SB 991

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 991 (Senator Garagiola, *et al.*)
Finance

Public Service Commission - Alternatives to Long-Term Electricity Generation Contracts and New Electricity Generation

This bill prohibits the Public Service Commission from requiring or approving electric companies to buy or build generation assets or enter into long-term generation contracts until existing alternatives have been considered and pursued through investigatory and evidentiary proceedings. In coordination with the Maryland Department of the Environment, PSC must also conduct investigatory and evidentiary proceedings to • study the associated environmental and customer rate impacts; and • demonstrate that new transmission will not be available before possible intermittent power outages, before requiring an electric company to buy or build generation assets or enter into a long-term contract requirement. If the EmPOWER Maryland Energy Efficiency Act of 2008 is enacted, PSC may not place the generation asset or long-term contract requirement on electric companies before June 1, 2009. Renewable Energy Portfolio Standard compliance requirements are excluded from the bill's prohibition requirement. Study and evaluation results must be reported to the Governor and the General Assembly by January 1, 2009.

The bill takes effect June 1, 2008 and terminates December 31, 2010.

Fiscal Summary

State Effect: Special fund expenditures could increase by $500,000 in FY 2009 as part of PSC investigatory and evidentiary proceedings. Office of People's Counsel special fund expenditures could also increase by an indeterminate amount to hire outside experts. Special fund expenditures for the Maryland Department of the Environment could increase by an indeterminate amount to determine site-by-site evaluations of environmental and cost impacts if generation assets are constructed and/or output purchased. Special fund revenues for PSC and OPC would increase by a corresponding amount from the cost recovery assessment on entities under the jurisdiction of PSC.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits the Public Service Commission from requiring or approving electric companies to buy or build generation assets or enter into long-term generation contracts until existing alternatives have been considered and pursued, including • transmission enhancements; • demand response solutions; • customer-owned generation facilities; and • postponing the retirement of existing generation facilities. Renewable Energy Portfolio Standard compliance requirements are excluded from the bill's prohibition requirement.

PSC must conduct investigatory and evidentiary proceedings to • study alternatives to long-term electricity generation contracts and new electricity generating facilities; and • in coordination with the Maryland Department of the Environment, study the environmental, short- and long-term expenses to electricity customers, and to what extent a rate increase would result after terminating a long-term contract as compared with existing alternatives. In the proceedings, PSC and MDE must also demonstrate that new transmission will not be available before there is a possibility of intermittent power outages before placing the generation asset or long-term contract requirement on electric companies. Study and evaluation results must be reported to the Governor and the General Assembly by January 1, 2009.

PSC may not place the generation asset or long-term contract requirement on electric companies before June 1, 2009, if the EmPOWER Maryland Energy Efficiency Act of 2008 is enacted.

Current Law: The Electric Customer Choice and Competition Act of 1999 provided that, as of July 1, 2000, all customers of electric companies had the opportunity to choose electric suppliers. Further, the Act required price caps with statewide rate reductions for four years which could be extended by settlement agreement. Under the final settlement agreements, the price caps required under the Act expired in PEPCO and Delmarva service territories on July 1, 2004, expired in the Baltimore Gas & Electric Company service territory on July 1, 2006, and will expire in the Allegheny service territory on January 1, 2009.

Local electric companies (*i.e.*, investor-owned utilities) who own the "wires" portion of the electric system obtain electricity supply through a competitive process for residential and small commercial customers that participate in standard offer service (SOS). In order to meet long-term, anticipated demand in the State for residential and small commercial SOS and other electricity supply, PSC may require or allow an investor-owned electric company to construct, acquire, or lease, and operate, its own generating facilities, and transmission facilities necessary to interconnect the generating facilities with the electric grid, subject to appropriate cost recovery. Residential and small commercial SOS, supplied through the electric companies, and electric suppliers' retail electricity products, are subject to Renewable Energy Portfolio Standard compliance requirements.

PSC, after notice and hearings, may adopt regulations that prescribe standards for safe, adequate, reasonable, and proper service by regulated electric companies. Regulated electric companies must furnish equipment, services, and facilities that are safe, adequate, just, reasonable, economical, and efficient, while considering the conservation of natural resources and the quality of the environment.

Case Number 9117, Phase II is currently before PSC. One of the two main subject areas identified in the commission's September 25, 2007 Notice Initiating Phase II Proceeding is the need for utilities to build and procure "new build" capacity or enter into wholesale purchase arrangements to avert a potential electric supply reliability problem within the next four or five years.

Background: Effective July 2000, the Maryland Electric Customer Choice and Competition Act of 1999 restructured the electric utility industry in the State to allow electric retail customers to potentially shop for electric power from various electric suppliers. Implementation of the Act was predicated on the supposition that the emergence of a competitive retail market would put downward pressure on prices and provide consumers with lower-cost power. Prior to restructuring, the local electric utility, operating as a regulated, franchised monopoly, supplied all end-use customers within its service area with the three principal components of electric power service: generation; transmission; and distribution. With Maryland's restructuring of the electric power industry, generation of electricity is offered in a competitive wholesale marketplace. Prices for power supply are therefore determined by electric suppliers operating in the market, rather than being determined by PSC in a regulated environment.

