

SENATE BILL 1013

C5

8lr3525

By: **Senator Middleton**

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session

Introduced and read first time: March 26, 2008

Rules suspended

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Public Service Commission – Nuclear Decommissioning, Electric Industry**
3 **Restructuring, and Acquisition and Financing Approvals**

4 FOR the purpose of authorizing the Public Service Commission to exercise certain
5 authority as set forth in certain provisions of federal law under certain
6 circumstances; providing for the construction of certain provisions of this Act;
7 granting the circuit court jurisdiction to enforce certain provisions of law;
8 providing for the application of certain provisions of this Act; authorizing the
9 Commission to authorize the taking, holding, or acquiring of certain capital
10 stock of a certain gas and electric company by a certain stock corporation or
11 certain public utility under certain circumstances; providing that certain
12 provisions of law apply to a gas and electric company; requiring a certain gas
13 and electric company to provide the Commission with a copy of a certain
14 document that is filed with a certain federal agency or commission under
15 certain circumstances; requiring the Commission to provide a certain gas and
16 electric company with certain confidentiality and other protections under
17 certain circumstances; prohibiting a person from acquiring power to exercise
18 certain influence over the policies and actions of a certain gas and electric
19 company without prior authorization of the Commission under certain
20 circumstances; providing that a person may not be considered to have acquired
21 certain power to exercise substantial influence over the policies and actions of a
22 gas and electric company under certain circumstances; authorizing the
23 Commission to order compliance with, and take certain actions authorized by,
24 certain provisions with respect to a certain gas and electric company under
25 certain circumstances; requiring the Commission to consider a certain factor in
26 considering a certain acquisition; requiring the Commission to issue a certain
27 order within a certain time period after the filing of a certain application under
28 certain circumstances; providing that, unless the Commission finds that a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 certain period should be extended by a certain time period, the failure of the
2 Commission to issue a certain order within a certain time period shall be
3 considered to be an approval of a certain acquisition; repealing a certain
4 requirement of the Commission to conduct certain hearings, provide to certain
5 customers funds for mitigation of certain rate increases, and require that
6 certain funds be in the form of a nonbypassable credit on certain customer bills;
7 altering the date by which a certain electric company shall determine and apply
8 certain residential electric credits; altering the time periods during which an
9 electric company shall determine and apply a certain credit; altering the form of
10 a certain credit; requiring a certain electric company to determine and apply
11 certain suspensions for a certain time period by a certain date under certain
12 circumstances; altering the time frame within which a certain electric company
13 must cease collecting a certain component of a certain charge; altering the time
14 frame within which a certain credit of a certain nuclear decommissioning charge
15 collected is to be imputed as if deposited in a certain trust fund and is to be
16 credited against certain electric customer bills; providing that a one-time total
17 credit of a certain amount be divided in a certain manner and credited against
18 certain residential electric customer bills by a certain date; providing that a
19 certain nuclear decommissioning charge may be altered only in a certain
20 manner under certain circumstances; providing that certain residential electric
21 customer suspensions may not be recovered through electric rates; providing
22 that certain ratepayers may not bear certain financial obligations with regard to
23 a certain nuclear power plant under certain circumstances; providing that
24 ratepayers shall be deemed to have paid a certain amount in accordance with a
25 certain agreement under certain circumstances; providing that certain nuclear
26 decommissioning rights and obligations shall be deemed fully extinguished and
27 satisfied under certain circumstances; requiring a certain gas and electric
28 company to implement certain depreciation accruals until certain circumstances
29 exist; requiring the Commission to review certain regulations; declaring that
30 the provisions of this Act are not severable; and generally relating to nuclear
31 decommissioning, electric industry restructuring, and acquisition and financing
32 approvals of public service companies.

