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By: **Senators Green, Della, and Stone**  
Introduced and read first time: February 23, 2006  
Assigned to: Rules

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A BILL ENTITLED

1 AN ACT concerning

2                   **Public Service Companies - Electric Companies and Electricity Suppliers -**  
3                   **Regulation**

4 FOR the purpose of returning electric generation to the status of a utility service  
5 subject to regulation by the Public Service Commission; requiring a public  
6 service company to charge just and reasonable rates for its utility services;  
7 requiring a public service company to file a certain tariff schedule of certain  
8 rates and charges with the Commission; providing that a certain electric  
9 company or electricity supplier may apply to the Commission to adjust certain  
10 rates and charges; establishing certain procedures for the Commission to review,  
11 investigate, and adjust certain rates and charges in a certain manner;  
12 authorizing a certain electric company or electricity supplier to have a  
13 separately stated and zero-based fuel rate to charge for a certain cost of fuel;  
14 requiring the Commission to authorize a certain fuel rate adjustment only if  
15 certain circumstances are met; requiring a certain electric company or  
16 electricity supplier to file an application with the Commission to reduce a  
17 certain fuel rate under certain circumstances; authorizing an electric company  
18 or electricity supplier to defer certain costs as an operating expense and recover  
19 the costs in a base rate proceeding if certain circumstances are met; requiring  
20 the Commission to make certain findings and conclusions based on a certain  
21 determination in a certain investigation; authorizing the Commission to  
22 disallow certain increased costs under certain circumstances; requiring a certain  
23 applicant for a fuel rate adjustment to file certain proposed initial direct  
24 testimony and exhibits with a certain application; requiring the Commission to  
25 conduct, or direct another person to conduct, a certain annual audit of certain  
26 fuel procurement and purchasing practices of certain electric companies and  
27 electricity suppliers under certain circumstances; authorizing the Department  
28 of Legislative Services to conduct a certain audit and study of fuel procurement  
29 and purchasing practices and examine a certain audit under certain  
30 circumstances; requiring the Commission, in cooperation with the Secretary of  
31 Natural Resources, to assemble and evaluate annually certain long-range plans  
32 of certain electric companies regarding generating needs and the means to meet  
33 those needs; requiring the Commission to take final action on an application for  
34 a certificate of public convenience and necessity only after due consideration of  
35 the need to meet existing and future demand for electric service; repealing a

1 provision that required the Commission to require functional, operational,  
2 structural, or legal separation between a certain electric company's regulated  
3 businesses and its nonregulated businesses or affiliates; repealing certain  
4 provisions relating to the capping of certain rates of an electric company by the  
5 Commission for a certain time period after the implementation of customer  
6 choice in certain territories; repealing certain provisions that authorized the  
7 Commission to approve a certain rate cap for a different time period under a  
8 certain settlement; repealing a provision that states that after a certain date,  
9 the generation, supply, and sale of electricity may not be regulated except under  
10 certain circumstances; repealing provisions that relate to the phased  
11 implementation of customer choice for electricity service; repealing provisions  
12 that relate to the requirement of an electric company to offer standard offer  
13 service electricity supply; repealing a provision that prohibits certain electricity  
14 suppliers from providing retail electricity supply service in the distribution  
15 territory of an unaffiliated electric company under certain circumstances;  
16 repealing certain provisions that relate to the recovery of certain costs by an  
17 electric company; authorizing an electric company to acquire or build a  
18 generating station in accordance with this Act; providing that an electric  
19 company may not pass on to ratepayers the cost of reacquiring certain electric  
20 generation assets; altering a certain definition; repealing certain obsolete  
21 provisions; providing that existing obligations or contract rights may not be  
22 impaired by this Act; making the provisions of this Act severable; providing for  
23 the effective dates of this Act; and generally relating to the regulation of electric  
24 companies and electricity suppliers.

25 BY repealing and reenacting, without amendments,  
26 Article - Public Utility Companies  
27 Section 1-101(a)  
28 Annotated Code of Maryland  
29 (1998 Volume and 2005 Supplement)

30 BY repealing and reenacting, with amendments,  
31 Article - Public Utility Companies  
32 Section 1-101(h), 4-201, 4-202, 4-402, 7-201, 7-207, 7-504, 7-505, 7-507, and  
33 7-512.1(b)  
34 Annotated Code of Maryland  
35 (1998 Volume and 2005 Supplement)

36 BY adding to  
37 Article - Public Utility Companies  
38 Section 4-403  
39 Annotated Code of Maryland  
40 (1998 Volume and 2005 Supplement)

41 BY repealing  
42 Article - Public Utility Companies

1 Section 7-509, 7-510, 7-512, 7-513, and 7-515  
2 Annotated Code of Maryland  
3 (1998 Volume and 2005 Supplement)

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

6 **Article - Public Utility Companies**

7 1-101.

8 (a) In this article the following words have the meanings indicated.

9 (h) (1) "Electric company" [means a person who physically transmits or  
10 distributes electricity in the State to a retail electric customer] INCLUDES A  
11 MUNICIPAL CORPORATION THAT IS IN THE BUSINESS OF SUPPLYING ELECTRICITY  
12 FOR OTHER THAN MUNICIPAL PURPOSES.

13 (2) "Electric company" does not include[:

14 (i) the following persons who supply electricity and electricity  
15 supply services solely to occupants of a building for use by the occupants:

16 1. an owner/operator who holds ownership in and manages  
17 the internal distribution system serving the building; or

18 2. a lessee/operator who holds a leasehold interest in and  
19 manages the internal distribution system serving the building;

20 (ii) any person who generates on-site generated electricity; or

21 (iii) a person who transmits or distributes electricity within a site  
22 owned by the person or the person's affiliate that is incidental to a primarily  
23 landlord-tenant relationship] A COMPANY THAT GENERATES OR TRANSMITS  
24 ELECTRICITY EXCLUSIVELY FOR ITS OWN USE.

25 4-201.

26 In accordance with the provisions of this article, a public service company shall  
27 charge just and reasonable rates for the [regulated] UTILITY services that it renders.  
28 4-202.

