

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 997

(Senator Middleton)

Finance

Public Service Commission - Regulation of Nuclear Decommissioning Funds

This bill alters the nuclear decommissioning funding component of the BGE settlement agreement approved by the Public Service Commission in Order No. 75757. To decommission each of the two nuclear power plants operating at Calvert Cliffs, the bill establishes that BGE electric customer payments may not exceed the minimum decommissioning fund estimate of December 31, 2006 of \$661,936,000, escalated at 6% annually for future years. The bill therefore establishes a maximum obligation for BGE electric customers that extends through the earlier of • the decommissioning date as provided in the operating license of the nuclear facilities as of December 2006; or • the actual date of decommissioning.

The bill also provides PSC with regulatory oversight regarding the performance of the nuclear decommissioning fund. PSC is to ensure that specified nuclear decommissioning funds are held, administered, and maintained in a specified manner and ensure that specified returns on the funds inure solely to the benefit of BGE electric customers.

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: Potentially minimal.

Analysis

Bill Summary: The Public Service Commission must ensure that nuclear decommissioning funds are held, administered, and maintained in a form and manner that

- is prudent;
- adequately protects and secures the funds so they are available for their intended purpose;
- ensures returns on the funds solely benefit electric customers, except for administration and management of the fund;
- regularly monitor fund performance, portfolio composition, and fund management; and
- ensure the returns on fund earnings are maximized.

The total of all contributions by electric customers to the costs of decommissioning a nuclear power plant in the State, together with all earnings on the contributions, may not exceed a minimum decommissioning fund estimate of December 31, 2006 of \$661,936,000. This amount is established under the generic funding calculation specified under 10 Code of Federal Regulations 50.75 and eleventh revision of NUREG-1307, as set forth in the licensee's *2007 Decommissioning Funding Status Report* filed with the Nuclear Regulatory Commission. The bill provides a set escalation rate of 6%, applicable through the earlier of

- the decommissioning date as provided in the nuclear power plants' operating license as of December 2006; or
- the actual date of decommissioning.

The cost of decommissioning must not include the dismantling of nonradioactive systems and structures or the cost of managing and storing spent fuel on the site of the power plant. Electric customer contributions may not exceed actual decommissioning costs, and any excess must be refunded to electric customers.

Current Law: As part of the process to provide reasonable assurance that adequate funds for nuclear decommissioning will be available when needed, the U.S. Nuclear Regulatory Commission (NRC) requires nuclear power reactor licensees to set aside funds to ensure facilities can be radiologically decontaminated when a nuclear power plant shuts down. Dismantling of facilities or the care of spent fuel are not components of NRC's decommissioning fund requirements.

Every two years, nuclear power reactor licensees are required to report the financial status of their external decommissioning funds to NRC. Licensees are to estimate the funding needs either by using an NRC-supplied formula or a site-specific methodology. NRC only allows a site-specific methodology if the funds collected are greater than the minimum funding amount required by NRC. That is, a site-specific collection methodology cannot be less than the NRC minimum decommissioning fund requirement. NRC does not discourage the placement of additional funds into a decommissioning fund to provide for nuclear decontamination.

On an annual basis, nuclear power plant licensees are required to adjust the estimated costs of decommissioning their plants. The NRC minimum decommissioning fund requirement is provided for in 10 Code of Federal Regulations (CFR) 50.75 and factors included in the latest available revision of NUREG-1307. NUREG-1307 factors consider burial expenses, labor, and energy according to technology type, region, and other components. NRC then forecasts if a licensee's currently held amounts will cover decommissioning costs once the license expires. Licensees must meet or exceed the decommissioning fund minimum requirement.

Nuclear licensees are only required to report external trust funds amounts. Internally held amounts, controlled by a licensee, are not recognized by NRC. External trust funds must be held in accordance to specified NRC regulations.

NRC regulations do not allow a licensee to take money out of a decommissioning fund, except for fees associated with maintaining the trust fund (*e.g.*, administrative costs) and a one-time study of the site to determine the actual costs of decontamination (10 CFR 50.75 and 10 CFR 50.82).

In 1999 (Order No. 75757, Case Nos. 8794 and 8804), PSC adopted a settlement establishing a restructuring plan for BGE. The plan included retail rate reductions, retail 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.

For a 10-year period, Chapter 5 of 2006 requires BGE to credit \$18.7 million in annual nuclear decommissioning charges. The amount totals to \$187.0 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.

