22 of this Act] shall:

(1) conduct ~~investigatory and evidentiary proceedings~~ **HEARINGS**, including the use of any necessary outside experts and consultants, to reevaluate the general regulatory structure, agreements, orders, and other prior actions of the Public Service Commission under the Electric Customer Choice and Competition Act of 1999, including the determination of and allowances for stranded costs;

(2) ~~on or before June 30, 2007, report the results of that reevaluation to the General Assembly in accordance with § 2-1246 of the State Government Article;~~

(3) ~~promptly and comprehensively review and take action on the proposed merger between FPL Group, Inc., and Constellation Energy Group, Inc., in accordance with the standards and procedures contained in § 6-105 of the Public Utility Companies Article, as enacted by this Act;~~

(4) provide to residential customers of the Baltimore Gas and Electric Company funds for mitigation of rate increases ~~including~~

(4) **RESULTING FROM** any adjustment, in favor of those customers, to allowances for stranded costs for assets that were transferred from Baltimore Gas and Electric Company to an affiliate; and

~~(ii) any funds identified by the Commission as properly allocated to Baltimore Gas and Electric Company and its residential customers as conditions of approval of the merger between FPL Group, Inc., and Constellation Energy Group, Inc.; and~~

~~(5)~~ **(3)** require that any funds for mitigating rates for residential electric customers under item ~~(4)~~ **(2)** of this subsection must be in the form of a nonbypassable credit on the customer's bill, and may not be recovered subsequently from those customers in rates or otherwise.

SECTION 7. AND BE IT FURTHER ENACTED, That:

(a) **(1)** The Public Service Commission [appointed in accordance with Section 12 of this Act] shall ~~initiate an evidentiary proceeding~~ **CONDUCT HEARINGS, INCLUDING THE USE OF ANY NECESSARY OUTSIDE EXPERTS AND CONSULTANTS,** to study and evaluate the status of electric restructuring in the State as it pertains to the **CURRENT AND FUTURE** availability of competitive generation to residential and small commercial customers and the structure, procurement, and terms and conditions of standard offer service for residential and small commercial customers.

(2) In its evaluation, the Commission shall consider changes that are necessary to provide ~~residents~~ **RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS** the benefit of a reliable electric system at the best possible price ~~and,~~ **INCLUDING** options for reregulation, if advisable, and to allow electric companies to develop a portfolio of electricity supply that provides electricity at the lowest cost with the least volatility.

(3) IN ITS EVALUATION, THE COMMISSION SHALL ALSO CONSIDER THE AVAILABILITY OF ADEQUATE TRANSMISSION AND GENERATION FACILITIES TO SERVE THE ELECTRICAL LOAD DEMANDS OF ALL CUSTOMERS IN THE STATE, PRICING AND PHYSICAL CONSTRAINTS ON THE ELECTRICAL TRANSMISSION AND DISTRIBUTION GRIDS IN THE STATE, AND OPTIONS AND POLICY RECOMMENDATIONS TO PROVIDE AN ADEQUATE, SAFE, AND RELIABLE SUPPLY OF ELECTRICITY AT REASONABLE COST TO ALL CUSTOMERS IN THE STATE.

(b) Among other considerations, the Commission shall consider the implications of the following:

(1) requiring or allowing investor-owned electric companies to purchase electricity by competitive or negotiated contracts of various durations or through other appropriate methods to minimize price volatility;

(2) requiring or allowing investor-owned electric companies to construct, acquire, or lease peak-load or other generating plants and associated transmission lines;

(3) IN ORDER TO ENCOURAGE THE PROCUREMENT AND IMPLEMENTATION OF COST-EFFECTIVE ENERGY EFFICIENCY AND CONSERVATION PROGRAMS AND SERVICES:

(I) providing a process, at the time bids by investor-owned electric companies for electricity supply are obtained for the standard offer service, to solicit bids for the procurement of COST-EFFECTIVE energy efficiency and conservation ~~measures~~ PROGRAMS and services if energy efficiency and conservation ~~measures~~ PROGRAMS and services are less expensive than electricity generation; AND

