

Special Session, June 2006
Electric Industry Restructuring –
Standard Offer Service – Rate Stabilization
Executive Summary

- Replaces Public Service Commission (PSC) commissioners effective July 1, 2006
- Provides that the People's Counsel is appointed by the Attorney General
- Continues the obligation of electric companies to provide Standard Offer Service (SOS) to residential and small commercial customers
- Alters the competitive supply auction process to prevent the full load from being exposed to market conditions at one time and allows changes to be made based on market conditions
- Allows, after consideration, the procurement of electricity for SOS customers using bilateral contracts outside the competitive process and the construction/operation of generation facilities by electric companies
- Requires, after consideration, the procurement of energy efficiency and conservation measures at the time of SOS bidding to offset anticipated demand (after consideration, requires regulation or order)
- Requires the initiation of commission proceedings to determine an appropriate rate stabilization plan when electric rates increase by more than 20%
- Sets out general parameters for the securitization of deferred costs under a rate stabilization plan
- Expands eligibility and provides additional funds for the Electric Universal Service Program (EUSP)
- Limits the rate increase for BGE residential customers to 15% under rate stabilization plan beginning July 1, 2006 (for 11 months and the recovery by BGE of the deferred costs). Additional deferrals may be authorized by PSC. Market rates will be attained not later than June 1, 2008
- Requires the incorporation into a rate stabilization plan for mitigation of rate increases to include possible return of stranded costs and funds identified as conditions of approval of the CEG-FPL merger
- Requires to be used as rate relief the amount customers pay for nuclear decommissioning charge (amount is approximately \$18.6 million) and the use of the return component of the SOS administrative charge (amount is approximately \$20 million)
- Repeals the income tax credit on real property used to generate electricity and provides these funds to EUSP (amount is estimated at \$5.6 million)
- Expands commission approval for stock, debt, and acquisition transactions involving public service companies "operating" in Maryland (currently only applies to those

“incorporated” in Maryland) and requires commission approval for these companies to lend to affiliates

- Requires commission approval for the acquisition of a public service company by a person not engaged in the public utility business and requires consideration of factors such as the impact on rates and the continuing investment needs for the maintenance of infrastructure; capital structure that will result; potential effect on employment; projected allocation of savings between stockholders and ratepayers; issues of reliability and quality of service; potential impact on community investment; affiliate and cross-subsidization issues, etc.
- Requires that any approval by the commission of the merger of FPL and CEG have conditions that prohibit the transfer of facilities and requires the application of savings in part to the elimination of carrying charges and the delay of increases in residential electric rates in a rate stabilization plan
- Requires several proceedings by the commission including the reevaluation of the general structure, settlement agreements, and actions of the previous commissions; the study of changes to the current SOS process, including allowing electric companies to buy power on a long-term contract; allowing investor-owned electric companies to build peak-load plants; allowing investor-owned electric companies to obtain a portion of SOS load through bilateral contracts; and requiring a process at the time of SOS bidding for the procurement of energy efficiency and conservation measures and services
- Requires the study of opt-out local government aggregation and specifies that the study does not interfere with the implementation of a pilot program that the commission is currently working on with the Maryland Municipal League
- Requires the commission to study the impact of the costs of rising fuel prices on low- and middle-income customers by obtaining information on residential utility turn-offs and to study other types of energy affordability programs
- Requires the commission, for an electric company which a rate cap expires after July 1, 2006 (Allegheny), to initiate a proceeding to investigate options available to implement a rate mitigation plan and to conduct a proceeding regarding the impact of renegotiation of a settlement agreement to allow a portion of the residential electric supply to be procured at market rates in a way that its full load is not subject to the market when rate caps expire
- Requires the study of the valuation of power plants by the State Department of Assessments and Taxation
- Directs the Attorney General to intervene and participate in commission proceedings and other appropriate State or federal hearings regarding the FPL-CEG merger
- Provides that any action brought to challenge the constitutionality of any provision of this legislation is to be filed in the Circuit Court of Baltimore City

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Summary

Public Service Commission Commissioners (Section 1: Section 2-102; 2-103; 2-113; Section 12 and 14)

