

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 1013

(Senator Middleton)

Finance

Economic Matters

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

This Administration bill restructures two Baltimore Gas and Electric (BGE) company ratepayer credits: one associated with nuclear decommissioning costs; the other, the return component of BGE's residential standard offer service (SOS). The bill specifies that while credit and suspension conditions are met, all ratepayer obligations for nuclear decommissioning costs are fulfilled and satisfied. The bill provides for a \$187.0 million BGE electric rate credit to residential customers, provides resolution of ongoing Public Service Commission proceedings, and eliminates PSC's obligation to prepare certain final reports to the General Assembly.

The bill provides the circuit courts with jurisdiction to enforce compliance with respect to access to books and records of a holding company and affiliates. The bill amends the provisions governing investments in public service companies and the PSC review and approval process. The bill defines the power to exercise substantial influence over the policies and actions of a company that owns or controls a gas and electric company. The bill requires an electric and gas company and holding company that operates in Maryland to provide certain federal filings to PSC. The bill expresses the intent of the General Assembly that, notwithstanding certain provisions or court findings, the provisions of this legislation are not severable.

The bill takes effect June 1, 2008.

Fiscal Summary

State Effect: The bill would not materially affect State operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: When a public utility company regulated by PSC is part of a holding company system, PSC may exercise full authority set forth in federal statute to gain access to books and records of a holding company and affiliates. The bill provides that the circuit courts have jurisdiction to enforce compliance.

The bill requires an electric and gas company and holding company that operates in Maryland to provide to PSC specified federal filings regarding the acquisition of voting securities to PSC when filing with the relevant federal agencies. PSC must provide the same confidentiality and other protections as provided at the federal level.

The bill amends the provisions governing investments in public service companies and the PSC review and approval process. Specifically, the bill excludes a holding company (that controls, directly or indirectly, a gas and electric company) from specified limitations on other companies' ability to acquire the holding company's capital stock. Simultaneously, the bill defines a level of stock ownership in the holding company of a gas and electric company below which an investor will be deemed not to exercise substantial influence over the policies and actions of the holding company and its regulated affiliate.

A person is considered to have acquired power to exercise substantial influence over the policies and actions of a gas and electric company when • controlling directly or indirectly 20% or more of the outstanding voting interests of a company that owns or controls a gas and electric company; and • has the right to designate 20% or more of the board of directors of a company that owns or controls a gas and electric company.

If, after acquiring voting securities, a person exercises substantial influence over the policies and actions of a gas and electric company, PSC may issue a compliance order and take authorized and necessary actions. Direct acquisition of voting interests of a gas and electric company are excluded from the bill's substantial influence provision.

If substantial influence does not occur, PSC authorization would not be required, providing a "safe harbor" for the investment. The limitations on acquisitions of a gas and electric company's own capital stock remain unchanged.

If PSC approval is required, PSC must issue an order approving or denying an application to acquire interests in an electric company, gas company, or an electric and gas company

in 180 days. Unless PSC finds, based on good cause, that the 180-day period should be extended for an additional 45 days, failure to be approved by PSC is considered approval. When considering an application, PSC must consider if it is necessary to revise ring fencing and code of conduct regulations.

The bill eliminates a PSC requirement to conduct hearings reevaluating the terms and implementation of the 1999 BGE settlement agreement. The bill restructures two BGE ratepayer credits created by Chapter 5 of the 2006 special session totaling \$386 million: the nuclear decommissioning credit and the residential return component of the administrative charge collected by the electric company for providing SOS. The bill provides that BGE must credit or suspend monetary collections from customers according to the following:

- BGE can collect the residential return component of the administrative charge for SOS for a two-year period (June 1, 2008 to May 31, 2010); however, collections will cease for the remaining six-and-a-half year term, beginning June 1, 2010 through December 31, 2016 (deemed as annual credit of \$20 million annually);
- BGE will collect \$18,661,980 annually from customers for nuclear decommissioning charges, to be imputed as if deposited within the Nuclear Decommissioning Trust Fund and credited to residential customers, through December 31, 2016; and
- BGE will provide a one-time \$187.0 million credit divided equally and credited to 1.1 million residential customers by December 31, 2008 (approximately \$170 per residential customer).