29 (a) A public service company shall file with the Commission a tariff schedule  
30 of its rates and charges [for its regulated services and for standard offer service as  
31 provided in § 7-505(b)(8) of this article].

32 (b) As ordered by the Commission, a public service company shall:

1 (1) plainly print the tariff schedule of its rates and charges [for its  
2 regulated services];

3 (2) make available the tariff schedules for public inspection; and

4 (3) post the tariff schedules to make the tariff schedules readily  
5 accessible to and convenient for inspection by the public.

6 4-402.

7 (a) (1) This section applies to:

8 (i) THE electric fuel rate adjustment [clauses] CLAUSE OF EACH  
9 ELECTRIC COMPANY THAT IS NOT SUBJECT TO § 4-403 OF THIS SUBTITLE;

10 (ii) purchased power adjustment clauses; and

11 (iii) purchased gas adjustment clauses.

12 (2) This section does not apply to a small rural electric cooperative.

13 (b) A gas company or electric company that directly passes on to its customers  
14 changes in fuel costs, costs of purchased power, or costs of purchased gas shall verify  
15 and justify the adjusted costs to the Commission each month.

16 (c) The Commission shall order a company to charge off and amortize, by  
17 means of a temporary decrease of rates, any charge the Commission finds is  
18 unjustified because:

19 (1) the company failed to show that the charges were based solely on  
20 increased costs of fuel, purchased power, or purchased gas;

21 (2) the company failed to follow competitive practices in procuring and  
22 purchasing fuel, power, or gas; or

23 (3) the company failed to show that its practices in procuring and  
24 purchasing fuel were reasonable.

25 (d) At least once every 12 months, the Commission shall conduct a public  
26 evidentiary hearing on any changes in costs that a company directly passes on to its  
27 customers under this section.

28 4-403.

29 (A) THIS SECTION APPLIES ONLY TO:

30 (1) AN ELECTRIC COMPANY THAT PRODUCES OR GENERATES POWER  
31 WITH GROSS ANNUAL REVENUES THAT EXCEED \$25,000,000; AND

32 (2) AN ELECTRICITY SUPPLIER.

1 (B) AS PART OF ITS RATES TO ALL CUSTOMERS, AN ELECTRIC COMPANY AND  
2 ELECTRICITY SUPPLIER MAY HAVE A SEPARATELY STATED AND ZERO-BASED FUEL  
3 RATE TO CHARGE FOR THE ACTUAL COST OF FUEL THAT IS COMPUTED ON A  
4 KILOWATT-HOUR BASIS.

5 (C) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, ON  
6 APPLICATION TO THE COMMISSION BY AN ELECTRIC COMPANY OR ELECTRICITY  
7 SUPPLIER SUBJECT TO THIS SECTION TO ADJUST RATES AND CHARGES BASED  
8 SOLELY ON THE ACTUAL COST OF FUEL PER KILOWATT HOUR SOLD, THE  
9 COMMISSION MAY SUSPEND THE PROPOSED ADJUSTMENT FOR A PERIOD NOT  
10 EXCEEDING 30 DAYS AFTER THE DAY THE APPLICATION IS FILED.

11 (2) THE COMMISSION SHALL:

12 (I) PROMPTLY INVESTIGATE AN APPLICATION FILED UNDER THIS  
13 SUBSECTION; AND

14 (II) INSTITUTE EVIDENTIARY HEARINGS UNDER § 4-402(D) OF THIS  
15 SUBTITLE TO CONSIDER THE APPLICATION WITHIN 30 DAYS AFTER THE DAY THE  
16 APPLICATION IS FILED.

17 (3) THE COMMISSION SHALL BASE ITS ORDER ON THE RECORD  
18 DEVELOPED AT THE HEARING.

19 (4) THE COMMISSION SHALL ISSUE ITS FINAL ORDER PROMPTLY BUT  
20 NO LATER THAN 120 DAYS AFTER THE DAY THE APPLICATION IS FILED.

21 (5) IF A SUSPENSION PERIOD UNDER THIS SUBSECTION ENDS BEFORE  
22 THE COMMISSION ISSUES A FINAL ORDER, THE ORDER SHALL PROVIDE FOR A  
23 REFUND OF THE DIFFERENCE BETWEEN THE RATE CHARGED AND THE RATE SET BY  
24 THE FINAL ORDER.

25 (D) (1) THE COMMISSION MAY AUTHORIZE AN ELECTRIC COMPANY OR  
26 ELECTRICITY SUPPLIER TO ADJUST ITS FUEL RATE UNDER THIS SECTION ONLY IF  
27 THE CURRENTLY CALCULATED ACTUAL FUEL RATE OR THE ELECTRIC COMPANY OR  
28 ELECTRICITY SUPPLIER IS MORE THAN 5% ABOVE OR BELOW THE SUM OF THE  
29 COMPONENTS OF THE FUEL RATE THEN IN EFFECT.

30 (2) AN ELECTRIC COMPANY OR ELECTRICITY SUPPLIER THAT HAS A  
31 DECREASE OF MORE THAN 5% IN ITS FUEL RATE PROMPTLY SHALL FILE AN  
32 APPLICATION WITH THE COMMISSION TO REDUCE THE FUEL RATE.

33 (3) TO THE EXTENT THAT AN ELECTRIC COMPANY OR ELECTRICITY  
34 SUPPLIER DOES NOT RECOVER ITS ACTUAL ACCUMULATED FUEL COSTS UNDER THIS  
35 SECTION, THE ELECTRIC COMPANY OR ELECTRICITY SUPPLIER MAY DEFER THE  
36 COSTS AS AN OPERATING EXPENSE AND RECOVER THE COSTS IN A BASE RATE  
37 PROCEEDING IF:

38 (I) THE COMMISSION FINDS THAT THE COSTS WERE JUSTIFIED;  
39 AND

1 (II) RECOVERY OF THE COSTS IS CONSISTENT WITH THE RATE  
2 PROVISIONS OF THIS TITLE.