- The term of office for the five commissioners serving as of June 30, 2006, ends June 30, 2006
- The new term of all of the five commissioners begins July 1, 2006. Expiration of new terms is staggered beginning at the end of fiscal 2007
- For this time only, a new chair and 4 other commissioners are appointed by the Governor from a list of 3 for the chair and 10 names for the other commissioners provided by the Presiding Officers (Future appointments are solely by the Governor with the consent of the Senate)
- The Governor has two weeks to make the new appointments; otherwise the Attorney General makes the appointments. The Executive Secretary of the commission is authorized to carry out ministerial functions until the fully-authorized membership has been appointed. The new commissioner appointments do not need confirmation by the Senate
- The commission appointments are required to be broadly representative of the geographic and demographic diversity of the State
- A member of the commission is not required to recuse himself or herself from any matter before the commission under the legislation on account of prior involvement in the matter in another capacity

Office of People's Counsel (Section 1: Section 2-202; Section 13 and 14)

- The People's Counsel is appointed by the Attorney General (rather than the Governor) and confirmed by the Senate. The office maintains autonomous structure
- The People's Counsel serving as of June 30, 2006, shall continue to serve at the pleasure of the Attorney General until a successor is appointed.
- The term of office for the People's Counsel is five years; at the end of a term, the current People's Counsel serves until a new appointment is made.
- A People's Counsel may be removed by the Attorney General for good cause.
- The People's Counsel is not required to recuse himself or herself from any matter before the commission under the legislation on account of prior involvement in the matter in another capacity

Standard Offer Service (SOS) (Section 1: Section 7-510; Section 7)

- An electric company continues to have the obligation to provide SOS to residential and small commercial customers after July 1, 2003
- Obligation is at a market price that permits recovery of verifiable, prudently incurred costs of procuring or producing the electricity plus a reasonable return
- The commission is no longer required to make a finding concerning whether the electricity supply market is competitive; instead, the commission is required to report every five years (beginning December 31, 2008) on the status of SOS, the development of competition, and the transition of SOS to a default service
- An electric company participating in SOS is required to obtain its electricity supply through a competitive process that is designed to obtain the best price in light of market conditions and need to protect customers from excessive price increases
 - The competitive process is to include a series of competitive wholesale bids in which the electric company solicits bids for its SOS load as part of a portfolio of blended wholesale supply contracts of short, medium, and long terms as needed to meet demand in a cost-effective manner.
 - The competitive process may include different bidding structures and mechanisms for base load, peak load, and very short-term procurement.
 - To prevent an excessive amount of load being exposed to upward price risks and volatility, the commission may stagger the competitive wholesale auction dates and may allow a date to be altered based on market conditions
 - By regulation or order, the commission may allow an electric company to refuse to accept some or all of the bids made in a competitive wholesale auction.
 - The electric company is required to publicly disclose the names of all bidders and the names and load allocation of all successful bidders 90 days after all contracts for supply are executed.
- After completion of a study (due December 31, 2006) which finds the following to be in the public interest, the commission:
 - may require or allow an electric company to procure electricity for SOS customers directly from an electricity supplier through one or more bilateral contracts outside the competitive process;
 - shall require or allow an electric company to procure energy efficiency and conservation measures with projected and verified energy savings to offset anticipated demand to be served by SOS, and the imposition of other demand-side management programs (after consideration, by December 31, 2006, the commission must establish, by regulation or order, the process to secure bids and criteria to evaluate bids); and
 - may allow an electric company to construct or acquire its own generating and transmission facilities

- To protect residential customers from the impact of sudden and significant increases in rates of 20% or more, the commission is required to hold proceedings to determine an appropriate phased implementation of electricity rates.
- A deferral of costs as part of a phased implementation plan is required to be treated as a regulatory asset to be recovered in accordance with a rate stabilization plan or any other plan for phased implementation approved by the commission. Deferred costs must be just, reasonable, and in the public interest.
- The recovery of deferred costs may be either long term (in accordance with a rate stabilization plan) or short term (through a rate proceeding)
- A phase-in of increased costs may include placing a cap on rates and allowing recovery over time or allowing rates to increase and providing for a rebate for excess costs paid

Electric Cooperatives: Rate Mitigation (Section 1: Section 7-510)

- The commission, on request by an electric cooperative or on its own initiative, is required to initiate a proceeding to investigate options for a rate stabilization plan to assist residential electric customers to gradually adjust to market rates over an extended period of time.
- If a cooperative determines that total electric rates for residential customers are anticipated to increase by more than 20% (resulting from an increase in generation costs) in a 12-month period, the cooperative is required to survey its membership to determine whether to make a request to the commission