The bill provides for PSC to true-up the annual nuclear decommissioning charge in a BGE rate case. The residential customer credits and suspensions may not be recovered through electric rates. As long as the bill's credit and suspension conditions are met:

- ratepayers will not bear any financial obligation with regard to the decommissioning of the two Calvert Cliff nuclear power plants;
- ratepayers will be deemed to have paid \$520 million (1993 dollars) in nuclear decommissioning costs; and
- all obligations of the nuclear decommissioning costs will be deemed fulfilled and satisfied.

The bill requires each gas and electric company to implement PSC staff's recommended depreciation accruals set forth on Schedule A of the settlement agreement by BGE, PSC,

other parties. In addition, PSC must review its code of conduct and ring fencing regulations.

Current Law: The Electric Customer Choice and Competition Act of 1999 restructured the electric utility industry in Maryland, and required Maryland's traditional local electric utilities to transfer their electric generation assets to unregulated subsidiaries or sell these assets to unaffiliated companies. With the elimination of the generation functions from regulation, PSC no longer determines the need for additional supply sources as was the case prior to implementation of restructuring. PSC does regulate the construction and operation of power plants in the State. Entities planning to construct a generation facility must receive a Certificate of Public Convenience and Necessity from PSC before construction.

PSC and multiple stakeholders undertook restructuring settlements with the four large investor-owned utilities (IOUs) to implement the electric industry restructuring legislation. Separate restructuring settlements were agreed to not only with BGE, but with the other three large IOUs that operate in the State: PEPCO, Potomac Edison (Allegheny), and Delmarva.

In 1999 (Order No. 75757, Case Nos. 8794 and 8804), PSC adopted a settlement establishing a restructuring plan for BGE. The plan included rate reductions, rate freezes, capped BGE's responsibility for Calvert Cliffs nuclear decommissioning costs, unbundled electric rates, and provided for the transfer or sale of generation facilities. The settlement agreement also provided BGE with after-tax transition costs of \$528.0 million to be recovered by customers. Cost recovery began July 1, 2000 and ended June 30, 2006.

In 2003 (PSC Order No. 78400, Case No. 8908), PSC approved a settlement agreement that established a stable priced generation service for retail market sectors. The generation service, known as Provider of Last Resort or standard offer service, is supplied by the four large IOUs (as an option to competitive service). A residential return component is included within the per kilowatt-hour SOS residential administrative charge.

For a 10-year period, Chapter 5 of the 2006 special session requires BGE to credit \$18.7 million in annual nuclear decommissioning charges. The amount totals to \$186.6 million over the 10-year period. BGE also collects \$18.7 million from industrial, commercial, and residential customers and redistributes this total amount to residential customers as a credit, resulting in a reduction in residential rates.

Applicable Federal and State Laws

Under the U.S. Code, upon the written request of a state commission having jurisdiction to regulate a public utility company in a holding company system; the holding company or other affiliates, other than the public utility company, must produce for inspection books and other records. Confidentiality must be maintained. Any U.S. District Court located in the State has jurisdiction to enforce compliance.

In Maryland, with regard to the acquisition of capital stock of a public service company, a company controlling a public service company is deemed to be a public service company of the same class as the controlled public service company. A public service company of the same class or a stock corporation can acquire more than 10% of the total capital stock of a public service company that operates in Maryland, if authorized or approved by PSC. Other stock companies are, under current law, permitted only to acquire more than 10% of a public service company's capital stock (with PSC approval) as collateral security.

Without prior authorization from PSC, a person may not acquire, directly or indirectly, the power to exercise any substantial influence over the policies and actions of an electric company or gas company, if the person would become an affiliate of the electric company or gas company as a result of the acquisition. Upon a finding by PSC that an acquisition is consistent with the public interest, convenience, and necessity, including benefits and no harm to consumers, PSC must issue an order granting the application. PSC can condition approval and the applicant bears the burden of proof.

COMAR 20.40 provides for electric and gas company code of conduct and affiliate regulations; COMAR 20.40.02.08 (B) pertains to annual utility ring fencing reporting requirements.