3 (E) IN ITS INVESTIGATION OF AN APPLICATION FOR A FUEL RATE  
4 ADJUSTMENT UNDER THIS SECTION, THE COMMISSION SHALL MAKE SPECIFIC  
5 FINDINGS OF FACT AND CONCLUSIONS BASED ON A DETERMINATION OF WHETHER  
6 THE APPLICANT HAS:

7 (1) INCLUDED ONLY CHANGES IN THE ACTUAL COSTS OF THE  
8 COMPONENTS OF THE FUEL RATE IN THE PROPOSED CHANGE;

9 (2) USED THE MOST ECONOMICAL MIX OF ALL TYPES OF GENERATION  
10 AND PURCHASES;

11 (3) MADE EVERY REASONABLE EFFORT TO MINIMIZE FUEL COSTS AND  
12 FOLLOWED COMPETITIVE PROCUREMENT PRACTICES, CONSIDERING THE  
13 RELIABILITY OF LOCAL TRANSPORTATION; AND

14 (4) FOR AN ELECTRIC COMPANY, MAINTAINED THE PRODUCTIVE  
15 CAPACITY OF ALL ITS GENERATING PLANTS AT A REASONABLE LEVEL.

16 (F) UNLESS CAUSE TO THE CONTRARY IS SHOWN, THE COMMISSION MAY  
17 DISALLOW ANY INCREASED COST THAT IT FINDS IS A RESULT OF THE APPLICANT'S  
18 FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION.

19 (G) AN APPLICANT FOR A FUEL RATE ADJUSTMENT SHALL FILE ITS  
20 PROPOSED INITIAL DIRECT TESTIMONY AND EXHIBITS WITH THE APPLICATION.

21 (H) (1) THE COMMISSION SHALL CONDUCT, OR DIRECT ANOTHER PERSON  
22 TO CONDUCT, AN ANNUAL AUDIT OF THE FUEL PROCUREMENT AND PURCHASING  
23 PRACTICES OF EACH ELECTRIC COMPANY AND ELECTRICITY SUPPLIER SUBJECT TO  
24 THIS SECTION.

25 (2) THE DEPARTMENT OF LEGISLATIVE SERVICES MAY:

26 (I) CONDUCT AN AUDIT AND STUDY OF THE FUEL PROCUREMENT  
27 AND PURCHASING PRACTICES OF AN ELECTRIC COMPANY OR ELECTRICITY  
28 SUPPLIER; AND

29 (II) EXAMINE AN AUDIT ISSUED BY OR GENERATED AT THE  
30 DIRECTION OF THE COMMISSION UNDER THIS SUBSECTION.

31 7-201.

32 (a) IN COOPERATION WITH THE SECRETARY OF NATURAL RESOURCES AS  
33 PROVIDED UNDER § 3-304 OF THE NATURAL RESOURCES ARTICLE, THE COMMISSION  
34 SHALL ASSEMBLE AND EVALUATE EACH YEAR THE LONG-RANGE PLANS OF THE  
35 STATE'S ELECTRIC COMPANIES REGARDING GENERATING NEEDS AND THE MEANS  
36 TO MEET THOSE NEEDS.

1 (B) (1) Annually, the Chairman of the Commission shall forward to the  
2 Secretary of Natural Resources a 10-year plan listing possible and proposed sites,  
3 including the associated transmission routes, for the construction of electric plants  
4 within the State.

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

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

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

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

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

23 (2) The evaluation of investments shall include:

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

28 (ii) utilization of renewable energy sources;

29 (iii) promotion and utilization of electricity from cogeneration and  
30 wastes; and

31 (iv) widespread public promotion of energy conservation programs.

32 7-207.

33 (a) (1) In this section and § 7-208 of this subtitle, "construction" means:

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

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

5 (2) "Construction" does not include a change that is needed for the  
6 temporary use of a site or route for nonutility purposes or for use in securing  
7 geological data, including any boring that is necessary to ascertain foundation  
8 conditions.

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

12 (ii) If a person obtains Commission approval for construction under  
13 § 7-207.1 of this subtitle, the Commission shall exempt a person from the  
14 requirement to obtain a certificate of public convenience and necessity under this  
15 section.

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

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

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

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

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

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

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

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

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

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

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

15           (2)       **THE NEED TO MEET EXISTING AND FUTURE DEMAND FOR ELECTRIC**  
16 **SERVICE; AND**

17           (3)       the effect of the generating station or overhead transmission line on:

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

19                   (ii)       economics;

20                   (iii)       esthetics;

21                   (iv)       historic sites;

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

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

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

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

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

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

4 (ii) the Maryland Aviation Administration concurs in that  
5 determination.

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

10 7-504.

11 The General Assembly finds and declares that the purpose of this subtitle is to:

12 (1) establish customer choice of electricity supply and electricity supply  
13 services;

14 (2) create competitive retail electricity supply and electricity supply  
15 services markets;

16 (3) [deregulate the generation, supply, and pricing of electricity;

17 (4)] provide economic benefits for all customer classes; and

18 [(5)] (4) ensure compliance with federal and State environmental  
19 standards.

20 7-505.

21 (a) [(1) In assessing and approving each electric company's restructuring  
22 plan, and overseeing the transition process and regulation of the restructured electric  
23 industry, the] THE Commission shall provide that the transition to a competitive  
24 electricity supply and electricity supply services market shall be orderly, maintain  
25 electric system reliability, and ensure compliance with federal and State  
26 environmental regulations, be fair to customers, electric company investors,  
27 customers of municipal electric utilities, electric companies, and electricity suppliers,  
28 and provide economic benefits to all customer classes.

29 [(2) The Commission shall consider the restructuring plans of municipal  
30 electric utilities, as specified under § 7-510 of this subtitle.]

31 (b) (1) The Commission shall issue the orders or adopt the regulations  
32 required under this subsection before the implementation of customer choice.

33 (2) The Commission shall order a universal service program, to be made  
34 available on a statewide basis, to benefit low-income customers, in accordance with §  
35 7-512.1 of this subtitle.