Electric Universal Service Program (EUSP) (Section 1: Section 7-512.1)

- The pool of applicants eligible for EUSP is expanded to include those at or below 175% of the federal poverty level, instead of at or below 150% of the federal poverty level
- As determined by the Office of Home Energy Programs, bill assistance payments to an electric company may be on a monthly basis for each customer.
- The total amount of funds collected for EUSP each year is raised from \$34 to \$37 million, with the industrial and commercial classes paying the additional amount.
- An estimated additional \$6 million will go to EUSP for fiscal 2007 only from the repeal of a credit that a public utility currently may claim against the State income tax (credit is based on an amount equal to 60% of the total property taxes paid by the public utility on its operating real property in the State that is used to generate electricity for sale).

Securitization (General Provisions) (Section 1: Sections 7-520 to 7-544)

- An electric company may file a rate stabilization plan with the commission which may include both short-term and long-term deferrals of incremental expenses of electricity supplies.

- The rate stabilization plan may provide that a deferral is to be securitized through the issuance of rate stabilization bonds authorized by a qualified rate order approved by the commission
- Residential customers are charged the full cost of the SOS necessary to recover the electric company's costs, with any credits or charges included as nonbypassable credits or charges on the electric distribution portion of the customers' bills
- The commission may authorize an electric company to recover, as additional rate stabilization costs, the actual cost to the electric company of carrying the deferred expenses as regulatory assets
- The commission is required to adopt the qualified rate order if the commission finds that the total amount of revenue to be collected under the order is less than the rate stabilization revenue that would be recovered over the same period using the electric company's weighted average cost of capital
- The recovery period for the rate stabilization plan may not exceed 12 years
- After becoming effective, a qualified rate order and the rate stabilization charges may not be altered by further action of the commission, except to reconcile overcollections or undercollections
- A rate stabilization bond is not a debt, liability, or pledge of the full faith and credit of the State or any other governmental unit.

Rate Stabilization (Specific to BGE) (Section 1: Sections 7-547 to 7-549)

- An electric company that has an obligation to provide SOS to residential customers for whom rate caps expire at the end of June 30, 2006, is required to file tariffs with the commission to implement a rate stabilization plan.
- The commission is required to order the electric company to establish regulatory assets for the rate stabilization plan of the deferral of the SOS rate deferred during the deferral period beginning July 1, 2006 (for 11 months).
- Any credit or charges to the cost of SOS is required to be included as a nonbypassable credit or charge on the electric distribution portion of the bill for residential customers
- An electric company may apply to the commission for a qualified rate order for the financing and recovery of its rate stabilization costs.
- The increase in the total rates charged to ALL residential electric customers on SOS, as compared to the total rates in effect on June 30, 2006, **is limited to 15% from July 1, 2006, through May 31, 2007** (no opting in or out).
- The commission is required to determine the remaining rate mitigation plan, including subsequent phase-in increases and how the deferral of electric costs are to be recovered by BGE. Customers begin paying market rates (plus any deferral) June 1, 2008.
- A rate stabilization cost may not begin to be recovered before January 1, 2007.

- The amount of the deferral is a rate stabilization cost which is to be recovered as a regulatory asset. The commission determines the rate stabilization plan for this recovery.
- An electric company is required to recover, as an additional rate stabilization cost, the actual cost to the electric company of carrying the costs and expenses deferred as regulatory assets under the rate stabilization plan

Recovery of a Deferral of Electric Costs in a Rate Stabilization Plan (BGE) (Section 5)

- The commission is required to incorporate into a rate stabilization plan for residential customers of BGE for mitigation of rate increases to include:
 - any adjustment, in favor of customers, to allowances for stranded costs for assets that were transferred from BGE to an affiliate;
 - any funds identified by the commission as properly allocated to BGE and ratepayers as conditions of approval of merger of Constellation Energy, Inc. and FPL Group, Inc.;
 - any taxes collected or voluntary contributions made in lieu of taxes identified under this legislation;
 - the credits shall be in the form of a nonbypassable credit on the electric distribution portion of the customers' bill; and
 - the credits may not be recovered subsequently in rates or otherwise.