Background: The State of Maryland and Constellation Energy Group and its subsidiaries have filed concurrent law suits. 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 of 2006. 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 2006 are constitutional and legal acts of the General Assembly.

Restructuring

PSC and multiple stakeholders undertook restructuring settlements with the four large investor-owned utilities (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.

Implementation of electric industry restructuring 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. What was envisioned (*e.g.*, lower prices and reduced costs) did not occur. Retail electric prices have increased throughout the Baltimore/Washington, DC region that encompasses both BGE and PEPCO service territories.

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. 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 in 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.

PSC Reports to the General Assembly

In January 2008, PSC issued a report and presented findings to legislative committees that, in part, asserts that the 1999 PSC order approving the BGE settlement resulted in

unforeseen financial gains to BGE. PSC's report concludes, had foresight and the actual cost and benefits of the settlement been properly weighed, under the current PSC, the settlement would not be found to be in the public interest. Moreover, the settlement agreement was not subject to adjudicatory hearings, which would have allowed for a public cross examination of expert witnesses; thereby providing additional review and understanding of the assumptions underlying the valuations comprising the settlement agreement.

In the presentation to the General Assembly, PSC's recommendations and intended courses of action included the following recommendations regarding nuclear decommissioning funds:

Initiate formal proceedings: • determine if the nuclear decommission funds are appropriately administered; • ascertain if any violations to the 1999 settlement, the 1999 order, or any other law regarding these funds have been violated.

Consider the introduction of legislation: • provide clear oversight authority for PSC over the decommissioning funds and their disposition; • provide upon a finding of fund management that is detrimental to ratepayers, authorize PSC to require BGE or the appropriate affiliate to credit additional amounts to the fund; • permit PSC to require BGE or the appropriate affiliate to increase funding amounts for the decommissioning fund.

National Regulatory Commission Decommissioning Funding

NRC calculates a minimum decommissioning funding amount for each nuclear unit operating across the country. Currently, there are 104 nuclear facilities in operation. NRC also forecasts if a licensee's currently held amounts, provided for in external decommissioning funds, will cover decommissioning costs once the license expires. Licensees must meet or exceed the decommissioning fund minimum requirement. Guidance with respect to these two fund amounts is provided via 10 CFR 50.75 and the latest available revision of NUREG-1307 – Revision 12. NRC provides calculations on a unit-by-unit basis.

Exhibit 1 presents • NRC's minimum decommissioning fund requirement amount for the Calvert Cliffs nuclear facilities; • the currently reported external decommissioning fund amounts reported to NRC; and • the most recent NRC forecast of future fund availability used to determine if adequate funds to decommission the Calvert Cliffs facilities are available upon plant retirements. Legislative Services advises that these amounts

fluctuate over time, are subject to NRC regulatory adjustments, and the actual decommissioning cost for the two units is unclear at this time and subject to uncertainty.

Exhibit 1
NRC Calvert Cliffs Decommissioning Funds

Required Minimum Funding Assurance	\$694,484,270
Currently Held in External Funds	\$400,249,000
NRC Forecast of Future Funds (calculated from currently held external funds)	<u>765,670,218</u>
Amount in Excess of Minimum NRC Requirement	\$71,185,948

Note: NRC's estimate only accounts for externally held decommissioning funds.

NRC advises that 84 of the 104 nuclear power plant external decommissioning funds are held by New York, Mellon Bank. PSC advises the external decommissioning funds for the two Calvert Cliffs units are held equally (*i.e.*, 50%/50%) by New York, Mellon Bank and US Trust. Legislative Services advises that Exhibit 1 only presents externally held funds and does not consider monies collected for Calvert Cliffs nuclear power plant decommissioning that are provided for in any internally held reserves. NRC does not consider internally held decommissioning reserves when calculating minimum funding requirements nor are any internal reserves captured in Exhibit 1. Legislative Services notes that NRC's current forecast of external funds, while being subject to substantial adjustments, is in excess of the NRC minimum requirement by \$71.2 million for the two Calvert Cliffs units in aggregate.

Additional Information

Prior Introductions: None.

Cross File: HB 1600 (Delegate McHale) – Economic Matters.

Information Source(s): Department of Natural Resources, Office of People's Counsel, Public Service Commission, U.S. Nuclear Regulatory Commission, Department of Legislative Services

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mcp/hlb

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