

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 897

(Senators Rosapepe and Pipkin)

Finance

Public Service Commission - Acquisition of Power to Influence Electric Company, Gas and Electric Company, or Gas Company Policy or Action - Authorization

This emergency bill specifies that if a person seeks to 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 through means other than acquisition of voting interest, the transaction requires prior authorization of the Public Service Commission (PSC). Other means of acquisition may include purchase of assets, such as electricity generating facilities.

This bill affects any transactions executed on or after June 1, 2008, for direct or indirect acquisition of the power to substantially influence the policies or actions of an electric company, a gas and electric company, or a gas company by a person who would become an affiliate of the electric company, gas and electric company, or gas company as a result of the transaction.

Fiscal Summary

State Effect: None. The bill's requirements can be handled by PSC with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

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 Energy Group (Constellation) decided to sell itself to MidAmerican Energy Holding Company (MidAmerican). 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 Energy Holdings 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.

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 assets included a 49.99% share in Constellation’s nuclear energy operations, which owns the Calvert Cliffs nuclear electric generating facility.

As a result of termination of the MidAmerican transaction, PSC concluded its Case Number 9160. 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. PSC is anticipated to rule on the case sometime in April.

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.

State Effect: In December 2008, PSC received \$2.5 million through a budget amendment to investigate the purchase of Constellation by MidAmerican. Since the transaction was subsequently terminated, investigation of the Constellation-EDF transaction can be handled by PSC with existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 737 (Delegate McHale) - Economic Matters.

Information Source(s): Public Service Commission, Department of Legislative Services

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