Credits to Electric Costs – Nuclear Decommission Charge and Rate of Return (Section 6)

- Credits are not contingent on the merger. They are used to decrease rates
- The credits shall be in the form of a nonbypassable credit on the electric distribution portion of the customers' bill, derived as follows:
 - for a period of 10 years, the electric company shall suspend the collection of the residential return component of the administrative charge collected by the electric company for providing SOS, which shall be deemed a value of \$20 million; and
 - for a period of 10 years, a credit of the \$18,661,980 annual nuclear decommissioning charge collected, without otherwise disturbing the agreement approved by the Maryland Public Service Commission in Order No 75757, to be imputed as deposits in the Nuclear Decommissioning Trust Fund and to be credited against residential electric customer bills. (The nuclear decommissioning charge may not be altered during the 10-year period of the credit)
- The credits may not be recovered through electric rates.

Income Tax Credit on Real Property Used to Generate Electricity (Section 2: Section 10-712; Section 10; Section 23)

- The credit that a public utility may claim against the State income tax in an amount equal to 60% of the total property taxes paid by the public utility on its operating real property in the State that is used to generate electricity for sale is REPEALED (Amount is

estimated at \$6 million) The Comptroller is required to distribute these funds to the EUSP

- This provision applies to taxable years beginning after December 31, 2005

Purchase of Stock of a Public Service Company, Issuance of Stock by a Public Service Company, Lending by a Public Service Company to an Affiliate, and Acquisition of a Public Service Company (Section 3: Sections 5-104, 5-203, 6-101, 6-102, 6-103, and 6-105; Section 21; Section 24)

Purchase of Stock of a Public Service Company, Issuance of Stock by a Public Service Company, Lending by a Public Service Company to an Affiliate

- Without prior authorization of the commission:
 - a public service company may not purchase/acquire/take/hold any part of capital stock of another public service company that operates in Maryland (currently, approval is only required for companies that are incorporated in Maryland);
 - a public service company that operates in Maryland (currently, refers to incorporated in Maryland) may not issue stocks or bonds;
 - a public service company that operates in Maryland may not lend money to an affiliate at rates or on terms that are significantly more favorable to the affiliate than the rates or terms that are otherwise commercially available to the affiliate;
 - a public service company may not take/hold/acquire stock of a public service company that operates in Maryland and is of the same class (currently, refers to incorporated in Maryland); and
 - a stock corporation (unless a public service company of the same class) may not take/hold/acquire more than 10% of the total capital stock of a public service company that operates in Maryland (currently, refers to incorporated in Maryland) this provision is construed to apply only prospectively.
- This provision takes effect January 1, 2007

Person Acquiring Substantial Influence Over Electric Company (if person would become affiliate of the electric company as a result of the acquisition)

- Without prior authorization of the commission, a person may not acquire, directly or indirectly, the power to exercise any substantial influence over the policies and actions of an electric company or gas company, if the person would become an affiliate of the electric company or gas company as a result of the acquisition.
- The commission is required to consider the following factors: impact on rates and the continuing investment needs for the maintenance of infrastructure; capital structure that will result; potential effect on employment; projected allocation of savings expected to the public service company between stockholders and ratepayers; issues of reliability and quality of service; potential impact on community investment; affiliate and cross-subsidization issues, etc

- The commission is required to issue an order granting the application if the commission finds that the acquisition is consistent with the public interest, convenience, and necessity, and provides a net benefit to consumers.
- The commission may condition an order on the applicant's satisfactory performance or adherence to specific requirements.

Merger of FPL Group, Inc. and Constellation Energy Group, Inc. (Section 4; Section 5(a) and (b)(3))

- Any approval by the commission of a merger between FPL Group and Constellation Energy Group must have the following conditions:
 - may not allow the transfer of facilities between FPL or BGE and an associate company;
 - may not allow the new issuances of securities by FPL or BGE for the benefit of an associate company;
 - may not allow new pledges or encumbrances of assets of FPL or BGE for the benefit of an associate company;
 - may not allow new affiliate contracts between nonutility associate companies and FPL or BGE (other than goods and services); and
 - any savings realized must be applied in part to the elimination of carrying charges and the delay of increases in residential electric rates in a plan for rate stabilization or minimization
- The commission may not take final action to approve or disapprove the merger until the new five members are appointed. The commission shall review the merger in accordance with the standards and procedures contained in this legislation.
- On or before December 31, 2006, the commission is required to review the proposed merger in accordance with provisions of the legislation.

Proceedings by Public Service Commission (Section 7; Section 11; Section 18)

- An additional fiscal 2007 appropriation for the commission of \$750,000 and for the People's Counsel of \$500,000. Costs recovered through the annual assessment on public utilities.