33 BY repealing and reenacting, with amendments,
34 Article – Public Utility Companies
35 Section 3–109, 6–101(c), and 6–105
36 Annotated Code of Maryland
37 (1998 Volume and 2007 Supplement)

38 BY repealing
39 Chapter 5 of the Acts of the General Assembly of the Special Session of 2006, as
40 amended by Chapter 549 of the Acts of the General Assembly of 2007
41 Section 5

42 BY repealing and reenacting, with amendments,
43 Chapter 549 of the Acts of the General Assembly of 2007
44 Section 2(a)(1) and (3)

1 BY repealing and reenacting, with amendments,
2 Chapter 5 of the Acts of the General Assembly of the Special Session of 2006
3 Section 6

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

6 **Article – Public Utility Companies**

7 3–109.

8 (a) On the request of a party to a proceeding in which a hearing is required
9 or held, the Commission shall issue subpoenas to compel the attendance and
10 testimony of witnesses and the production of documents at a hearing or deposition to
11 be taken by the party.

12 (b) On its own motion, the Commission may issue a subpoena to compel the
13 attendance and testimony of witnesses and the production of documents at a hearing
14 or deposition to be taken by the Commission.

15 (c) A subpoena shall be signed and issued by a commissioner or the
16 Executive Secretary of the Commission.

17 **(D) (1) THE COMMISSION MAY EXERCISE THE FULL AUTHORITY SET**
18 **FORTH IN 42 U.S.C. § 16453(A) THROUGH (C) AS IF SET FORTH IN THIS**
19 **ARTICLE.**

20 **(2) NOTHING IN THE GRANT OF AUTHORITY SET FORTH IN**
21 **PARAGRAPH (1) OF THIS SUBSECTION MAY BE CONSTRUED TO PREEMPT OR**
22 **LIMIT ANY OTHER AUTHORITY OF THE COMMISSION UNDER THIS ARTICLE.**

23 **(3) IN ADDITION TO THE AUTHORITY GRANTED TO THE**
24 **COMMISSION UNDER FEDERAL LAW TO ENFORCE THE PROVISIONS OF 42 U.S.C.**
25 **§ 16453, THE CIRCUIT COURTS OF THE STATE HAVE JURISDICTION TO ENFORCE**
26 **COMPLIANCE WITH THIS SUBSECTION.**

27 6–101.

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

31 (2) In this subsection, a company controlling a public service company
32 is deemed a public service company of the same class as the controlled public service
33 company.

1 (3) Without prior authorization of the Commission, a public service
2 company may not take, hold, or acquire any part of the capital stock of a public service
3 company that:

4 (i) operates in Maryland; and

5 (ii) is of the same class as the acquiring company.

6 (4) (i) Except as provided in subparagraph (ii) of this paragraph, a
7 stock corporation may not take, hold, or acquire more than 10% of the total capital
8 stock of a public service company that operates in Maryland unless:

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

10 2. the Commission approves the acquisition.

11 (ii) The Commission may authorize a public service company of
12 the same class to take, hold, or acquire more than 10% of the total capital stock of a
13 public service company that operates in Maryland.

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

16 **(6) NOTWITHSTANDING PARAGRAPH (2) OF THIS SUBSECTION, §**
17 **6-105 OF THIS SUBTITLE SHALL APPLY, AND THE PROVISIONS OF THIS**
18 **SUBSECTION DO NOT APPLY, TO THE ACQUISITION, OWNERSHIP, OR**
19 **DISPOSITION OF ANY CAPITAL STOCK OF VOTING SECURITIES OF A COMPANY**
20 **THAT CONTROLS, DIRECTLY OR INDIRECTLY, A GAS AND ELECTRIC COMPANY.**

21 **(7) NOTWITHSTANDING ANY OTHER PROVISION OF THIS**
22 **SUBSECTION, THE COMMISSION MAY AUTHORIZE, IN ACCORDANCE WITH §**
23 **6-105 OF THIS SUBTITLE, THE TAKING, HOLDING, OR ACQUIRING OF ALL OR ANY**
24 **PART OF THE CAPITAL STOCK OF A GAS AND ELECTRIC COMPANY THAT**
25 **OPERATES IN THE STATE BY A STOCK CORPORATION OR A PUBLIC SERVICE**
26 **COMPANY THAT IS NOT OF THE SAME CLASS AS THE GAS AND ELECTRIC**
27 **COMPANY.**

28 6-105.

