

SENATE BILL 795

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By: **Senators Pipkin and Rosapepe**

Introduced and read first time: February 6, 2009

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of requiring the Public Service Commission to assemble and evaluate
4 certain plans regarding electric generating needs and the means to meet those
5 needs; requiring the Commission to take final action on an application for a
6 certificate of public convenience and necessity only after a certain consideration
7 of a need to meet certain electric services; making a certain finding and
8 declaration regarding a goal of the State to return to a regulated electric
9 market; requiring that a certain new electric generation facility be owned by a
10 certain electric company or consortium of electric companies; allowing a certain
11 new electric generation facility to be owned by certain entities other than an
12 electric company under certain circumstances; requiring the sale of certain
13 electricity to be offered for sale first to a certain electric company or consortium;
14 providing that the Commission has a certain jurisdiction over a certain electric
15 generation facility; requiring certain persons to enter into a certain contract for
16 the sale of certain electricity; specifying the standards that the Commission
17 must apply in approving a certain contract; requiring the Commission to
18 determine certain times to take a certain action that require a certain electric
19 company or consortium to acquire an existing electric generation facility;
20 requiring the Commission to seek to identify certain opportunities for
21 appropriate times to take a certain action; requiring the Commission to conduct
22 certain proceedings or hearings in evaluating certain costs, risks, and benefits;
23 requiring the Commission to consider certain factors in evaluating a certain
24 acquisition and make a certain finding before taking a certain action;
25 authorizing an owner of a certain electric generation facility to enter into a
26 certain contract under certain circumstances; requiring the Commission to
27 direct electric companies to develop a plan toward meeting a certain goal;
28 requiring the Commission to implement a certain provision of law; defining a
29 certain term; and generally relating to the Public Service Commission and
30 electric generation facilities under rate regulation or contracts.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Public Utility Companies
3 Section 7–201 and 7–207
4 Annotated Code of Maryland
5 (2008 Replacement Volume and 2008 Supplement)

6 BY adding to
7 Article – Public Utility Companies
8 Section 7–518
9 Annotated Code of Maryland
10 (2008 Replacement Volume and 2008 Supplement)

11 Preamble

12 WHEREAS, Chapters 3 and 4 of the Acts of the General Assembly of 1999
13 enabled electric industry restructuring in the State of Maryland for the purpose of
14 establishing customer choice of electricity supply and electricity supply services,
15 creating competitive retail electricity supply and electricity supply markets,
16 deregulating the generation, supply, and pricing of electricity, providing economic
17 benefits for all customer classes, and ensuring compliance with federal and State
18 environmental standards; and

19 WHEREAS, After almost 10 years after the enactment of the electric industry
20 restructuring law in the State, competitive retail electric markets have not developed
21 as envisioned under the electric restructuring law; and

22 WHEREAS, Retail electricity rates increased significantly following the
23 expiration of rate caps and have continued to increase each year, indicating that
24 economic benefits have not materialized for most ratepayers as envisioned under the
25 electric restructuring law; and

26 WHEREAS, No new sizable generation has been constructed in Maryland since
27 1992, causing Maryland to meet its demand by importing over 30% of its electricity
28 from out-of-state and resulting in ratepayers being assessed high capacity and
29 congestion charges as part of electricity rates; and

30 WHEREAS, The electricity supply market, which is a capital intensive market
31 provided through a monopolistic system of local distribution and transmission, will be
32 better served in a fully regulated market; and

33 WHEREAS, Other states that have deregulated their electric industry markets
34 are in similar situations to that which Maryland is facing; now, therefore,

35 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
36 MARYLAND, That the Laws of Maryland read as follows:

37 **Article – Public Utility Companies**

1 7-201.