Reevaluate Settlement Agreements

- The commission is required to conduct investigatory and evidentiary proceedings to reevaluate the general structure, agreements, and actions of the previous commissions as they relate to the electric restructuring law, including the determination of and allowances for stranded costs.
- The report is due December 31, 2006.
- The commission may hire experts and consultants.

Study Changes to the Current SOS Process

- The commission is required to initiate an evidentiary proceeding to study and evaluate the status of electric restructuring in the State as it pertains to the availability of competitive generation for residential and small commercial customers
- The study shall consider changes that are necessary to provide residents the benefit of a reliable electric system at the best possible price and options for reregulation, if advisable
- The commission shall give consideration to:
 - allowing investor-owned electric companies to buy power on a long-term contract;
 - allowing investor-owned electric companies to build peak load and other plants;
 - requiring a process at the time of SOS bidding for the procurement of energy efficiency and conservation measures and services (after consideration, by December 31, 2006, the commission must establish, by regulation or order, the process to secure bids and criteria to evaluate bids); and
 - providing a process to allow investor-owned electric companies to obtain a portion of SOS load through bilateral contracts (outside of competitive wholesale auctions)
- The report is due December 31, 2006
- The commission has authority to implement the above after completing the study and making a finding that they are in the interest of ratepayers.
- The commission is required to adopt a uniform definition of “small commercial” customer

Study of Opt-out Local Government Aggregation

- The commission is required to study opt-out local government aggregation
- This study does not interfere with the implementation of a pilot program that the commission is currently working on with the Maryland Municipal League.
- The report on the study is due by December 31, 2006.
- The commission may not implement opt-out aggregation without legislative approval

Impact of the Costs of Rising Fuel Prices on Low-income Residents

- The commission is required to study the impact of the costs of rising fuel prices on low- and middle-income customers by obtaining information on residential utility turn-off notices issued, actual turn-offs, and reconnections, and amount of arrearages. Reports are due October 1 of each year from 2006 to 2010.

- The commission is required to study (using university-based research) energy affordability programs, including percentage of income plans and tiered rate structure plans. The report is due December 31, 2006.

Allegheny: Rate Mitigation and Renegotiation of Settlement Agreement (Section 8)

- The commission, on its own initiative or on request of an electric company in the service territory of which a rate cap expires after July 1, 2006, shall initiate a proceeding to investigate options available to implement a rate mitigation plan or rate stabilization plan.
- The commission is required to conduct a proceeding regarding the impact of renegotiation of a settlement agreement to allow a portion of the residential electric supply in that service territory to be procured at market rates in a way that its full load is not exposed to volatile market conditions when price caps expire, while ensuring that residential customers in that service territory obtain the full value of the savings provided under the existing rate cap.

Study of the Valuation of Power Plants (Section 9; Section 18)

- The State Department of Assessments and Taxation is required to study whether the current valuation of power plants provides an adequate determination of the value of power plants in a restructured electric industry.
- The department is required to hire a consultant with expertise in plant valuation.
- The department may not change the current method before May 1, 2007.
- The report is due December 31, 2006.
- An additional appropriation of \$250,000. Costs recovered through the annual assessment on public utilities.

Attorney General Intervenes in FPL-CEG Merger Proceedings (Section 15, Section 18)

- The Attorney General is directed to intervene and participate in commission proceedings and other appropriate State or federal hearings regarding the FPL-CEG Merger.
- Costs and expenses may not exceed \$500,000 to be borne by public service companies in the same manner these companies are assessed annually.

Effect of Legislation on Prior Transactions and Actions (Sections 16 and 17)

- All transactions affected from statutes amended in the legislation remain valid.
- All actions of the commission and Office of People's Counsel continue until changed pursuant to law.

Court Action (Section 19 and 22)

- If any action is brought to challenge the constitutionality of any provision of this legislation:
 - The action must be filed in the Circuit Court of Baltimore City
 - The Attorney General shall be permitted to intervene
 - A final decision of the circuit court must be reviewable by appeal directly to the Court of Appeals of Maryland
 - It is the duty of the circuit court and Court of Appeals to advance on the docket and to expedite the disposition of the action and the appeal
- The provisions of the legislation are severable

Emergency Bill (Section 25)

Source: Department of Legislative Services, June 2006

Last Revised: June 13, 2006, 7 am