29 (a) In this section, “affiliate” has the meaning stated in § 7-501 of this
30 article.

31 (b) (1) The General Assembly finds that:

32 (i) existing legislation requires the approval by the Commission
33 of the acquisition by one public service company of another public service company’s
34 stocks and obligations, but does not require the Commission’s approval of these

1 acquisitions by persons not engaged in the public utility business in the State; and

2 (ii) an attempt by a person not engaged in the public utility
3 business in the State to acquire the power to exercise any substantial influence over
4 the policies and actions of a public service company that provides electricity or gas in
5 the State could result in harm to the customers of the public service company,
6 including the degradation of utility services, higher rates, weakened financial
7 structure, and diminution of utility assets.

8 (2) The General Assembly declares that it is the policy of the State to
9 regulate acquisitions by persons that are not engaged in the public utility business in
10 the State of the power to exercise any substantial influence over the policies and
11 actions of a public service company that provides electricity or gas in the State in order
12 to prevent unnecessary and unwarranted harm to the customers of the public service
13 company.

14 (c) This section applies to the acquisition of an electric company, **GAS AND**
15 **ELECTRIC COMPANY**, or a gas company that operates in Maryland.

16 (d) **(1) A GAS AND ELECTRIC COMPANY, AT THE SAME TIME AS A**
17 **FILING BY THE COMPANY OR WITHIN 10 DAYS AFTER RECEIPT BY THE**
18 **COMPANY, SHALL PROVIDE THE COMMISSION WITH A COPY OF ANY DOCUMENT**
19 **REGARDING THE ACQUISITION OF VOTING SECURITIES OF THE GAS AND**
20 **ELECTRIC COMPANY OR ANY COMPANY THAT OWNS OR CONTROLS THE GAS AND**
21 **ELECTRIC COMPANY, FILED OR RECEIVED BY THE COMPANY, THAT IS FILED**
22 **WITH:**

23 **(I) THE SECURITIES AND EXCHANGE COMMISSION;**

24 **(II) THE FEDERAL ENERGY REGULATORY COMMISSION;**

25 **(III) THE NUCLEAR REGULATORY COMMISSION;**

26 **(IV) THE DEPARTMENT OF JUSTICE;**

27 **(V) THE FEDERAL TRADE COMMISSION; OR**

28 **(VI) ANY SUCCESSOR AGENCY.**

29 **(2) THE COMMISSION SHALL PROVIDE THE GAS AND ELECTRIC**
30 **COMPANY WITH THE SAME CONFIDENTIALITY AND OTHER PROTECTIONS**
31 **PROVIDED BY THE FEDERAL AGENCY WITH WHICH THE FILING WAS MADE.**

32 **(E) (1) Without prior authorization from the Commission, a person may**
33 **not acquire, directly or indirectly, the power to exercise any substantial influence over**

1 the policies and actions of an electric company, **GAS AND ELECTRIC COMPANY**, or gas
2 company, if the person would become an affiliate of the electric company, **GAS AND**
3 **ELECTRIC COMPANY**, or gas company as a result of the acquisition.

4 **(2) FOR THE PURPOSES OF THIS SUBSECTION, A PERSON MAY**
5 **NOT BE CONSIDERED TO HAVE ACQUIRED, DIRECTLY OR INDIRECTLY, THE**
6 **POWER TO EXERCISE ANY SUBSTANTIAL INFLUENCE OVER THE POLICIES AND**
7 **ACTIONS OF A GAS AND ELECTRIC COMPANY IF THE PERSON:**