1 (3) The Commission shall order an electric company to adopt policies and  
2 practices reasonably designed to prevent:

3 (i) discrimination against a person, locality, or particular class of  
4 service or giving undue or unreasonable preference in favor of the electric company's  
5 own electricity supply, other services, divisions, or affiliates, if any; and

6 (ii) any other forms of self-dealing [or practices that could result in  
7 noncompetitive electricity prices to customers].

8 (4) (i) The Commission shall, by regulation or order, require each  
9 electric company and electricity supplier to provide adequate and accurate  
10 information to each customer on the available electric services of the electric company  
11 or electricity supplier, including disclosure, every 6 months, of a uniform common set  
12 of information about:

13 1. the fuel mix of the electricity purchased by customers,  
14 including categories of electricity from coal, natural gas, nuclear, oil, hydroelectric,  
15 solar, biomass, wind, and other resources, or disclosure of a regional fuel mix average;  
16 and

17 2. the emissions, on a pound per megawatt-hour basis, of  
18 pollutants identified by the Commission, or disclosure of a regional fuel mix average.

19 (ii) The Commission may require an electric company or an  
20 electricity supplier to provide documentation supporting the disclosures required  
21 under subparagraph (i) of this paragraph.

22 (5) (i) The Commission shall, by regulation or order, require the  
23 unbundling of electric company rates, charges, and services into standardized  
24 categories determined by the Commission.

25 (ii) The Commission shall, by regulation or order, require that  
26 customers' bills for electricity service indicate charges for:

27 1. distribution and transmission;

28 2. transition charge or credit;

29 3. universal service program charges;

30 4. customer charges;

31 5. taxes; and

32 6. other charges identified by the Commission.

33 (6) The Commission shall issue orders or regulations to prevent an  
34 electric company and an electricity supplier from disclosing a retail electric  
35 customer's billing, payment, and credit information without the retail electric

1 customer's consent, except as allowed by the Commission for bill collection or credit  
2 rating reporting purposes.

3 (7) An electricity supplier may not engage in marketing, advertising, or  
4 trade practices that are unfair, false, misleading, or deceptive.

5 (8) The Commission shall determine the terms, conditions, and rates [of  
6 standard offer service] in accordance with[:

7 (i)] Title 4 of this article[; or

8 (ii) as applicable, § 7-510(c)(3)(ii) of this subtitle].

9 (9) In connection with § 7-513 of this subtitle, the Commission may not  
10 require an electric company to divest itself of a generation asset or prohibit an electric  
11 company from divesting itself voluntarily of a generation asset.

12 (10) (i) On or before July 1, 2000, the Commission shall issue orders or  
13 adopt regulations reasonably designed to ensure the creation of competitive electricity  
14 supply and electricity supply services markets, with appropriate customer  
15 safeguards.

16 (ii) On or before July 1, 2000, the Commission shall require:

17 1. an appropriate code of conduct between the electric  
18 company and an affiliate providing electricity supply and electricity supply services in  
19 the State;

20 2. access by electricity suppliers and customers to the electric  
21 company's transmission and distribution system on a nondiscriminatory basis;

22 3. appropriate complaint and enforcement procedures; and

23 4. any other safeguards deemed necessary by the  
24 Commission to ensure the creation and maintenance of a competitive electricity  
25 supply and electricity supply services market.

26 [(iii) On or before July 1, 2000, the Commission shall require, among  
27 other factors, functional, operational, structural, or legal separation between the  
28 electric company's regulated businesses and its nonregulated businesses or  
29 nonregulated affiliates.]

30 (11) Nothing in this title may be construed as preventing the application  
31 of State and federal consumer protection and antitrust laws to electric companies and  
32 their affiliates, and to electricity suppliers.

33 (12) The Commission, in consultation with the Department of the  
34 Environment, shall adopt appropriate measures to maintain environmental  
35 standards, adapt existing programs, and develop new programs as appropriate to  
36 ensure compliance with federal and State environmental protection standards.

1 (13) (i) An electric company shall comply with all requirements of the  
2 Commission in conducting regulated operations in compliance with this article.

3 (ii) The Commission shall require each electric company to adopt a  
4 code of conduct to be approved by the Commission by a date to be determined by the  
5 Commission to prevent regulated service customers from subsidizing the services of  
6 unregulated businesses or affiliates of the electric company.

7 (c) (1) Notwithstanding any other provision of law[, including subsection (d)  
8 of this section,] the Commission may regulate [the regulated services of] an electric  
9 company through alternative forms of regulation.

10 (2) The Commission may adopt an alternative form of regulation under  
11 this section if the Commission finds, after notice and hearing, that the alternative  
12 form of regulation:

13 (i) protects consumers;

14 (ii) ensures the quality, availability, and reliability of regulated  
15 electric services; and

16 (iii) is in the interest of the public, including shareholders of the  
17 electric company.

18 (3) Alternative forms of regulation may include:

19 (i) price regulation, including price freezes or caps;

20 (ii) revenue regulation;

21 (iii) ranges of authorized return;

22 (iv) rate of return;

23 (v) categories of services; or

24 (vi) price-indexing.

25 (d) [(1) The Commission shall cap, for 4 years after initial implementation of  
26 customer choice in the electric company's distribution territory, the total of the rates  
27 of an electric company charged to a retail electric customer at the actual level of the  
28 rates in effect or authorized by the Commission on the date immediately preceding  
29 the initial implementation of customer choice in the electric company's distribution  
30 territory.

31 (2) (i) Except as provided in subparagraph (ii) of this paragraph, the  
32 cap required under paragraph (1) of this subsection does not apply to the recovery of  
33 costs added after January 1, 2000, in accordance with § 7-512(c) of this subtitle.

34 (ii) The cap required under paragraph (1) of this subsection applies  
35 to the recovery of:

- 1                                   1.       any transition costs under § 7-513 of this subtitle;
- 2                                   2.       any costs included in rates on January 1, 2000, in  
3 accordance with § 7-512(c) of this subtitle; and
- 4                                   3.       costs for the universal service program established under  
5 § 7-512.1 of this subtitle.

6                   (3)       As part of a settlement, the Commission may approve a cap for a  
7 different time period or an alternative price protection plan that the Commission  
8 determines is equally protective of ratepayers.