(II) ESTABLISHING A LONG-TERM GOAL FOR SAVINGS OVER A PERIOD OF TIME OF THE TOTAL RESIDENTIAL RETAIL ENERGY CONSUMED IN A YEAR IN AN ELECTRIC COMPANY'S SERVICE TERRITORY THROUGH THE PROCUREMENT AND IMPLEMENTATION OF COST-EFFECTIVE ENERGY EFFICIENCY AND CONSERVATION PROGRAMS AND SERVICES UNDER §§ 7-211 AND 7-510(C)(4)(II)2C OF THE PUBLIC UTILITY COMPANIES ARTICLE;

(4) providing a process to allow investor-owned electric companies to obtain a portion of its electricity supply for standard offer service through the negotiation of bilateral contracts with wholesale electricity suppliers, either in conjunction with or outside of procurement through competitive wholesale auctions; ~~and~~

(5) allowing opt-out aggregation of residential electric customer demand AND SMALL COMMERCIAL ELECTRIC CUSTOMER DEMAND by local governments in the service territories of investor-owned electric companies; AND

(6) ESTABLISHING AN OFFICE OF RETAIL MARKET DEVELOPMENT; AND

(7) REQUIRING INVESTOR-OWNED ELECTRIC COMPANIES TO PURCHASE ACCOUNTS RECEIVABLE OF ELECTRICITY SUPPLIERS FOR RESIDENTIAL AND SMALL COMMERCIAL ACCOUNTS.

~~(c) On or before December 31, 2006, the Commission shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, to the General Assembly on its findings and recommendations.~~

~~(d)~~ (1) The Commission may not implement any of the actions under subsection (b)(1) through (4) of this section that are otherwise authorized by this Act unless the Commission finds that the action is in the public interest.

(2) ~~On or before December 31, 2006, and based~~ **BASED** on its consideration of energy efficiency and conservation measures under subsection (b)(3) of this section, the Commission shall establish, by regulation or order:

(i) the process for procurement of energy and conservation ~~measures~~ **PROGRAMS** and services; and

(ii) criteria to evaluate bids that are submitted for energy and conservation ~~measures~~ **PROGRAMS** and services.

(3) As a part of its review of electric restructuring in the State as it pertains to the availability of competitive generation to residential and small commercial customers and the structure, procurement, and terms and conditions of standard offer service for residential and small commercial customers, the Commission shall:

1. adopt a uniform definition of a “small commercial customer” for purposes of standard offer service that applies in all service territories in the State; and

2. consider whether it benefits small commercial customers for an electric company not to be required to provide the standard offer service under § 7-510(c) for small commercial customers.

~~(e) (D) The requirement to study opt-out local governmental aggregation **FOR RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS IN THE SERVICE TERRITORIES OF INVESTOR OWNED ELECTRIC COMPANIES** under subsection (b)(5) of this section may not be construed to interfere with any pilot program to implement local aggregation in existence on the effective date of this Act. **THE COMMISSION MAY NOT APPROVE AN OPT-OUT AGGREGATION PROGRAM UNLESS THE GENERAL ASSEMBLY THROUGH LEGISLATION AUTHORIZES THE COMMISSION TO ALLOW OPT-OUT AGGREGATION. IN ITS STUDY OF OPT-OUT AGGREGATION, THE COMMISSION SHALL IDENTIFY THE IMPLICATIONS OF THE VARIOUS ASPECTS OF AN OPT-OUT AGGREGATION PROGRAM, INCLUDING:**~~

~~(1) LIMITING THE ESTABLISHMENT OF AN OPT-OUT AGGREGATION PROGRAM TO ONLY RESIDENTIAL CUSTOMERS;~~

~~(2) RESTRICTING THE AMOUNT OF LOAD THAT MAY BE MOVED FROM THE STANDARD OFFER SERVICE IN ANY YEAR TO AN OPT-OUT AGGREGATION PROGRAM;~~

~~(3) LIMITING VOLUMETRIC RISK COSTS FOR CUSTOMERS REMAINING WITH THE STANDARD OFFER SERVICE;~~

~~(4) ENSURING THE ABILITY OF ELIGIBLE LOW-INCOME CUSTOMERS IN AN OPT-OUT AGGREGATION PROGRAM TO OBTAIN FUNDS THROUGH THE ELECTRIC UNIVERSAL SERVICE PROGRAM AND OTHER PROGRAMS AVAILABLE TO LOW-INCOME CUSTOMERS;~~