8 **(I) AFTER ANY ACQUISITION OF VOTING INTERESTS OF A**
9 **COMPANY THAT OWNS OR CONTROLS A GAS AND ELECTRIC COMPANY, DIRECTLY**
10 **OR INDIRECTLY, OWNS, CONTROLS, OR HAS THE RIGHT TO VOTE, OR DIRECT**
11 **THE VOTING OF, NOT MORE THAN 20% OF THE OUTSTANDING VOTING**
12 **INTERESTS OF A COMPANY THAT OWNS OR CONTROLS A GAS AND ELECTRIC**
13 **COMPANY; AND**

14 **(II) DOES NOT HAVE THE RIGHT TO DESIGNATE MORE THAN**
15 **20% OF THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY OF A COMPANY**
16 **THAT OWNS OR CONTROLS A GAS AND ELECTRIC COMPANY.**

17 **(3) PARAGRAPH (2) OF THIS SUBSECTION MAY NOT BE**
18 **CONSTRUED TO APPLY TO THE ACQUISITION OF ANY VOTING INTERESTS OF A**
19 **GAS AND ELECTRIC COMPANY.**

20 **(4) IF A PERSON THAT ACQUIRES VOTING SECURITIES OF A**
21 **COMPANY THAT OWNS OR CONTROLS A GAS AND ELECTRIC COMPANY AFTER**
22 **THE ACQUISITION ACTUALLY EXERCISES SUBSTANTIAL INFLUENCE OVER THE**
23 **POLICIES AND ACTIONS OF A GAS AND ELECTRIC COMPANY, THE COMMISSION**
24 **MAY ORDER COMPLIANCE WITH, AND TAKE ANY ACTIONS AUTHORIZED BY,**
25 **OTHER PROVISIONS OF THIS ARTICLE WITH RESPECT TO THE GAS AND**
26 **ELECTRIC COMPANY.**

27 **[(e)] (F)** An application for authorization under subsection **[(d)] (E)** of this
28 section must include detailed information regarding:

29 (1) the applicant's identity and financial ability;

30 (2) the background of the key personnel associated with the applicant;

31 (3) the source and amounts of funds or other consideration to be used
32 in the acquisition;

33 (4) the applicant's compliance with federal law in carrying out the
34 acquisition;

1 (5) whether the applicant or the key personnel associated with the
2 applicant have violated any State or federal statutes regulating the activities of public
3 service companies;

4 (6) all documents relating to the transaction giving rise to the
5 application;

6 (7) the applicant's experience in operating public service companies
7 providing electricity;

8 (8) the applicant's plan for operating the public service company;

9 (9) how the acquisition will serve the customers of the public service
10 company in the public interest, convenience, and necessity; and

11 (10) any other information that the Commission may specify by
12 regulation or order.

13 **[(f)] (G)** (1) The Commission promptly shall:

14 (i) examine and investigate each application received under
15 this section; and

16 (ii) undertake any proceedings necessary or convenient to
17 review the application in accordance with Title 3 of this article and issue an order
18 concerning the acquisition.

19 (2) The Commission shall consider the following factors in considering
20 an acquisition under this section:

21 (i) the potential impact of the acquisition on rates and charges
22 paid by customers and on the services and conditions of operation of the public service
23 company;

24 (ii) the potential impact of the acquisition on continuing
25 investment needs for the maintenance of utility services, plant, and related
26 infrastructure;

27 (iii) the proposed capital structure that will result from the
28 acquisition, including allocation of earnings from the public service company;

29 (iv) the potential effects on employment by the public service
30 company;

31 (v) the projected allocation of any savings that are expected to
32 the public service company between stockholders and rate payers;

1 (vi) issues of reliability, quality of service, and quality of
2 customer service;

3 (vii) the potential impact of the acquisition on community
4 investment;

5 (viii) affiliate and cross–subsidization issues;

6 (ix) the use or pledge of utility assets for the benefit of an
7 affiliate;

8 (x) jurisdictional and choice–of–law issues; [and]

9 (xi) **WHETHER IT IS NECESSARY TO REVISE THE**
10 **COMMISSION’S RING FENCING AND CODE OF CONDUCT REGULATIONS IN LIGHT**
11 **OF THE ACQUISITION; AND**

12 (XII) any other issues the Commission considers relevant to the
13 assessment of acquisition in relation to the public interest, convenience, and necessity.