9                   (4)       (i)       1.       Subject to the provisions of paragraph (5) of this  
10 subsection, the Commission shall reduce residential rates for each investor-owned  
11 electric company by an amount between 3% and 7.5% of base rates, as measured on  
12 June 30, 1999.

13                                   2.       The reduction required under sub-subparagraph 1 of this  
14 subparagraph shall begin on the initial implementation date and remain in effect for  
15 4 years.

16                                   3.       The Commission shall determine the allocation of the rate  
17 reduction among the generation, transmission, and distribution residential rate  
18 components.

19                                   (ii)       In achieving the rate reduction required under subparagraph (i)  
20 of this paragraph, the Commission shall consider:

- 21                                   1.       the expiration of any surcharge;
- 22                                   2.       changes in the electric company's tax liability;
- 23                                   3.       cost of service determinations ordered by the Commission;
- 24                                   4.       net transition costs or benefits;
- 25                                   5.       the effect on the competitive electricity supply market;
- 26                                   6.       whether the rate reduction and rate cap will unduly  
27 impair the electric company's financial condition;
- 28                                   7.       the costs associated with the universal service program;  
29 and
- 30                                   8.       the interests of the public, including shareholders of the  
31 electric company.

32                                   (iii)       The Commission may, within the parameters provided in  
33 subparagraph (i) of this paragraph, increase or decrease the actual rate reduction  
34 required.

1 (iv) The Commission may allow the recovery of any extraordinary  
2 costs based on the circumstances of an individual electric company if the Commission  
3 determines that the action is necessary and in the public interest.

4 (v) In determining the rate reduction required under subparagraph  
5 (i) of this paragraph, the Commission may not increase rates for nonresidential  
6 customers.

7 (5) The requirements of paragraph (4) of this subsection do not apply to  
8 an electric company if the Commission approves or has in effect a settlement that the  
9 Commission determines is equally protective of ratepayers.

10 (e)] (1) The Commission shall assess the amount of electricity generated in  
11 Maryland as well as the amount of electricity imported from other states in order to  
12 determine whether a sufficient supply of electricity is available to customers in the  
13 State.

14 (2) On or before January 1 in 2001, 2003, 2005, and 2007, the  
15 Commission shall report to the General Assembly in accordance with § 2-1246 of the  
16 State Government Article on its assessment under this subsection, and any  
17 recommendations for legislation which may be needed to ensure an adequate supply  
18 of electricity for customers in the State.

19 7-507.

20 (a) A person, other than [an electric company providing standard offer service  
21 under § 7-510(c) of this subtitle or] a municipal electric utility serving customers  
22 solely in its distribution territory, may not engage in the business of an electricity  
23 supplier in the State unless the person holds a license issued by the Commission.

24 (b) An application for an electricity supplier license shall:

25 (1) be made to the Commission in writing on a form adopted by the  
26 Commission;

27 (2) be verified by oath or affirmation; and

28 (3) contain information that the Commission requires, including:

29 (i) proof of technical and managerial competence;

30 (ii) proof of compliance with all applicable requirements of the  
31 Federal Energy Regulatory Commission, and any independent system operator or  
32 regional or system transmission operator to be used by the licensee;

33 (iii) a certification of compliance with applicable federal and State  
34 environmental laws and regulations that relate to the generation of electricity; and

35 (iv) payment of the applicable licensing fee.

36 (c) The Commission shall, by regulation or order:

- 1           (1)     require proof of financial integrity;
- 2           (2)     require a licensee to post a bond or other similar instrument, if, in the  
3 Commission's judgment, the bond or similar instrument is necessary to insure an  
4 electricity supplier's financial integrity;
- 5           (3)     require a licensee to:
- 6                   (i)     provide proof that it is qualified to do business in the State with  
7 the Department of Assessments and Taxation; and
- 8                   (ii)    agree to be subject to all applicable taxes; and
- 9           (4)     adopt any other requirements it finds to be in the public interest,  
10 which may include different requirements for:
- 11                   (i)     electricity suppliers that serve only large customers; and
- 12                   (ii)    the different categories of electricity suppliers.
- 13   (d)     A license issued under this section may not be transferred without prior  
14 Commission approval.
- 15   (e)     The Commission shall adopt regulations or issue orders to:
- 16           (1)     protect consumers, electric companies, and electricity suppliers from  
17 anticompetitive and abusive practices;
- 18           (2)     require each electricity supplier to provide, in addition to the  
19 requirements under § 7-505(b)(5) of this subtitle, adequate and accurate customer  
20 information to enable customers to make informed choices regarding the purchase of  
21 any electricity services offered by the electricity supplier;
- 22           (3)     establish reasonable restrictions on telemarketing;
- 23           (4)     establish procedures for contracting with customers;
- 24           (5)     establish requirements and limitations relating to deposits, billing,  
25 collections, and contract cancellations; AND
- 26           (6)     [establish provisions providing for the referral of a delinquent  
27 account by an electricity supplier to the standard offer service under § 7-510(c) of this  
28 subtitle; and
- 29           (7)]    establish procedures for dispute resolution.
- 30   (f)     In accordance with regulations or orders of the Commission, electricity  
31 bills, for competitive and regulated electric services, provided to consumers may  
32 provide, in addition to the requirements of § 7-505(b)(5) of this subtitle and  
33 subsection (e)(2) of this section, the following information:

1 (1) the identity and phone number of the electricity supplier of the  
2 service;

3 (2) sufficient information to evaluate prices and services; and

4 (3) information identifying whether the price is regulated or competitive.

5 (g) (1) An electricity supplier or any person or governmental unit may not,  
6 without first obtaining the customer's permission:

7 (i) make any change in the electricity supplier for a customer; or

8 (ii) add a new charge for a new or existing service or option.

9 (2) The Commission shall adopt regulations or issue orders establishing  
10 procedures to prevent the practices prohibited under paragraph (1) of this subsection.

11 (h) (1) An electricity supplier may not discriminate against any customer  
12 based wholly or partly on race, color, creed, national origin, or sex of an applicant for  
13 service or for any arbitrary, capricious, or unfairly discriminatory reason.