~~(5) TO PREVENT COST SHIFTING, REQUIRING A FIREWALL BETWEEN RATEPAYERS AND TAXPAYERS IN A LOCAL GOVERNMENT THAT HAS AN OPT-OUT AGGREGATION PROGRAM;~~

~~(6) IF AN OPT-OUT AGGREGATION PROGRAM IS MORE EXPENSIVE, OR BECOMES MORE EXPENSIVE, THAN THE STANDARD OFFER SERVICE DUE TO THE PROCUREMENT OF RENEWABLE ENERGY, REQUIRING AN ALTERNATIVE OPTION FOR CUSTOMERS IN THE OPT-OUT AGGREGATION PROGRAM;~~

~~(7) SPECIFYING THE METHODS, TIMING, AND ADEQUACY OF NOTIFICATION TO CUSTOMERS WHO ARE PLACED IN AN OPT-OUT AGGREGATION PROGRAM;~~

~~(8) SPECIFYING WHETHER DELINQUENT ACCOUNTS IN AN OPT-OUT AGGREGATION PROGRAM WOULD BE RETURNED TO THE STANDARD OFFER SERVICE;~~

~~(9) REQUIRING THAT NO ADDITIONAL FEES, TAXES, OR OTHER CHARGES OTHER THAN THE ACTUAL COST OF THE SERVICE MAY BE CHARGED TO CUSTOMERS IN AN OPT-OUT AGGREGATION PROGRAM;~~

~~(10) IDENTIFYING UP-FRONT COSTS OF IMPLEMENTING AN OPT-OUT AGGREGATION PROGRAM, INCLUDING SPECIFYING THE COSTS~~

~~ASSOCIATED WITH THE ROLE OF HIRING CONSULTANTS, AND DETERMINING HOW COSTS ARE PAID;~~

~~(11) IDENTIFYING WHEN CONTRACTS WOULD BEST BE AWARDED FOR AN OPT-OUT AGGREGATION PROGRAM IN RELATION TO THE STANDARD OFFER SERVICE;~~

~~(12) SPECIFYING OTHER STANDARDS AND PROCEDURES TO PROTECT CUSTOMERS IN AN OPT-OUT AGGREGATION PROGRAM, INCLUDING PROHIBITING DISCRIMINATION BASED ON THE LOCATION OF THE CUSTOMER; AND~~

~~(13) ENSURING THAT THE RENEWABLE PORTFOLIO STANDARD REQUIREMENTS UNDER TITLE 7, SUBTITLE 7 OF THE PUBLIC UTILITY COMPANIES ARTICLE APPLY TO AN OPT-OUT AGGREGATION PROGRAM.~~

~~(E) REGARDLESS OF WHETHER THE ELECTRIC SUPPLY MARKET REMAINS RESTRUCTURED OR RETURNS TO A REGULATED ELECTRIC SUPPLY MARKET, THE *THE* REQUIREMENT UNDER SUBSECTION (B)(3)(II) OF THIS SECTION RELATING TO ENERGY EFFICIENCY AND CONSERVATION PROGRAMS AND SERVICES MAY NOT BE CONSTRUED TO INTERFERE WITH THE DEVELOPMENT AND IMPLEMENTATION OF PROGRAMS AND SERVICES TO ENCOURAGE AND PROMOTE THE EFFICIENT USE AND CONSERVATION OF ENERGY BY CONSUMERS, GAS COMPANIES, AND ELECTRIC COMPANIES UNDER § 7-211 OF THE PUBLIC UTILITY COMPANIES ARTICLE. IN ITS STUDY OF ESTABLISHING A LONG TERM GOAL FOR SAVINGS OVER A PERIOD OF TIME OF THE TOTAL RESIDENTIAL RETAIL ENERGY CONSUMED IN A CERTAIN YEAR IN AN ELECTRIC COMPANY'S SERVICE TERRITORY THROUGH THE PROCUREMENT AND IMPLEMENTATION OF COST EFFECTIVE ENERGY EFFICIENCY AND CONSERVATION PROGRAMS AND SERVICES, THE COMMISSION SHALL DETERMINE:~~

