

**Department of Legislative Services**  
 Maryland General Assembly  
 2009 Session

**FISCAL AND POLICY NOTE**

Senate Bill 795  
 Finance

(Senators Pipkin and Rosapepe)

**Maryland Electricity Reregulation and Energy Independence Act of 2009**

This bill indicates that the State should undertake action to return to a regulated electric market for all customer classes that results in a reliable electric system at the best possible price for ratepayers. All new electric generation facilities built in the State on or after July 1, 2009 must be owned by an electric company in the State or a consortium, except under certain circumstances. The bill also establishes procedures for an electric company in the State to acquire an existing electric generation facility in operation before July 1, 2009 that is not currently owned by an electric company in the State.

The bill takes effect July 1, 2009.

**Fiscal Summary**

**State Effect:** Special fund expenditures increase by \$1.4 million in FY 2010 and 2011 for reregulation purposes. Future year expenditures reflect a decrease in consulting fees. Revenues are not affected.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	1,378,100	1,432,700	567,800	578,500	374,000
Net Effect	(\$1,378,100)	(\$1,432,700)	(\$567,800)	(\$578,500)	(\$374,000)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** None.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** An electric generation facility constructed in the State on or after July 1, 2009 must be owned by an electric company or a consortium. A consortium is defined as a combination of electric companies, each of which is in the State. A facility built after this date may also be owned by an electricity supplier, a parent or affiliate of an electric company, or any combination of the above if it enters into a Public Service Commission (PSC)-approved contract to sell electricity generated to an electric company or consortium. This restriction does not apply to on-site generated electricity; a waste-to-energy generation facility; a municipal electric utility; a small rural electric cooperative; a generation facility of less than 30 megawatts in capacity; a renewable on-site generator; an eligible customer-generator; or an electric generation facility owned or controlled by a unit of local government.

Electricity generated from an electric facility, constructed on or after July 1, 2009, must first be offered for sale to an electric company in the State or a consortium. If electricity produced is not sold directly or through a contract, it may then be sold to the electric grid. PSC has authority over a generation facility or share of a generation facility, including the sale of electricity generated.

### *Existing Electric Generation Facilities*

Based on market conditions, PSC must determine appropriate times to require an electric company in the State or a consortium to acquire an electric generation facility or a share of an electric generation facility that was in operation prior to July 1, 2009 and is not owned by an electric company in the State or a consortium. PSC must seek to identify an opportunity for appropriate times to take action by:

- monitoring electric industry market transactions;
- using outside experts and consultants;
- having discussions with owners of electric generation facilities and electric companies in the State; and
- any other manner, as determined by PSC.

### *Requiring Reregulation of Electric Generating Facilities*

If PSC determines it to be an appropriate time to require an electric company in the State or a consortium to acquire an electric generation facility, PSC must initiate investigatory and evidentiary proceedings or hearings to evaluate costs, risks, and benefits to ratepayers. These proceedings must consider the impact of requiring such a transaction. In connection with such a hearing, the owner of an electric generation facility must provide PSC access to any accounts, books, papers, and documents that PSC considers

necessary. If PSC finds that such an acquisition is in the public interest, convenience, and necessity, PSC must take action to require an electric company in the State or a consortium to acquire an electric generation facility or a share in an electric generation facility.

An electric generation facility that was acquired under direction of PSC must offer electricity for sale first to an electric company in the State or consortium under a contract authorized by PSC. If not purchased, directly or through a contract, by an electric company in the State or consortium, may then be sold to the electric grid. The bill specifies that PSC has authority over an electric generation facility or share of an electric generation facility, which includes sale of electricity, or a share of the facility that is acquired by an electric company in the State or a consortium.

### *Other Requirements*

PSC must direct each electric company in the State to develop a plan toward meeting the long-term goal of supplying the electricity necessary to serve the load of the electric company. PSC and DNR are required to meet annually and assess these long-term the plans. Is considering an application for a certificate of public convenience and necessity (CPCN), PSC must consider the need to meet existing and future demand for electric services.