14 (2) An electricity supplier may not refuse to provide service to a  
15 customer except by the application of standards that are reasonably related to the  
16 electricity supplier's economic and business purposes.

17 (i) An electricity supplier shall be subject to all applicable federal and State  
18 environmental laws and regulations.

19 (j) An electricity supplier shall post on the Internet information that is  
20 readily understandable about its services and rates for small commercial and  
21 residential electric customers.

22 (k) (1) The Commission may revoke or suspend the license of an electricity  
23 supplier, impose a civil penalty or other remedy, order a refund or credit to a  
24 customer, or impose a moratorium on adding or soliciting additional customers by the  
25 electricity supplier, for just cause on the Commission's own investigation or on  
26 complaint of the Office of People's Counsel, the Attorney General, or an affected party.

27 (2) A civil penalty may be imposed in addition to the Commission's  
28 decision to revoke, suspend, or impose a moratorium.

29 (3) Just cause includes:

30 (i) intentionally providing false information to the Commission;

31 (ii) switching, or causing to be switched, the electricity supply for a  
32 customer without first obtaining the customer's permission;

33 (iii) failing to provide electricity for its customers;

34 (iv) committing fraud or engaging in deceptive practices;

- 1 (v) failing to maintain financial integrity;
- 2 (vi) violating a Commission regulation or order;
- 3 (vii) failing to pay, collect, remit, or calculate accurately applicable  
4 State or local taxes;
- 5 (viii) violating a provision of this article or any other applicable  
6 consumer protection law of the State;
- 7 (ix) conviction of a felony by the licensee or principal of the licensee  
8 or any crime involving fraud, theft, or deceit; and
- 9 (x) suspension or revocation of a license by any State or federal  
10 authority.

11 (l) (1) An electricity supplier or person selling or offering to sell electricity  
12 in the State in violation of this section, after notice and an opportunity for a hearing,  
13 is subject to:

- 14 (i) a civil penalty of not more than \$10,000 for the violation; or
- 15 (ii) license revocation or suspension.
- 16 (2) Each day a violation continues is a separate violation.
- 17 (3) The Commission shall determine the amount of any civil penalty  
18 after considering:
- 19 (i) the number of previous violations of any provision of this  
20 article;
- 21 (ii) the gravity of the current violation; and
- 22 (iii) the good faith of the electricity supplier or person charged in  
23 attempting to achieve compliance after notification of the violation.

24 (m) In connection with a consumer complaint or Commission investigation  
25 under this section, an electricity supplier shall provide to the Commission access to  
26 any accounts, books, papers, and documents which the Commission considers  
27 necessary to resolve the matter at issue.

28 (n) The Commission may order the electricity supplier to cease adding or  
29 soliciting additional customers or to cease serving customers in the State.

30 (o) The Commission shall consult with the Consumer Protection Division of  
31 the Office of the Attorney General before issuing regulations designed to protect  
32 consumers.

33 (p) The People's Counsel shall have the same authority in licensing,  
34 complaint, and dispute resolution proceedings as it has in Title 2 of this article.

1 (q) Nothing in this subtitle may be construed to affect the authority of the  
2 Division of Consumer Protection in the Office of the Attorney General to enforce  
3 violations of Titles 13 and 14 of the Commercial Law Article or any other applicable  
4 State law or regulation in connection with the activities of electricity suppliers.

5 [7-509.

6 (a) (1) On and after the initial implementation date, the generation, supply,  
7 and sale of electricity, including all related facilities and assets, may not be regulated  
8 as an electric company service or function except to:

9 (i) establish the price for standard offer service under § 7-510(c) of  
10 this subtitle; and

11 (ii) review and approve transfers of generation assets under §  
12 7-508 of this subtitle.

13 (2) This subsection does not apply to:

14 (i) regulation of an electricity supplier under § 7-507 of this  
15 subtitle; or

16 (ii) the costs of nuclear generation facilities or purchased power  
17 contracts that, as part of a settlement approved by the Commission, remain regulated  
18 or are recovered through the distribution function.

19 (b) (1) Subject to paragraph (2) of this subsection, this section does not apply  
20 to an investor-owned electric company until the electric company:

21 (i) transfers generation facilities and generation assets to an  
22 affiliate of the electric company, and the affiliate operates the facilities and assets; or

23 (ii) sells the generation facilities and generation assets to a  
24 nonaffiliate.

25 (2) (i) Notwithstanding the provisions of paragraph (1) of this  
26 subsection, this section applies to an investor-owned electric company that does not  
27 transfer its generation facilities and generation assets to an affiliate or sell its  
28 generation facilities and generation assets to a nonaffiliate if, on January 1, 1999, the  
29 retail peak load of the investor-owned electric company in the State was less than  
30 1,000 megawatts.

31 (ii) An investor-owned electric company to which this section  
32 applies through subparagraph (i) of this paragraph shall, by January 1, 2001:

33 1. transfer its generation facilities and generation assets to  
34 an affiliate of the investor-owned electric company that operates the facilities and  
35 assets; or



1 (iv) The Commission may approve each municipal electric utility  
2 plan and schedule after considering the features that distinguish the municipal  
3 electric utility from other electric companies.

4 (v) Nothing in this subtitle may be construed to require the  
5 functional, operational, structural, or legal separation of the regulated and  
6 nonregulated operations of the municipal electric utility.

7 (3) On or before October 1, 2003, each municipal electric utility shall  
8 report, subject to § 2-1246 of the State Government Article, to the General Assembly  
9 on the status of the opportunity for customer choice in its service territory, including:

10 (i) if the service territory of the municipal electric utility is  
11 available for customer choice, its experience, through July 1, 2003, with the transition  
12 to customer choice; or

13 (ii) if the service territory of the municipal electric utility is not  
14 available for customer choice as of July 1, 2003, its proposed intention to make  
15 customer choice available in the future.

16 (4) If a municipal electric utility serves customers outside its distribution  
17 territory, electricity suppliers licensed under § 7-507 of this subtitle may serve the  
18 customers in the distribution territory of the municipal electric utility.