~~(I) HOW A REASONABLE AND ACHIEVABLE LONG TERM GOAL WOULD BE ESTABLISHED;~~

~~(II) WHO SHOULD PAY THE COSTS OF IMPLEMENTING PROGRAMS AND SERVICES THAT ARE TIED TO A LONG TERM GOAL;~~

~~(III) TO ENCOURAGE THE CONTINUATION OF COST EFFECTIVE PROGRAMS AND SERVICES PROCURED OR IMPLEMENTED~~

~~THROUGH AN ELECTRIC COMPANY PRIOR TO THE ESTABLISHMENT OF A LONG TERM GOAL, HOW THOSE PROGRAMS AND SERVICES WOULD BE FACTORED INTO ESTABLISHING A LONG TERM GOAL REQUIREMENT ON THE ELECTRIC COMPANY; AND~~

~~(IV) HOW THE DEVELOPMENT AND IMPLEMENTATION OF PROGRAMS AND SERVICES FROM PERSONS OTHER THAN GAS COMPANIES AND ELECTRIC COMPANIES COULD CONTRIBUTE TO ACHIEVING A LONG TERM GOAL.~~

SECTION 18. AND BE IT FURTHER ENACTED, That:

(a) Pursuant to Article III, § 52(14) of the Maryland Constitution, in addition to the amounts provided under Chapter 216 of the Acts of 2006 (The Budget Bill), the following appropriations shall be made for fiscal year 2007 to implement the requirements of this Act:

(2) Public Service Commission

<u>Special Funds</u>	<u>C90G00.01 General Administration and Hearings</u>	<u>\$750,000</u>
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(3) People’s Counsel

<u>Funds</u>	<u>C91H00.01 General Administration</u>	<u>\$500,000</u>	<u>Special</u>
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(b) Special funds appropriated in subsection (a)(2) through (4) of this section shall be recovered through the assessment on public utilities authorized under § 2–110 of the Public Utility Companies Article.

(c) Special funds appropriated in subsection (a)(5) of this section shall be credited from funds assessed under § 7–512.1 of the Public Utility Companies Article, as enacted by this Act, and the repeal of the income tax credit and designation of special funding under Sections 2 and 10 of this Act.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) (1) ~~The~~ Notwithstanding the reporting dates established under Section 5(b) and Section 7(c) of Chapter 5 of the Acts of the General Assembly of the First Special Session of 2006 prior to the amendment of those sections by this Act, the Public Service Commission shall initiate new proceedings to review and evaluate the

requirements under Section ~~5(4)~~ and Section 7 of Chapter 5 of the Acts of the General Assembly of the First Special Session of 2006, as amended by this Act.

(2) (i) In conducting its review and analysis of the availability of adequate transmission and generation facilities serving the State under Section 7(a) of Chapter 5 of the Acts of the General Assembly of the Special Session of 2006, as amended by this Act, the Commission shall convene one or more workgroups that may include, and shall otherwise encourage participation from representatives of, the following:

1. members of the House of Delegates of Maryland, appointed by the Speaker of the House;

2. members of the Senate of Maryland, appointed by the President of the Senate of Maryland;

3. the Federal Energy Regulatory Commission;

4. PJM Interconnection, LLC;

5. the North American Electric Reliability Corporation;

6. competitive generation suppliers in the State and in the PJM region;

7. transmission suppliers in the State and in the PJM region;

8. the Office of People's Counsel;

9. the Maryland Energy Administration;

10. the Maryland Department of the Environment;

11. the Maryland Department of Natural Resources;

12. other interested State agencies;

13. local governments, through the Maryland Association of Counties and the Maryland Municipal League;

14. organizations representing environmental interests in the State;

15. organizations representing commercial and industrial electric customers in the State; and

16. other interested parties as identified by the Commission.

(ii) The workgroup or workgroups shall assist the Commission in studying and preparing recommendations for statutory and regulatory changes to increase the availability of generation and transmission assets in the State.

(3) The review and evaluation shall include any orders that were issued by the Commission relating to the requirements of ~~those sections~~ Section 5 and Section 7 of Chapter 5 of the Acts of the General Assembly of the Special Session of 2006, prior to the amendment of those sections by this Act and may include review and evaluation of the open record for any case pending before the Commission relating to the requirements of those sections.