2 (a) **IN COOPERATION WITH THE SECRETARY OF NATURAL RESOURCES,**
3 **AS PROVIDED UNDER § 3-304 OF THE NATURAL RESOURCES ARTICLE, THE**
4 **COMMISSION SHALL ASSEMBLE AND EVALUATE ANNUALLY THE LONG-RANGE**
5 **PLANS OF THE STATE'S ELECTRIC COMPANIES REGARDING GENERATING NEEDS**
6 **AND THE MEANS TO MEET THOSE NEEDS.**

7 (B) (1) [Annually] **EACH YEAR**, the Chairman of the Commission shall
8 forward to the Secretary of Natural Resources a 10-year plan listing possible and
9 proposed sites, including the associated transmission routes, for the construction of
10 electric plants within the State.

11 (2) (i) The Chairman shall delete from the 10-year plan any site
12 that the Secretary of Natural Resources identifies as unsuitable in accordance with
13 the requirements of § 3-304 of the Natural Resources Article.

14 (ii) The Chairman may include a site deleted from a 10-year
15 plan under subparagraph (i) of this paragraph in a subsequent 10-year plan.

16 (3) The Chairman shall include information in the annual 10-year
17 plan on current and projected efforts by electric companies and the Commission to
18 moderate overall electrical generation demand and peak demand through the electric
19 companies' promotion of energy conservation by customers and through the electric
20 companies' use of alternative energy sources, including cogeneration.

21 (4) To the extent that the Commission requires an electric company to
22 report the information described in paragraph (3) of this subsection, a small rural
23 electric cooperative described in § 7-502(a) of this title may satisfy the requirement by
24 submitting to the Commission a copy of the power requirement study that the small
25 rural electric cooperative submits to the rural utilities service.

26 [(b)] (C) (1) The Commission shall evaluate the cost-effectiveness of the
27 investments by electric companies in energy conservation to reduce electrical demand
28 and in renewable energy sources to help meet electrical demand.

29 (2) The evaluation of investments shall include:

30 (i) the electric companies' promotion and conduct of a building
31 audit and weatherization program, including low-interest or no-interest electric
32 company financing for the installation of energy conservation materials and renewable
33 energy devices;

34 (ii) utilization of renewable energy sources;

35 (iii) promotion and utilization of electricity from cogeneration
36 and wastes; and

1 (iv) widespread public promotion of energy conservation
2 programs.

3 7-207.

4 (a) (1) In this section and § 7-208 of this subtitle, “construction” means:

5 (i) any physical change at a site, including fabrication, erection,
6 installation, or demolition; or

7 (ii) the entry into a binding agreement or contractual obligation
8 to purchase equipment exclusively for use in construction in the State or to undertake
9 a program of actual construction in the State which cannot be canceled or modified
10 without substantial loss to the owner or operator of the proposed generating station.

11 (2) “Construction” does not include a change that is needed for the
12 temporary use of a site or route for nonutility purposes or for use in securing geological
13 data, including any boring that is necessary to ascertain foundation conditions.

14 (b) (1) (i) Unless a certificate of public convenience and necessity for
15 the construction is first obtained from the Commission, a person may not begin
16 construction in the State of a generating station.

17 (ii) If a person obtains Commission approval for construction
18 under § 7-207.1 of this subtitle, the Commission shall exempt a person from the
19 requirement to obtain a certificate of public convenience and necessity under this
20 section.

21 (2) Unless a certificate of public convenience and necessity for the
22 construction is first obtained from the Commission, and the Commission has found
23 that the capacity is necessary to ensure a sufficient supply of electricity to customers
24 in the State, a person may not exercise a right of condemnation in connection with the
25 construction of a generating station.

26 (3) Unless a certificate of public convenience and necessity for the
27 construction is first obtained from the Commission, an electric company may not begin
28 construction of an overhead transmission line that is designed to carry a voltage in
29 excess of 69,000 volts or exercise a right of condemnation with the construction.

30 (c) (1) On receipt of an application for a certificate of public convenience
31 and necessity under this section, the Commission shall provide notice to the
32 Department of Planning and to all other interested persons.

33 (2) The Department of Planning shall forward the application to each
34 appropriate State unit and unit of local government for review, evaluation, and
35 comment regarding the significance of the proposal to State, area-wide, and local
36 plans or programs.