19 (b) For good cause shown and if the Commission finds the action to be in the  
20 public interest, the Commission may:

21 (1) accelerate or delay the initial implementation date of July 1, 2000 by  
22 up to 3 months; or

23 (2) accelerate any of the other implementation dates and phase-in  
24 percentages in subsection (a) of this section.

25 (c) (1) Beginning on the initial implementation date, an electric company's  
26 obligation to provide electricity supply and electricity supply service is stated by this  
27 subsection.

28 (2) Electricity supply purchased from a customer's electric company is  
29 known as standard offer service. A customer is considered to have chosen the  
30 standard offer service if the customer:

31 (i) is not allowed to choose an electricity supplier under the phase  
32 in of customer choice in subsection (a) of this section;

33 (ii) contracts for electricity with an electricity supplier and it is not  
34 delivered;

35 (iii) cannot arrange for electricity from an electricity supplier;

36 (iv) does not choose an electricity supplier;

1 (v) chooses the standard offer service; or

2 (vi) has been denied service or referred to the standard offer service  
3 by an electricity supplier in accordance with § 7-507(e)(6) of this subtitle.

4 (3) Any obligation of an electric company to provide standard offer  
5 service shall cease on July 1, 2003, except that:

6 (i) electric cooperatives and municipal electric utilities may choose  
7 to continue providing standard offer service in their respective distribution  
8 territories, and may cease offering that service after notifying the Commission at  
9 least 12 months in advance; and

10 (ii) 1. if the Commission finds that the electricity supply market  
11 is not competitive or that no acceptable competitive proposal has been received to  
12 supply electricity to those customers described under paragraph (2) of this subsection,  
13 the Commission shall extend the obligation to provide standard offer service to  
14 residential and small commercial customers at a market price that permits recovery  
15 of the verifiable, prudently incurred costs to procure or produce the electricity plus a  
16 reasonable return.

17 2. The Commission shall reexamine the finding made under  
18 this subparagraph at least annually.

19 (4) On or before July 1, 2001, the Commission shall adopt regulations or  
20 issue orders to establish procedures for the competitive selection of electricity  
21 suppliers, including an affiliate of an electric company, to provide standard offer  
22 service to customers of electric companies under paragraph (2) of this subsection,  
23 except for customers of electric cooperatives and municipal electric utilities. Unless  
24 delayed by the Commission, the competitive selection shall take effect no later than  
25 July 1, 2003.

26 (5) An electric company may procure the electricity needed to meet its  
27 standard offer service electricity supply obligation from any electricity supplier,  
28 including an affiliate of the electric company.

29 (d) Notwithstanding the dates set forth in this section or any other law,  
30 customer choice may not commence until legislation is enacted by the General  
31 Assembly to restructure Maryland taxes to address the State and local tax  
32 implications of restructuring the electric utility industry.

33 (e) The Commission shall, by regulation or order, adopt procedures to  
34 implement this section, including the allocation of any unused opportunity for  
35 customer choice among customer classes.

36 (f) A county or municipal corporation may not act as an aggregator unless the  
37 Commission determines there is not sufficient competition within the boundaries of  
38 the county or municipal corporation.]

1 7-512.1.

2 (b) (1) All customers shall contribute to the funding of the electric universal  
3 service program through a charge collected by each electric company.

4 (2) The Commission shall determine a fair and equitable allocation for  
5 collecting the charges among all customer classes pursuant to subsection (e) of this  
6 section.

7 (3) In accordance with subsection (f)(6) of this section, any unexpended  
8 bill assistance and arrearage retirement funds returned to customers under  
9 subsection (f) of this section shall be returned to each customer class as a credit in the  
10 same proportion that the customer class contributed charges to the fund.

11 (4) An electric company shall recover electric universal service program  
12 costs [in accordance with § 7-512 of this subtitle].

13 (5) The Commission shall determine the allocation of the electric  
14 universal service charge among the generation, transmission, and distribution rate  
15 components of all classes.

16 (6) The Commission may not assess the electric universal service  
17 surcharge on a per kilowatt-hour basis.

18 [7-515.

19 An electricity supplier that also provides distribution service, or that has an  
20 affiliate that provides distribution service, in Pennsylvania, Delaware, West Virginia,  
21 Virginia, or the District of Columbia may not provide retail electricity supply service,  
22 directly, indirectly, or through an aggregator, marketer, or broker, in the distribution  
23 territory of an unaffiliated electric company unless there is electricity supply  
24 competition in at least a portion of the distribution service area of the electricity  
25 supplier or affiliate.]

26 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
27 read as follows:

28 **Article - Public Utility Companies**

29 [7-512.

30 (a) This section and § 7-513 of this subtitle apply to an entity that was  
31 regulated as an electric company on June 30, 1999, whether or not the entity or any  
32 of its businesses, services, or assets continues to be regulated under this article after  
33 that date.

34 (b) An electric company may recover costs under this section to the extent that  
35 the Commission finds costs to be just and reasonable.

1 (c) (1) An electric company shall be provided a fair opportunity to recover  
2 fully all costs that have been or will be incurred by the electric company under public  
3 purpose programs established by law or ordered by the Commission.

4 (2) (i) Except as provided in paragraph (3) of this subsection, the costs  
5 subject to this subsection shall be funded by a surcharge or other cost recovery  
6 mechanism collected on a statewide basis that:

7 1. fully recovers from customers the costs of the plans and  
8 programs; and

9 2. subject to subparagraph (ii) of this paragraph, with  
10 respect to any of these costs not included in rates on January 1, 2000, is not subject to  
11 any otherwise applicable cap.

12 (ii) The recovery by an electric company of costs for a universal  
13 service program is subject to any applicable cap regardless of when the costs are  
14 included in rates.

15 (3) During the fiscal year ending June 30, 2000, an electric company may  
16 not, under paragraph (2) of this subsection, recover costs of a consumer education  
17 program established by law, regulation, or order.]

18 [7-513.

19 (a) (1) In accordance with this subsection, an electric company shall be  
20 provided a fair opportunity to recover all of its prudently incurred and verifiable net  
21 transition costs, subject to full mitigation, following the Commission's determination  
22 under subsection (b) of this section.