~~(b) The new proceedings shall begin on the earlier of:~~

~~(1) the date a Chairman of the Public Service Commission is appointed to replace the Chairman who served on January 30, 2007; or~~

~~(2) July 1, 2008.~~

~~(e) (b) (1)~~ On or before ~~January 1, 2008~~ December 1, 2007, the Public Service Commission shall submit an interim report to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly. The interim report shall include at a minimum:

(i) the identification of the issues relating to options for reregulation, as required to be studied under Section 7 of Chapter 5 of the Acts of the General Assembly of the First Special Session of 2006, as amended by this Act; and

(ii) to the extent possible, discussion of costs and benefits to residential and small commercial customers of returning to a regulated electric supply market.

(2) On or before December ~~31~~ 1, 2008, the Public Service Commission shall submit a final report of its review ~~and evaluations~~, evaluation, and findings and recommendations, as required under subsection (a) of this section, to the Governor and, in accordance with § 2-1246 of the State Government Article, the General

Assembly. ~~As required to be studied under Section 5 and Section 7 of the Acts of the General Assembly of the First Special Session of 2006, as amended by this Act, the report shall include a full discussion of the costs and benefits to residential and small commercial customers of:~~

- ~~(i) continuing in a restructured electric supply market;~~
- ~~(ii) returning to a regulated electric supply market; and~~
- ~~(iii) allowing an electric supply market that includes a combination of competitive and regulated electric supply aspects.~~

(c) Any hearing conducted under this Act need not be an evidentiary proceeding.

SECTION 3. AND BE IT FURTHER ENACTED, That notwithstanding § 2-110(c)(10) of the Public Utility Companies Article, any unexpended funds at the end of fiscal 2007 that were appropriated under Section 18(a)(2) and (3) of Chapter 5 of the Acts of the General Assembly of the First Special Session of 2006:

- (1) shall be considered encumbered by the Public Service Commission and the Office of People's Counsel, respectively, by June 30, 2007; and
- (2) may not be deducted from the appropriation for fiscal 2008.

SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) Notwithstanding any other provision of law, for fiscal 2008 only, in addition to the amounts appropriated in the budget bill for fiscal 2008, the Public Service Commission may impose up to ~~\$4,000,000~~ \$3,000,000 as a special assessment using the assessment process authorized under § 2-110 of the Public Utility Companies Article, provided that:

- (1) *except as provided in subsection (d) of this section,* the assessment shall be imposed only on those electric companies and electricity suppliers otherwise subject to the assessment under § 2-110 of the Public Utility Companies Article; and
- (2) the limit under § 2-110(c)(12) of the Public Utility Companies Article does not apply to any assessment made under this section.

(b) (1) The amounts collected under subsection (a) of this section may be expended for fiscal 2008 for the support of the Commission in accordance with an approved budget amendment.

(2) Notwithstanding § 2-110(c)(10) of the Public Utility Companies Article, any unexpended funds at the end of fiscal 2008 that were collected under this section:

(i) shall be considered encumbered by the Public Service Commission by June 30, 2008; and

(ii) may not be deducted from the appropriation for fiscal 2009.

(c) ~~The~~ For that portion of the assessment to be paid by both electricity suppliers and electric companies under subsection (d) of this section, the bill sent to each electric company and electricity supplier subject to the assessment under subsection (a) of this section shall equal the product of multiplying:

(1) the amount authorized to be collected under this section; ~~multiplied by and~~

(2) the ratio of the gross operating revenues of the entity subject to the special assessment to the total gross operating revenues for all entities subject to the assessment.

(d) (1) Of the \$3,000,000 assessment authorized under subsection (a) of this section, the Public Service Commission may not expend more than \$1,500,000 on consultants and experts related to the issues identified in Section 2(b)(1) of this Act, either in connection with the interim report or the final report of the Commission.

(2) The portion of the assessment that is allocated to the studies of issues identified in Section 2(b)(1) of this Act:

(i) shall be paid only by each electric company; and

(ii) shall equal the product of multiplying:

1. the amount to be collected under this section; and

2. the ratio of the gross operating revenues of each electric company to the total gross operating revenue for all electric companies in the State.

SECTION 5. AND BE IT FURTHER ENACTED, That notwithstanding any other provision of law, that the Public Service Commission may use an emergency procurement under § 13-108 of the State Finance and Procurement Article to obtain

any outside experts or consultants necessary to conduct the studies required under this Act.

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

Approved by the Governor, May 17, 2007.