1 (d) (1) The Commission shall provide an opportunity for public comment
2 and hold a public hearing on the application for a certificate of public convenience and
3 necessity in each county and municipal corporation in which any portion of the
4 construction of a generating station or of an overhead transmission line designed to
5 carry a voltage in excess of 69,000 volts is proposed to be located.

6 (2) The Commission shall hold the public hearing jointly with the
7 governing body of the county or municipal corporation in which any portion of the
8 construction of the generating station or overhead transmission line is proposed to be
9 located, unless the governing body declines to participate in the hearing.

10 (3) Once in each of the 4 successive weeks immediately before the
11 hearing date, the Commission shall provide weekly notice of the public hearing and an
12 opportunity for public comment by advertisement in a newspaper of general
13 circulation in the county or municipal corporation affected by the application.

14 (4) (i) The Commission shall ensure presentation and
15 recommendations from each interested State unit, and shall allow representatives of
16 each State unit to sit during hearing of all parties.

17 (ii) The Commission shall allow each State unit 15 days after
18 the conclusion of the hearing to modify the State unit's initial recommendations.

19 (e) The Commission shall take final action on an application for a certificate
20 of public convenience and necessity only after due consideration of:

21 (1) the recommendation of the governing body of each county or
22 municipal corporation in which any portion of the construction of the generating
23 station or overhead transmission line is proposed to be located; [and]

24 **(2) THE NEED TO MEET EXISTING AND FUTURE DEMAND FOR**
25 **ELECTRIC SERVICES; AND**

26 ~~[(2)]~~ **(3)** the effect of the generating station or overhead transmission
27 line on:

28 (i) the stability and reliability of the electric system;

29 (ii) economics;

30 (iii) esthetics;

31 (iv) historic sites;

32 (v) aviation safety as determined by the Maryland Aviation
33 Administration and the administrator of the Federal Aviation Administration;

1 (vi) when applicable, air and water pollution; and

2 (vii) the availability of means for the required timely disposal of
3 wastes produced by any generating station.

4 (f) For the construction of an overhead transmission line, in addition to the
5 considerations listed in subsection (e) of this section, the Commission shall take final
6 action on an application for a certificate of public convenience and necessity only after
7 due consideration of the need to meet existing and future demand for electric service.

8 (g) (1) The Commission may not authorize, and an electric company may
9 not undertake, the construction of an overhead transmission line that is aligned with
10 and within 1 mile of either end of a public airport runway, unless:

11 (i) the Federal Aviation Administration determines that the
12 construction of an overhead transmission line will not constitute a hazard to air
13 navigation; and

14 (ii) the Maryland Aviation Administration concurs in that
15 determination.

16 (2) A privately owned airport runway shall qualify as a public airport
17 runway under this subsection only if the runway has been on file with the Federal
18 Aviation Administration for at least 2 years as being open to the public without
19 restriction.

20 (h) The Commission shall consider and take final action on an application for
21 a certificate of public convenience and necessity in an expeditious manner if the
22 application is for the construction of a generating station:

23 (1) that is designed to provide electricity for a single electric customer
24 that uses at least 1,500,000,000 kilowatt hours of electricity each year; and

25 (2) with a generating capacity that does not exceed 750 megawatts.

26 **7-518.**

27 (A) **IN THIS SECTION, "CONSORTIUM" MEANS A COMBINATION OF**
28 **ELECTRIC COMPANIES, EACH OF WHICH IS IN THE STATE.**

29 (B) **THE GENERAL ASSEMBLY FINDS AND DECLARES THAT IT IS THE**
30 **GOAL OF THE STATE TO RETURN AS SOON AS POSSIBLE TO A REGULATED**
31 **ELECTRIC MARKET FOR ALL CUSTOMER CLASSES THAT RESULTS IN A RELIABLE**
32 **ELECTRIC SYSTEM AT THE BEST POSSIBLE PRICE FOR RATEPAYERS.**