23 (2) A competitive transition charge, or other appropriate mechanism  
24 that the Commission determines, may be included for customers who access the  
25 transmission or distribution system of the electric company in whose distribution  
26 territory the customer is located. The costs authorized by the Commission to be  
27 recovered shall be allocated to customer classes in a manner that, as nearly as  
28 reasonably possible, does not exceed the cost of providing the service to those classes  
29 of customers, avoiding where reasonably possible any interclass or intraclass cross  
30 subsidy.

31 (3) (i) The competitive transition charge may be included on bills to  
32 customers for a period determined by the Commission.

33 (ii) The Commission may establish recovery periods of different  
34 lengths for each electric company and for different categories of transition costs.

35 (4) A competitive transition charge, or other appropriate mechanism  
36 determined by the Commission, may not apply to any on-site generated electricity to  
37 the extent of:

1 (i) the existing facilities' installed generating capacity as of  
2 January 1, 1999;

3 (ii) the generating capacity of an existing facility to be installed  
4 under a legally binding contract:

5 1. executed on or before January 1, 1999; or

6 2. executed on or before September 29, 1999, if the  
7 Commission, on a case by case review of the evidence, determines that negotiations in  
8 good faith concerning the contract were ongoing as of January 1, 1999; or

9 (iii) for a facility with a capacity of 500 kilowatts or less:

10 1. the first 80 megawatts of the aggregate statewide  
11 generating capacity of on-site generating facilities;

12 2. the generating capacity of the facility if the facility:

13 A. is installed between January 1, 2000 and December 31,  
14 2003;

15 B. derives electricity from fuel cells, photovoltaics, wind  
16 machines, or microturbines; and

17 C. has an energy conversion efficiency greater than 40%; or

18 3. the generating capacity of the facility if the facility:

19 A. is installed after January 1, 2004;

20 B. derives electricity from fuel cells, photovoltaics, wind  
21 machines, or microturbines; and

22 C. has an energy conversion efficiency greater than 50%.

23 (b) The Commission shall determine the transition costs and the amounts of  
24 the transition costs that an electric company shall be provided an opportunity to  
25 recover under its restructuring plan through the competitive transition charge or  
26 other appropriate mechanism.

27 (c) (1) After July 1, 1999, an electric company may apply to the Commission  
28 for a qualified rate order for some or all of its transition costs.

29 (2) If the Commission issues a qualified rate order and the transition  
30 bonds approved by that order are successfully issued:

31 (i) the electric company shall impose and collect, through its  
32 customer bills, the intangible transition charges approved by the qualified rate order;  
33 and

1 (ii) at the same time, the electric company's competitive transition  
2 charge shall be reduced by an amount equal to that portion of the competitive  
3 transition charge related to the transition costs for which transition bonds have been  
4 successfully issued, together with any costs of capital related to the transition costs  
5 for which recovery was provided in the competitive transition charge, as provided in  
6 the qualified rate order.

7 (d) (1) The Commission shall establish procedures for the annual review of  
8 the competitive transition charge for each electric company to reconcile the annual  
9 revenues received from the charge with the annual amortization of transition costs  
10 approved by the Commission under this section to take account of actual  
11 kilowatt-hour sales in the prior year compared with previously estimated  
12 kilowatt-hour sales. The Commission shall adjust the competitive transition charge  
13 based on any under recovery or over recovery with respect to the authorized  
14 amortization amount.

15 (2) Nothing in this subtitle may be construed as preventing the  
16 Commission from approving for an investor-owned electric company:

17 (i) an adjustment mechanism proposed by the investor-owned  
18 electric company in its initial restructuring proposal filed prior to January 1, 1999,  
19 that takes into account differences other than differences in kilowatt-hour sales,  
20 taking into consideration any requirements related to any transition bonds;

21 (ii) an adjustment that takes into account generation asset sales by  
22 an electric company or an affiliate to a nonaffiliate that are consummated on or before  
23 June 30, 2005; or

24 (iii) any other mechanism as part of a settlement.

25 (e) (1) In determining the appropriate transition costs or benefits for each  
26 electric company's generation-related assets, the Commission shall:

27 (i) conduct public hearings; and

28 (ii) consider, in addition to other appropriate evidence of value:

29 1. book value and fair market value;

30 2. auctions and sales of comparable assets;

31 3. appraisals;

32 4. the revenue the company would receive under  
33 rate-of-return regulation;

34 5. the revenue the company would receive in a restructured  
35 electricity supply market; and

36 6. computer simulations provided to the Commission.

1           (2)     The Commission shall determine any equitable allocation of costs or  
2 benefits between shareholders and ratepayers. In determining the allocation of  
3 transition costs or benefits, the Commission shall consider the following factors:

4                   (i)     the prudence and verifiability of the original investment;

5                   (ii)    whether the investment continues to be used and useful;

6                   (iii)   whether the loss is one of which investors can be said to have  
7 reasonably borne the risk; and

8                   (iv)    whether investors have already been compensated for the risk.]

9     SECTION 3. AND BE IT FURTHER ENACTED, That an electric company may  
10 acquire or build a generating station in accordance with this Act, but may not pass on  
11 to ratepayers the cost of reacquiring any generation assets that the electric company  
12 previously transferred to an affiliated company or sold.

13    SECTION 4. AND BE IT FURTHER ENACTED, That a presently existing  
14 obligation or contract right may not be impaired in any way by this Act.

15    SECTION 5. AND BE IT FURTHER ENACTED, That if any provision of this  
16 Act or the application thereof to any person or circumstance is held invalid for any  
17 reason in a court of competent jurisdiction, the invalidity does not affect other  
18 provisions or any other application of this Act which can be given effect without the  
19 invalid provision or application, and for this purpose the provisions of this Act are  
20 declared severable.

21    SECTION 6. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall  
22 take effect January 1, 2010.

23    SECTION 7. AND BE IT FURTHER ENACTED, That, except as provided in  
24 Section 6 of this Act, this Act shall take effect June 1, 2006.