

CHAPTER 133

(Senate Bill 1013)

AN ACT concerning

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

FOR the purpose of authorizing the Public Service Commission to exercise certain authority as set forth in certain provisions of federal law under certain circumstances; providing for the construction of certain provisions of this Act; granting the circuit court jurisdiction to enforce certain provisions of law; providing for the application of certain provisions of this Act; authorizing the Commission to authorize the taking, holding, or acquiring of certain capital stock of a ~~certain~~ gas and electric company by a ~~certain~~ stock corporation or ~~certain~~ public utility under certain circumstances; providing that certain provisions of law apply to a gas and electric company; requiring a ~~certain~~ gas and electric company to provide the Commission with a copy of a certain document that is filed with a certain federal agency or commission under certain circumstances; requiring the Commission to provide a ~~certain~~ gas and electric company with certain confidentiality and other protections under certain circumstances; prohibiting a person from acquiring power to exercise certain influence over the policies and actions of a ~~certain~~ gas and electric company without prior authorization of the Commission under certain circumstances; providing that a person may not be considered to have acquired certain power to exercise substantial influence over the policies and actions of a gas and electric company under certain circumstances; authorizing the Commission to order compliance with, and take certain actions authorized by, certain provisions with respect to a ~~certain~~ gas and electric company under certain circumstances; requiring the Commission to consider a certain factor in considering a certain acquisition; requiring the Commission to issue a certain order within a certain time period after the filing of a certain application under certain circumstances; providing that, unless the Commission finds that a certain period should be extended by a certain time period, the failure of the Commission to issue a certain order within a certain time period shall be considered to be an approval of a certain acquisition; repealing a certain requirement of the Commission to conduct certain hearings, provide to certain customers funds for mitigation of certain rate increases, and require that certain funds be in the form of a nonbypassable credit on certain customer bills; altering the date by which a certain electric company shall determine and apply certain residential electric credits; altering the time periods during which an electric company shall determine and apply a certain credit; altering the form of a certain credit; requiring a certain electric company to determine and apply certain suspensions for a certain time period by a certain date under certain

circumstances; altering the time frame within which a certain electric company must cease collecting a certain component of a certain charge; altering the time frame within which a certain credit of a certain nuclear decommissioning charge collected is to be imputed as if deposited in a certain trust fund and is to be credited against certain electric customer bills; providing that a one-time total credit of a certain amount be divided in a certain manner and credited against certain residential electric customer bills by a certain date; providing that a certain nuclear decommissioning charge may be altered only in a certain manner under certain circumstances; providing that certain residential electric customer suspensions may not be recovered through electric rates; providing that certain ratepayers may not bear certain financial obligations with regard to a certain nuclear power plant under certain circumstances; providing that ratepayers shall be deemed to have paid a certain amount in accordance with a certain agreement under certain circumstances; providing that certain nuclear decommissioning rights and obligations shall be deemed fully extinguished and satisfied under certain circumstances; requiring a certain gas and electric company to implement certain depreciation accruals until certain circumstances exist; ~~providing that certain electric generation facilities constructed after a certain date shall be owned by an electric company; providing that power generated by certain electric generation facilities shall be first offered for sale to certain electric companies; providing that the Commission has jurisdiction over the sale of power generated from certain electric generation facilities;~~ requiring the Commission to review certain regulations; ~~providing for the construction of this Act;~~ declaring that the provisions of this Act are not severable; and generally relating to nuclear decommissioning, electric industry restructuring, and acquisition and financing approvals of public service companies.

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

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

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

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

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

Article – Public Utility Companies

3–109.

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

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

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

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

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

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

6–101.

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

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

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

- (i) operates in Maryland; and
- (ii) is of the same class as the acquiring company.

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

- 1. the stock is acquired as collateral security; and
- 2. the Commission approves the acquisition.

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

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

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

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

6-105.