33 (C) **THIS SECTION DOES NOT APPLY TO:**

- 1 **(1) ON-SITE GENERATED ELECTRICITY;**
- 2 **(2) ELECTRICITY GENERATED FROM A WASTE-TO-ENERGY**
 3 **GENERATION FACILITY;**
- 4 **(3) A MUNICIPAL ELECTRIC UTILITY;**
- 5 **(4) A SMALL RURAL ELECTRIC COOPERATIVE;**
- 6 **(5) A GENERATION FACILITY OF LESS THAN 30 MEGAWATTS IN**
 7 **CAPACITY;**
- 8 **(6) A RENEWABLE ON-SITE GENERATOR, AS DEFINED IN § 7-701**
 9 **OF THIS TITLE;**
- 10 **(7) AN ELIGIBLE CUSTOMER-GENERATOR, AS DEFINED IN § 7-306**
 11 **OF THIS TITLE; OR**
- 12 **(8) AN ELECTRIC GENERATION FACILITY THAT IS OWNED OR**
 13 **CONTROLLED BY A UNIT OF LOCAL GOVERNMENT.**

14 **(D) (1) THIS SUBSECTION APPLIES TO AN ELECTRIC GENERATION**
 15 **FACILITY CONSTRUCTED IN THE STATE FOR OPERATION BEGINNING ON OR**
 16 **AFTER JULY 1, 2009.**

17 **(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
 18 **PARAGRAPH, AN ELECTRIC GENERATION FACILITY SHALL BE OWNED BY AN**
 19 **ELECTRIC COMPANY IN THE STATE OR A CONSORTIUM.**

20 **(II) SUBJECT TO PARAGRAPH (5) OF THIS SUBSECTION, AN**
 21 **ELECTRIC GENERATION FACILITY MAY BE OWNED:**

- 22 **1. BY AN ELECTRICITY SUPPLIER;**
- 23 **2. BY A PARENT OR AN AFFILIATE OF AN ELECTRIC**
 24 **COMPANY; OR**
- 25 **3. BY ANY COMBINATION OF AN ELECTRICITY**
 26 **SUPPLIER, A PARENT OR AN AFFILIATE OF AN ELECTRIC COMPANY, AN**
 27 **ELECTRIC COMPANY IN THE STATE, OR A CONSORTIUM.**

28 **(3) ELECTRICITY GENERATED FROM AN ELECTRIC GENERATION**
 29 **FACILITY:**

1 **(I) SHALL BE OFFERED FOR SALE FIRST TO AN ELECTRIC**
2 **COMPANY IN THE STATE OR A CONSORTIUM; AND**

3 **(II) IF NOT PURCHASED, DIRECTLY OR THROUGH A**
4 **CONTRACT, BY AN ELECTRIC COMPANY IN THE STATE OR A CONSORTIUM, MAY**
5 **THEN BE SOLD TO THE ELECTRIC GRID.**

6 **(4) IN ACCORDANCE WITH TITLE 4 OF THIS ARTICLE, THE**
7 **COMMISSION HAS JURISDICTION OVER AN ELECTRIC GENERATION FACILITY OR**
8 **A SHARE OF AN ELECTRIC GENERATION FACILITY, INCLUDING THE SALE OF**
9 **ELECTRICITY GENERATED FROM THE ELECTRIC GENERATION FACILITY OR A**
10 **SHARE OF THE ELECTRIC GENERATION FACILITY, THAT IS OWNED BY AN**
11 **ELECTRIC COMPANY IN THE STATE OR A CONSORTIUM.**

12 **(5) (I) AN ELECTRICITY SUPPLIER OR A PARENT OR AN**
13 **AFFILIATE OF AN ELECTRIC COMPANY UNDER PARAGRAPH (2)(II) SHALL ENTER**
14 **INTO A CONTRACT WITH AN ELECTRIC COMPANY IN THE STATE OR A**
15 **CONSORTIUM, AS APPROVED BY THE COMMISSION, FOR THE SALE OF**
16 **ELECTRICITY GENERATED FROM THE ELECTRIC GENERATION FACILITY OR A**
17 **SHARE OF THE ELECTRIC GENERATION FACILITY THAT IS OWNED BY THE**
18 **ELECTRICITY SUPPLIER OR THE PARENT OR THE AFFILIATE OF AN ELECTRIC**
19 **COMPANY.**