14 (3) (i) If the Commission finds that the acquisition is consistent
15 with the public interest, convenience, and necessity, including benefits and no harm to
16 consumers, the Commission shall issue an order granting the application.

17 (ii) The Commission may condition an order authorizing the
18 acquisition on the applicant’s satisfactory performance or adherence to specific
19 requirements.

20 (4) If the Commission does not find that the acquisition is consistent
21 with the public interest, convenience, and necessity, including benefits and no harm to
22 consumers, the Commission shall issue an order denying the application.

23 (5) The applicant bears the burden of showing that granting the
24 acquisition is consistent with the public interest, convenience, and necessity, including
25 benefits and no harm to consumers.

26 (6) (I) **EXCEPT AS PROVIDED IN ITEM (II) OF THIS**
27 **SUBPARAGRAPH, THE COMMISSION SHALL ISSUE AN ORDER WITH RESPECT TO**
28 **THE APPLICATION NO LATER THAN 180 DAYS AFTER THE FILING OF THE**
29 **APPLICATION FOR AUTHORIZATION.**

30 (II) **UNLESS THE COMMISSION FINDS, BASED ON GOOD**
31 **CAUSE, THAT THE 180–DAY PERIOD SHOULD BE EXTENDED FOR AN ADDITIONAL**
32 **45 DAYS, FAILURE OF THE COMMISSION TO ISSUE AN ORDER WITHIN THE**
33 **180–DAY PERIOD SHALL BE CONSIDERED TO BE AN APPROVAL OF THE**
34 **ACQUISITION BY THE COMMISSION.**

1 SECTION 6. AND BE IT FURTHER ENACTED, That:

2 (a) Starting [January 1, 2007,] **JUNE 1, 2008**, the investor-owned electric
3 company incorporated in Maryland whose parent is involved in a merger on the
4 effective date of this Act shall determine and apply **THE FOLLOWING** residential
5 electric credits [totaling \$38,661,980 each year] **AND SUSPENSIONS** for [a period of 10
6 years] **THE SPECIFIED PERIODS** to the bills of all residential electric customers of the
7 electric company[.

8 (b) The credits shall be in the form of a nonbypassable credit or suspension
9 on a customer's bill, derived as follows]:

10 (1) for [a] **THE** period [of 10 years,] **BEGINNING JUNE 1, 2010,**
11 **UNTIL THE END OF DECEMBER 31, 2016**, the electric company shall [suspend the
12 collection of] **CEASE COLLECTING** the residential return component of the
13 administrative charge collected by the electric company for providing standard offer
14 service under § 7-510(c)(3) of the Public Utility Companies Article, which shall be
15 deemed an annual **CREDIT** value of \$20 million; [and]

16 (2) [for a period of 10 years,] **UNTIL THE END OF DECEMBER 31,**
17 **2016**, a credit of the \$18,661,980 annual nuclear decommissioning charge collected,
18 without otherwise disturbing the agreement approved by the Maryland Public Service
19 Commission in Order No. 75757, to be imputed as [deposits] **IF DEPOSITED** in the
20 Nuclear Decommissioning Trust Fund and to be credited against residential electric
21 customer bills; **AND**

22 (3) **A ONE-TIME TOTAL CREDIT OF \$187 MILLION TO BE DIVIDED**
23 **INTO EQUAL DOLLAR AMOUNTS AND CREDITED AGAINST RESIDENTIAL**
24 **ELECTRIC CUSTOMER BILLS NO LATER THAN DECEMBER 31, 2008.**