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

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

(i) existing legislation requires the approval by the Commission of the acquisition by one public service company of another public service company's stocks and obligations, but does not require the Commission's approval of these acquisitions by persons not engaged in the public utility business in the State; and

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

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

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

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

- (I) THE SECURITIES AND EXCHANGE COMMISSION;**
- (II) THE FEDERAL ENERGY REGULATORY COMMISSION;**
- (III) THE NUCLEAR REGULATORY COMMISSION;**
- (IV) THE DEPARTMENT OF JUSTICE;**
- (V) THE FEDERAL TRADE COMMISSION; OR**
- (VI) ANY SUCCESSOR AGENCY.**

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

(E) (1) Without prior authorization from the Commission, a person may not acquire, directly or indirectly, the power to exercise any substantial influence over the policies and actions of an electric company, **GAS AND ELECTRIC COMPANY**, or gas

company, if the person would become an affiliate of the electric company, **GAS AND ELECTRIC COMPANY**, or gas company as a result of the acquisition.

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

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

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

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

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

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

- (1) the applicant's identity and financial ability;
- (2) the background of the key personnel associated with the applicant;
- (3) the source and amounts of funds or other consideration to be used in the acquisition;
- (4) the applicant's compliance with federal law in carrying out the acquisition;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (vi) issues of reliability, quality of service, and quality of customer service;
- (vii) the potential impact of the acquisition on community investment;
- (viii) affiliate and cross-subsidization issues;
- (ix) the use or pledge of utility assets for the benefit of an affiliate;
- (x) jurisdictional and choice-of-law issues; [and]

(xi) WHETHER IT IS NECESSARY TO REVISE THE COMMISSION'S RING FENCING AND CODE OF CONDUCT REGULATIONS IN LIGHT OF THE ACQUISITION; AND

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

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

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

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

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

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

(II) UNLESS THE COMMISSION FINDS, BASED ON GOOD CAUSE, THAT THE 180-DAY PERIOD SHOULD BE EXTENDED FOR AN ADDITIONAL 45 DAYS, FAILURE OF THE COMMISSION TO ISSUE AN ORDER WITHIN THE

180-DAY PERIOD SHALL BE CONSIDERED TO BE AN APPROVAL OF THE ACQUISITION BY THE COMMISSION.

~~[(g)]~~ **(H)** Nothing in this section prohibits dissemination by any party of information concerning the acquisition if the dissemination does not otherwise conflict with federal or State law.

Chapter 5 of the Acts of the Special Session of 2006, as amended by Chapter 549 of the Acts of 2007

[SECTION 5. AND BE IT FURTHER ENACTED, That:

The Public Service Commission shall:

(1) conduct 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) provide to residential customers of the Baltimore Gas and Electric Company funds for mitigation of rate increases 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

(3) require that any funds for mitigating rates for residential electric customers under item (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.]

Chapter 549 of the Acts of 2007

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) (1) 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 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.

(3) The review and evaluation shall include any orders that were issued by the Commission relating to the requirements of [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.

Chapter 5 of the Acts of the General Assembly of the Special Session of 2006

SECTION 6. AND BE IT FURTHER ENACTED, That:

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

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

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

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

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

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

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

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

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

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

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

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

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

~~SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding any other law:~~

~~(1) any new electric generation facility constructed in the State after the effective date of this Act shall be owned by an electric company in the State and may not be owned by an electric supplier or an affiliate of an electric company in the State;~~

~~(2) power generated from an electric generation facility in the State constructed after the effective date of this Act shall be first offered for sale to an electric company in the State; and~~

~~(3) the Public Service Commission has jurisdiction over the sale of power generated from an electric generation facility in the State constructed after the effective date of this Act.~~

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

~~SECTION 3. 4. AND BE IT FURTHER ENACTED, That nothing in this Act may be construed to limit the Public Service Commission's regulatory authority with regard to the regulation of the Maryland electricity markets, customer choice, standard offer service, rates, rate design, or codes of conduct.~~

SECTION ~~3.~~ 4. ~~5.~~ 3. AND BE IT FURTHER ENACTED, That, notwithstanding the provisions of Article 1, § 23 of the Annotated Code of Maryland, the provisions of this Act are not severable, and if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, no other provision or application of this Act may be given effect.

SECTION ~~4.~~ ~~5.~~ ~~6.~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2008.

Approved by the Governor, April 24, 2008.