Background:

2008 Settlement Agreement

This bill is part of a settlement agreement that will resolve pending litigation and other disputed matters between the State of Maryland, certain State officials and various Constellation Energy Group, Inc. companies, including BGE. In the settlement agreement, all parties acknowledge and agree that the terms of the settlement agreement are subject to enactment of this bill. The parties agree on specified issues, including: Calvert Cliffs decommissioning, a \$187.0 million BGE electric rate credit to residential customers, the terms of collection of the return component of BGE's residential SOS, resolution of ongoing PSC proceedings, and elimination of PSC's obligation to prepare certain final reports to the General Assembly. The provisions of the settlement

agreement are interdependent and not severable. This bill is a cornerstone to the settlement agreement.

Based on a recent analysis, PSC has estimated that the ratepayers' liability obligation under the 1999 settlement for decommissioning Calvert Cliffs Nuclear Power Plants will be \$5.2 billion by the time the plants are scheduled for decommissioning (2034 to 2036). With contributions to date, ratepayers contributions will amount to about \$3.7 billion by the required date. Without further contributions by ratepayers, there would be a \$1.5 billion shortfall in satisfying the obligation. To close this gap, ratepayers were projected to begin annual contributions of \$33 million for 20 years, beginning 2016 and ending 2036. Under the bill, with all responsibility for funding and oversight of the funding for the decommissioning of the plants borne by Constellation, ratepayers will save about \$1.5 billion according to PSC.

Pending Litigation

The State of Maryland and Constellation Energy Group and its subsidiaries have filed concurrent law suits. The Attorney General and Governor O'Malley filed suit in Baltimore City Circuit Court that asks the court to find the credits to BGE customers specified in Chapter 5 of the 2006 special session are constitutional and legal acts of the General Assembly. Constellation Energy Group filed a lawsuit in federal court to affirm BGE's 1999 settlement agreement that implemented electric restructuring in the BGE service territory. The filing seeks to prevent what is alleged to be an unconstitutional taking of the \$386 million enacted with Chapter 5.

Restructuring

PSC and multiple stakeholders undertook restructuring settlements with the four large IOUs to implement the 1999 electric industry restructuring legislation. Separate restructuring settlements were agreed to not only with BGE, but with the other three large IOUs that operate in the State: PEPCO; Potomac Edison (Allegheny); and Delmarva. Restructuring settlements were designed to implement electric restructuring, as enacted by the General Assembly.

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 marketplace.

Moreover, Maryland's traditional local electric utilities were required to build or contract for power supply resources to provide reliable service to all customers within the utility's

franchised service territory. In exchange for the right to exclusively serve customers with the service territory, PSC would establish the rates for the electric service provided by the electric utilities. These rates were set to cover all prudent incurred investments (*e.g.*, the construction of power plants and associated costs) and provide the utility with an adequate return on investment.

The principal purpose of the asset divestiture requirement of the Restructuring Act was to support the development of a robust and competitive market for generation services by eliminating the utility's incentive to favor its own generation resources. Retail customers are supplied power via competing electricity suppliers or are provided power supplies through the electric distribution company via SOS, procured at competitive rates.

Prompted by increases in the price of electricity and the slow development of a competitive market for residential electricity supply, the General Assembly convened a special session on June 14, 2006 to consider comprehensive legislation to address electric industry restructuring, standard offer service, rate stabilization plans, and the makeup of PSC. During the 2006 special session and 2007 session, the General Assembly requested that PSC provide input with regards to • obtaining a reliable power supply for the State at reasonable and stable costs going forward; and • reevaluating the general regulatory structure, agreements, orders, and other prior actions of PSC under the Restructuring Act, including the determination of and allowance for stranded costs.

In January 2008, PSC issued a report and presented findings to legislative committees that, in part, assert that the 1999 PSC order approving the BGE settlement resulted in unforeseen financial gains to BGE. PSC also provided the General Assembly with recommendations and intended courses of action regarding nuclear decommissioning funds. Several pieces of legislation to address the topic were subsequently introduced in the 2008 session; most notably, SB 997 and HB 1600.

Additional Information

Prior Introductions: None.

Cross File: HB 1626 (The Speaker) (By Request – Administration) – Economic Matters.

Information Source(s): Constellation Energy Group, Judiciary (Administrative Office of the Courts), Public Service Commission, Office of People's Counsel, Department of Legislative Services

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