Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1246 (Delegate Hucker, *et al.*)
Economic Matters

Transition Costs - Return to Baltimore Gas and Electric Company Customers - Condition of Approval to Construct a Nuclear Reactor

This bill prohibits the Public Service Commission from taking a final action on an application for a certificate of public convenience and necessity to construct a nuclear reactor until Constellation Energy Group, Inc. returns $528 million in after-tax transition costs to Baltimore Gas and Electric Company. BGE, in turn, must return the amount to customers through a credit on customer bills.

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: Overall minimal; however, small businesses receiving a credit would realize a small monetary gain.

Analysis

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.

Background:

Transition Costs

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, rates freezes, capped BGE's responsibility for Calvert Cliffs nuclear decommissioning costs, allowed recovery of $528 million of stranded generation costs, unbundled electric rates, and provided for the transfer or sale of generation facilities.

The settlement agreement provided BGE with after-tax transition costs to be recovered from customers of $528 million. The cost recovery began (per kilowatt charge) July 1, 2000 and ended June 30, 2006. The 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.

Prior to restructuring of the electric industry, 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.

One of the more complex issues in enacting electric utility industry restructuring was the treatment of transition costs or benefits, the difference between the book value and market value of an electric company's generation assets, subject to adjustments for reasons of public policy. Deregulation allowed an electric company to recover certain prudently incurred transition costs but those costs had to be under a PSC-approved transition plan, developed in accordance with fact-finding and evidentiary proceedings, and subject to full mitigation. An electric company with verified recoverable transition costs could institute a competitive transition charge that applied generally to customers located in the electric company's service territory. An electric company was able to transfer its generation facilities or generation assets to an affiliate, but the transfer could not affect or restrict the PSC's determination of the value of a generation asset for purposes of transition costs or benefits.

As part of the transition cost determination, PSC was required to consider, the following factors in determining transition cost relating to investment in a generation asset: (1) the prudence and verifiability of the investment; (2) whether the investment is used and useful; (3) whether the loss is one of which investors can be said to have reasonably borne the risk; and (4) whether investors have already been compensated for the risk.

PSC 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 or allowing local aggregation.

Chapter 549 of 2007 requires the current 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. Chapter 549 of 2007 also requires 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 reregulation, if advised. Additionally, PSC is 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 reregulation 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.

PSC Interim Report on Options for Reregulation and New Generation

In the December 2007 interim report, PSC stated that Maryland faces a serious reliability concern in the 2011-2012 timeframe. The lack of new generation in the State, coupled with inadequate transmission capability and growing demand means Maryland faces the prospect of brown-outs or even rolling black-outs on hot summer days in 2011-2012. Moreover, PSC consultants advise that along with new and expanded transmission capacity, the construction of nuclear facilities at Calvert Cliffs would result in the highest cumulative economic value added ("EVA") for Maryland when compared to the costs. However, given the lead time associated with such a project, the price benefits are not realized until 2017. Nonetheless, PSC's report indicates new nuclear generating capacity provides a rapid, substantial, and sustained benefit to Maryland ratepayers unmatched over the 20-year horizon by any other option. The option evaluated was the addition of a new 1,600 MW reactor unit at the Calvert Cliffs facility.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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Analysis by: Michael P. Lee

Direct Inquiries to:
(410) 946-5510
(301) 970-5510