Merchant generators or unregulated utility affiliates now own most power plants. Consequently, residential, commercial, and industrial customers purchase power from electric suppliers other than their local regulated utility. Power is purchased from electric suppliers, who either own generation assets or have purchased power from the wholesale market. The regulation of the wholesale market is overseen by the Federal Regulatory

Energy Commission. This power is transported through the local utilities' transmission and distribution system (*i.e.*, "the wires") and delivered to retail customers.

Standard Offer Service

The Maryland Electric Customer Choice and Competition Act of 1999 accommodated retail customers that did not shop or could not shop for electric power supplies, while the competitive retail market developed and electric suppliers entered the retail markets to supply electricity products. During a multiyear transition period, the traditional electric utilities made available SOS at rates frozen and below the rates in effect prior to electric restructuring. For Maryland's various customer classes, these fixed rates have largely expired; however, SOS has been extended and now reflects market prices for power. Coinciding with the removal of fixed SOS rates, was a realization of high and volatile wholesale market prices throughout the region, including the Baltimore/Washington metropolitan area. Higher wholesale market prices reflect higher fuel prices to generate power, barriers to import lower-cost power supplies, and increased costs of environmental compliance.

Local electric companies (*i.e.*, investor-owned utilities) who own the "wires" portion of the electric system obtain electricity supply through a competitive process for residential and small commercial customers that participate in SOS. Electric companies are required to procure electricity for residential and small commercial customers through one or more bilateral contracts. The investor-owned electric companies submit bids to supply anticipated SOS load for residential and small commercial customers, as part of a portfolio of blended wholesale supply contracts. Current SOS contracts for residential and small commercial customers are all two years in length. SOS contracts for medium-size commercial customers are three months in length. The blended portfolio mitigates the potential for sudden retail price changes due to volatile whole market conditions. Additionally, in order to prevent an excessive amount of load from being exposed to upward market price risks and volatility, PSC may stagger the dates of the wholesale auctions.

PSC General Assembly Reports

Chapter 5 of the 2006 special session mandated PSC to complete several reports to assist the General Assembly in assessing the impact of electric restructuring on the State and in altering it for the benefit of consumers. PSC was required to study actions taken to implement restructuring and study the impact of potential changes such as re-regulating electric generation.

Chapter 549 of 2007 required PSC to initiate new proceedings to review and evaluate certain requirements of Chapter 5 of the 2006 special session, including the review and evaluation of any orders that were issued under the 2006 enactment. The Act also required PSC to conduct additional studies and complete reports on the general regulatory structure of the electric industry under the Electric Customer Choice and Competition Act of 1999, including options for re-regulation, if advised. Additionally, PSC was required 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 of standard offer service for these small retail electricity customers.

PSC issued a preliminary report identifying the issues relating to options for re-regulation as required and presented the preliminary report to the Maryland General Assembly in December 2007. A final report containing the complete set of evaluations, findings, and recommendations required under Chapter 5, as amended by Chapter 549 of 2007, is due December 1, 2008.

PJM Interconnection

PJM Interconnection is the regional transmission organization (RTO) that oversees the high-voltage transmission grid and operates the centrally dispatched, wholesale electricity market spanning Maryland and all or part of 12 other states and Washington, DC. PJM recently approved two large transmission backbone projects to address the region's forecasted reliability shortfall. PJM is also undertaking an auction mechanism, known as the Reliability Pricing Model (RPM), to assist with incentivising market development of generation capacity. As a tool, RPM also stimulates demand response, reduction in power plant retirements, while simultaneously providing financial incentives for the unregulated power plant sector to locate in specific regions. As such, PJM has stepped in to provide a structure supporting the development of what was otherwise expected to be accomplished by individual generation sector participants through free market choice.

At this time, PJM cannot reliability estimate the completion date for the approved transmission lines designed to import capacity from the west. In part, this is due to permitting and siting issues associated with constructing a multistate project of a magnitude that has not been undertaken in decades. As a partial aside, Legislative Services notes that the demand for generation resources to the west of Maryland, upon which new transmission is to import and supply to the State, is also likely to increase in future years. To the extent resources to the west of Maryland will not reliably provide for Maryland's energy needs, other options to ensure power supplies must be supported and developed for the region.

Legislative Services advises that there remains ambiguity regarding the extent to which electric reliability shortfalls will occur in the 2011 to 2012 time period; however, a future of power shortages should be regarded as unacceptable. To the extent PSC approves the construction of new power plants or bilateral contracts for SOS customers that also act to mitigate the potential effects of a reliability shortfall, all customers in the region will benefit.

State Fiscal Effect: As part of investigatory and evidentiary proceedings, PSC would incur one-time special fund expenditures of $500,000 in fiscal 2009 to retain consultants and evaluate and analyze the nongeneration alternatives and then evaluate the environmental and cost impacts of buying or building various generation assets. In addition, MDE advises that additional special fund expenditures would be incurred to conduct investigatory and evidentiary proceedings that are focused on the environmental and cost impacts of buying or building various generation assets such as the output levels of emissions from power plants and land and water usage requirements that vary by technology type and site location. The bill would likely require CPCN hearings and the participation of various State agencies in the licensing process. The Office of People's Counsel advises that the requirements of the bill would require additional expenditures to retain outside consultants versed in the subject matters specified within the bill. The Maryland Energy Administration and the Department of Natural Resources could handle the bill's requirements with existing resources.

Additional Information

Prior Introductions: None.

Cross File: House Bill 822 is identified as a cross file, but it is not identical.

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

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