20 **(II) IN APPROVING A CONTRACT UNDER SUBPARAGRAPH (I)**
21 **OF THIS PARAGRAPH, THE COMMISSION SHALL REQUIRE THAT THE STANDARDS**
22 **UNDER TITLE 4 OF THIS ARTICLE APPLY TO THE SALE OF ELECTRICITY UNDER**
23 **THE CONTRACT.**

24 **(E) (1) THIS SUBSECTION APPLIES TO AN ELECTRIC GENERATION**
25 **FACILITY CONSTRUCTED IN THE STATE FOR OPERATION PRIOR TO JULY 1,**
26 **2009, AND THAT IS NOT OWNED BY AN ELECTRIC COMPANY IN THE STATE OR A**
27 **CONSORTIUM.**

28 **(2) (I) BASED ON MARKET CONDITIONS, THE COMMISSION**
29 **SHALL DETERMINE APPROPRIATE TIMES TO TAKE ACTION THAT REQUIRE AN**
30 **ELECTRIC COMPANY IN THE STATE OR A CONSORTIUM TO ACQUIRE AN**
31 **ELECTRIC GENERATION FACILITY OR A SHARE OF AN ELECTRIC GENERATION**
32 **FACILITY.**

33 **(II) THE COMMISSION SHALL SEEK TO IDENTIFY AN**
34 **OPPORTUNITY FOR APPROPRIATE TIMES TO TAKE ACTION UNDER THIS**
35 **SUBSECTION BY:**

- 1 1. MONITORING ELECTRIC INDUSTRY MARKET
2 TRANSACTIONS;
- 3 2. USING OUTSIDE EXPERTS AND CONSULTANTS;
- 4 3. DISCUSSIONS WITH OWNERS OF ELECTRIC
5 GENERATION FACILITIES AND ELECTRIC COMPANIES IN THE STATE; AND
- 6 4. ANY OTHER MANNER, AS DETERMINED BY THE
7 COMMISSION.

8 (3) (I) AFTER DETERMINING THAT IT MAY BE AN
9 APPROPRIATE TIME TO TAKE ACTION UNDER THIS SUBSECTION, THE
10 COMMISSION SHALL CONDUCT INVESTIGATORY AND EVIDENTIARY
11 PROCEEDINGS OR HEARINGS TO EVALUATE THE COSTS, RISKS, AND BENEFITS
12 TO RATEPAYERS, INCLUDING AN ECONOMIC ANALYSIS.

13 (II) THE COMMISSION SHALL CONSIDER THE FOLLOWING
14 FACTORS IN EVALUATING AN ACQUISITION UNDER THIS SUBSECTION:

- 15 1. THE POTENTIAL IMPACT ON RATES AND CHARGES
16 PAID BY CUSTOMERS;
- 17 2. THE POTENTIAL IMPACT ON THE SERVICES AND
18 CONDITIONS OF OPERATION OF THE ELECTRIC COMPANY OR CONSORTIUM;
- 19 3. THE POTENTIAL IMPACT ON CONTINUING
20 INVESTMENT NEEDS FOR THE MAINTENANCE OF UTILITY SERVICES, PLANT, AND
21 RELATED INFRASTRUCTURE, INCLUDING THE AGE OF THE ELECTRIC
22 GENERATION FACILITY AND LIKELY COST OF MAINTENANCE OR
23 ENVIRONMENTAL UPGRADES THAT MAY BECOME TECHNOLOGICALLY OR
24 ECONOMICALLY OBSOLETE;
- 25 4. THE PROPOSED CAPITAL STRUCTURE THAT WILL
26 RESULT FROM THE ACQUISITION, INCLUDING THE EFFECT ON THE BOND
27 RATING OF THE ELECTRIC COMPANY OR CONSORTIUM;
- 28 5. ISSUES OF RELIABILITY, QUALITY OF SERVICE,
29 AND QUALITY OF CUSTOMER SERVICE; AND
- 30 6. ANY OTHER ISSUES THE COMMISSION CONSIDERS
31 RELEVANT TO THE ASSESSMENT OF THE ACQUISITION IN RELATION TO THE
32 PUBLIC INTEREST, CONVENIENCE, AND NECESSITY.