25 [(c)] (B) The **ANNUAL** nuclear decommissioning charge **OF \$18,661,980**
26 described in subsection [(b)(2)] (A)(2) of this section may not be altered during the
27 [10-year] period of the credit **DESCRIBED IN SUBSECTION (A)(2) OF THIS SECTION,**
28 **EXCEPT THAT FOR AMOUNTS COLLECTED AFTER JUNE 1, 2008, UNTIL THE END**
29 **OF DECEMBER 31, 2016, THE COMMISSION MAY AUTHORIZE A TRUE-UP BASED**
30 **ON ACTUAL SALES VOLUMES ON A PROSPECTIVE BASIS ONLY AS PART OF AN**
31 **ELECTRIC DISTRIBUTION BASE RATE CASE TO ENSURE THE ANNUAL**
32 **COLLECTION OF \$18,661,980.**

33 [(d)] (C) [residential] **THE RESIDENTIAL** electric customer credits **AND**
34 **SUSPENSIONS DESCRIBED IN THIS SECTION** may not be recovered through electric
35 rates.

1 (D) AS LONG AS SUBSECTIONS (A)(1), (A)(2), (B), AND (E) OF THIS
2 SECTION REMAIN IN FULL FORCE AND EFFECT AND ARE IMPLEMENTED BY THE
3 COMMISSION IN ACCORDANCE WITH THEIR TERMS:

4 (1) RATEPAYERS MAY NOT BEAR ANY FINANCIAL OBLIGATION
5 WITH REGARD TO THE DECOMMISSIONING OF CALVERT CLIFFS NUCLEAR
6 POWER PLANT UNITS 1 AND 2 AND RELATED FACILITIES;

7 (2) RATEPAYERS SHALL BE DEEMED TO HAVE PAID \$520 MILLION
8 IN 1993 DOLLARS IN ACCORDANCE WITH THE AGREEMENT APPROVED BY THE
9 COMMISSION IN ORDER NO. 75757; AND

10 (3) ALL NUCLEAR DECOMMISSIONING RIGHTS AND OBLIGATIONS
11 IN ACCORDANCE WITH THE AGREEMENT APPROVED BY THE COMMISSION IN
12 ORDER NO. 75757 SHALL BE DEEMED FULLY EXTINGUISHED AND SATISFIED.

13 (E) THE RESIDENTIAL RETURN COMPONENT OF THE ADMINISTRATIVE
14 CHARGE FOR PROVIDING STANDARD OFFER SERVICE UNDER § 7-510(C)(3) OF
15 THE PUBLIC UTILITY COMPANIES ARTICLE SHALL BE IN ACCORDANCE WITH
16 ORDER NO. 78400 FOR THE PERIOD JUNE 1, 2008, TO MAY 31, 2010.

17 (F) UNTIL NEW BASE RATES BECOME EFFECTIVE IN ACCORDANCE WITH
18 THE FIRST ELECTRIC DISTRIBUTION RATE CASE FOR AN INVESTOR-OWNED GAS
19 AND ELECTRIC COMPANY INCORPORATED IN THE STATE, EACH GAS AND
20 ELECTRIC COMPANY SHALL IMPLEMENT THE COMMISSION STAFF'S
21 RECOMMENDED DEPRECIATION ACCRUALS SET FORTH ON SCHEDULE A OF THE
22 SETTLEMENT AGREEMENT BY THE GAS AND ELECTRIC COMPANY AND THE
23 COMMISSION, AMONG OTHER PARTIES, DATED ON OR ABOUT APRIL 1, 2008.

24 SECTION 2. AND BE IT FURTHER ENACTED, That the Public Service
25 Commission shall review its regulations regarding ring fencing and code of conduct for
26 electric companies, gas companies, and gas and electric companies operating in the
27 State.

28 SECTION 3. AND BE IT FURTHER ENACTED, That, notwithstanding the
29 provisions of Article 1, § 23 of the Annotated Code of Maryland, the provisions of this
30 Act are not severable, and if any provision of this Act or the application thereof to any
31 person or circumstance is held invalid for any reason in a court of competent
32 jurisdiction, no other provision or application of this Act may be given effect.

33 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 June 1, 2008.