**Current Law:** In order to meet long-term anticipated demand in the State for standard offer service (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.

The licensing of new electric power plants or overhead transmission lines in the State is a comprehensive two-part process involving PSC and several other State agencies, including the Department of Natural Resources and the Maryland Department of the Environment. PSC is the lead agency for licensing the siting, construction, and operation of power plants in the State. Companies wishing to construct a new power plant or an overhead transmission line must apply to PSC for a CPCN.

In an application for a CPCN, PSC must consider the recommendation of the local government in which the generating facility or overhead transmission line may be located. PSC must also consider the effect of the generating station or overhead transmission line on: (1) the stability and reliability of the electric system, economics, aesthetics, historic sites, aviation safety, air and water pollution; and (2) the availability of means for the required timely disposal of wastes produced by any generating facility.

Also, for the construction of any overhead transmission line, the commission must consider the need to meet existing and current demand for electric service.

To obtain the best price for SOS for residential and small commercial customers, PSC may require each investor-owned electric company to obtain its electricity supply through a competitive process. PSC may also require or allow an investor-owned electric company to procure electricity for these customers directly from an electricity supplier through one or more bilateral contracts outside the competitive process.

**Background:** The Electric Customer Choice and Competition Act of 1999 (Chapters 3 and 4) facilitated the restructuring of the electric utility industry in Maryland. The Act required electric companies to divest themselves of generating facilities or to create a structural separation between the unregulated generation of electricity and the regulated distribution and transmission of electricity. Some electric companies created separate entities to operate unregulated and regulated businesses under a single holding company structure and other companies divested generation facilities. 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.

In response to the growing public and legislative belief that deregulation had not served the public interest, the General Assembly, through Chapter 549 of 2007 (SB 400), required PSC to conduct studies and complete reports on electric industry reregulation and to assess the availability of adequate transmission and generation facilities to serve the electrical load demands of all customers in the State. PSC, at a cost of approximately \$2 million, completed a study of the efforts for new generation and possibilities for reregulation.

In this report PSC outlined various options for “reregulation” considering tradeoffs among direct costs, risks, and benefits. PSC concluded that it would not recommend that the legislature seek to return the existing generation fleet to full cost-of-service regulation (where the ratepayers bear all prudently incurred costs to own and operate a generation plant, plus a rate of return) given the costs, risks, and likely disruptions that may result from acquiring the plants. The study valued only the impact of the cost of purchasing the assets under fair market value relative to ratepayer benefits and does not attempt to quantify complexities and risks that may result in added costs.

Instead, PSC recommended incremental, forward-looking reregulation when appropriate. Other options involve measures to mitigate price volatility for residential consumers that include directing utilities to enter into long-term contracts for new generation, establishing a State power authority to initiate power projects, adopting integrated resource planning to coordinate a variety of efforts, and aggressively intervening in

Federal Energy Regulatory Commission proceedings to shape PJM wholesale market policies.

**State Fiscal Effect:** Reregulation of the electricity market in Maryland will require a comprehensive review of existing generating facilities and ongoing analysis to determine an optimal time to require a generating facility to be purchased by an electric company in the State or a consortium. A preliminary analysis identifying potential candidates has already been prepared in accordance with Chapter 549 of 2007; however, PSC advises that a considerable amount of fees for consulting services are required to identify plants to acquire and implement a regulated electricity market.

Special fund expenditures may increase by \$1.4 million in fiscal 2010 and 2011. This estimate reflects consulting fees and the cost of hiring three full-time positions to perform ongoing monitoring of market conditions and to assist with reregulation efforts. Consulting fees will total \$1,225,000 in fiscal 2010 and 2011 and \$350,000 in fiscal 2012 and 2013. Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover; and 1% annual increases in ongoing operating expenses.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1312 (Delegates Smigiel and Taylor) - Rules and Executive Nominations.

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

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