1 (III) IN CONNECTION WITH AN EVALUATION UNDER THIS
2 PARAGRAPH, THE OWNER OF THE ELECTRIC GENERATION FACILITY SHALL
3 PROVIDE THE COMMISSION ACCESS TO ANY ACCOUNTS, BOOKS, PAPERS, AND
4 DOCUMENTS THAT THE COMMISSION CONSIDERS NECESSARY.

5 (4) IF THE COMMISSION FINDS THAT AN ACQUISITION IS
6 CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY, THE
7 COMMISSION SHALL TAKE ACTION TO REQUIRE AN ELECTRIC COMPANY IN THE
8 STATE OR A CONSORTIUM TO ACQUIRE THE ELECTRIC GENERATION FACILITY
9 OR A SHARE OF THE ELECTRIC GENERATION FACILITY.

10 (5) ELECTRICITY GENERATED FROM AN ELECTRIC GENERATION
11 FACILITY OR A SHARE OF AN ELECTRIC GENERATION FACILITY THAT HAS BEEN
12 ACQUIRED UNDER THIS SECTION:

13 (I) SHALL BE OFFERED FOR SALE FIRST TO AN ELECTRIC
14 COMPANY IN THE STATE OR A CONSORTIUM; AND

15 (II) IF NOT PURCHASED, DIRECTLY OR THROUGH A
16 CONTRACT, BY AN ELECTRIC COMPANY IN THE STATE OR A CONSORTIUM, MAY
17 THEN BE SOLD TO THE ELECTRIC GRID.

18 (6) IN ACCORDANCE WITH TITLE 4 OF THIS ARTICLE, THE
19 COMMISSION HAS JURISDICTION OVER AN ELECTRIC GENERATION FACILITY OR
20 A SHARE OF AN ELECTRIC GENERATION FACILITY, INCLUDING THE SALE OF
21 ELECTRICITY GENERATED FROM THE ELECTRIC GENERATION FACILITY OR A
22 SHARE OF THE ELECTRIC GENERATION FACILITY, THAT IS ACQUIRED BY AN
23 ELECTRIC COMPANY IN THE STATE OR A CONSORTIUM.

24 (7) (I) AN OWNER OF AN ELECTRIC GENERATION FACILITY
25 MAY ENTER INTO A CONTRACT WITH AN ELECTRIC COMPANY IN THE STATE OR A
26 CONSORTIUM, AS APPROVED BY THE COMMISSION, FOR THE SALE OF
27 ELECTRICITY GENERATED FROM THE ELECTRIC GENERATION FACILITY.

28 (II) IN APPROVING A CONTRACT UNDER SUBPARAGRAPH (I)
29 OF THIS PARAGRAPH, THE COMMISSION SHALL REQUIRE THAT THE STANDARDS
30 UNDER TITLE 4 OF THIS ARTICLE APPLY TO THE SALE OF ELECTRICITY UNDER
31 THE CONTRACT.

32 (F) THE COMMISSION SHALL DIRECT EACH ELECTRIC COMPANY IN THE
33 STATE TO DEVELOP A PLAN TOWARD MEETING THE LONG-TERM GOAL OF
34 SUPPLYING THE ELECTRICITY NECESSARY TO SERVE THE LOAD OF THE
35 ELECTRIC COMPANY.

1 **(G) THE COMMISSION SHALL BY REGULATION OR, NOTWITHSTANDING**
2 **TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE, BY ORDER**
3 **ADOPT PROCEDURES TO IMPLEMENT THIS SECTION.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 July 1, 2009.