

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 696 (Delegate McDonough)
Economic Matters

Constellation Energy Group Review Commission

This bill establishes a Constellation Energy Group Review Commission to review the details surrounding the pending sale of Constellation Energy Group, Inc. (Constellation) to MidAmerican Energy Holdings Company (MidAmerican). The Public Service Commission (PSC), Office of the People's Counsel (OPC), and the Office of the Attorney General (OAG) must provide staff support for the commission. The commission must report its findings to the Governor and the General Assembly by January 1, 2010.

The bill takes effect June 1, 2009 and terminates on May 31, 2010.

Fiscal Summary

State Effect: Given the State's fiscal difficulties, agency budgets have been constrained. Thus, the requirement to staff the commission and develop the report may not be absorbable within the existing budgeted resources of PSC, OPC, and OAG. Instead, general and special fund expenditures may increase in FY 2010 for contractual staff to support the commission and complete the required evaluation. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The commission must examine the events leading up to the sale and possible causes of Constellation's financial troubles; management's efforts to prevent the financial failure; the terms of the sale; alternatives to the sale, including bankruptcy or a

sale to another buyer; whether Constellation executives stand to benefit from the sale; and the timing and value of any sales of Constellation stock by Constellation executives in the period leading up to the company's financial troubles and eventual pending sale to MidAmerican.

Current Law: State law requires PSC approval for any transaction where a person may acquire, directly or indirectly, the power to “exercise any substantial influence over the policies and actions” of an electric company, gas and electric company, or gas company. This requirement also applies if the person would become an affiliate of the electric company, gas and electric company, or gas company as a result of the acquisition.

This restriction does not apply when a person acquires up to 20% of the voting interests of a gas and electric *holding* company, and the person is not authorized to designate more than 20% of the holding company's board of directors. State law specifies that in such a transaction the acquiring party is not considered to have acquired “substantial influence over the policies and actions of a gas and electric company.”

Background: In September 2008, as a result of turbulent financial markets, tightening credit markets, and involvement in volatile commodities-based businesses, Constellation decided to sell itself to MidAmerican. The agreement would have made Constellation an indirect wholly owned subsidiary of MidAmerican. If approved, MidAmerican would have purchased all of the shares of Constellation for \$26.50/share, at a cost of \$4.7 billion. In October 2008, Constellation, MidAmerican, and BGE filed an application with PSC for approval of the acquisition. Because the acquisition of Constellation Energy Group by MidAmerican was a 100% acquisition, PSC approval was required. PSC opened Case Number 9160 to consider the impact of the transaction.

In December 2008, Constellation terminated the transaction with MidAmerican and announced plans to pursue a different transaction with Electricité de France International, SA and certain of its affiliates (EDF). At the time, EDF was already one of Constellation's largest shareholders at 9.5% and a partner in nuclear power development in Maryland. Termination of the transaction resulted in Constellation granting a 10% equity stake to MidAmerican, paying MidAmerican a cash payment of \$500 million, and incurring \$1 billion in debt to MidAmerican, which has since been repaid with interest.

The EDF transaction was structured differently than the terminated MidAmerican structure, in that it included a purchase of assets, instead of a controlling portion of Constellation's stock. The transaction included payment of \$4.5 billion for a 49.99% share in Constellation's nuclear energy operations, which owns the Calvert Cliffs nuclear electric generating facility. In addition, EDF provided Constellation a \$1 billion cash

investment. The agreement also included options for Constellation to sell up to \$2.0 billion of its nonnuclear generation assets to EDF for two years.

In January 2009, PSC opened Case Number 9173 to determine if purchase of assets by EDF would result in EDF gaining “substantial influence over the policies and actions of” Constellation or BGE, thus requiring PSC approval of the transaction. PSC is anticipated to rule on the case in April 2009.

On February 19, 2009, the Federal Energy Regulatory Committee authorized the \$4.5 billion purchase by EDF of an ownership interest in the nuclear generation and operations business of Constellation. The deal also provides EDF the right to nominate one director to Constellation’s board, expanding the Constellation board from 12 to 13 directors. EDF now owns an 8.52% interest in Constellation, acquired through open markets.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of People’s Counsel, Public Service Commission, Department of Legislative Services

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mlm/rhh

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