

**C90G00**  
**Public Service Commission**

***Operating Budget Data***

(\$ in Thousands)

|                    | <u>FY 07</u><br><u>Actual</u> | <u>FY 08</u><br><u>Working</u> | <u>FY 09</u><br><u>Allowance</u> | <u>FY 08-09</u><br><u>Change</u> | <u>% Change</u><br><u>Prior Year</u> |
|--------------------|-------------------------------|--------------------------------|----------------------------------|----------------------------------|--------------------------------------|
| Special Fund       | \$13,008                      | \$13,210                       | \$14,417                         | \$1,207                          | 9.1%                                 |
| Federal Fund       | <u>0</u>                      | <u>0</u>                       | <u>26</u>                        | <u>26</u>                        |                                      |
| <b>Total Funds</b> | <b>\$13,008</b>               | <b>\$13,210</b>                | <b>\$14,443</b>                  | <b>\$1,233</b>                   | <b>9.3%</b>                          |

- The allowance increases by \$1,232,548 or 9.3%, above the fiscal 2008 working appropriation. However, when you adjust the allowance to reflect changes in the allocation of health insurance and Other Post Employment Benefits (OPEB), the fiscal 2009 allowance increases by \$583,028, or 4.8%.
- Personnel expenses increase by \$1.3 million primarily due to (1) the addition of seven new regular positions (\$441,278); (2) ongoing employee health insurance and OPEB (\$582,418); (3) a reduction in turnover expectancy for existing employees (\$113,812); and (4) employee increments, merit increases, and other pay adjustments (\$107,914).
- Rent expenditures increase by \$53,909 due to a \$1.24 increase in rent paid per square foot to the Department of General Services.
- Contractual employee expenditures decrease by \$80,055 due to the elimination of three contractual full-time equivalents (FTE).
- Federal funds increase by \$26,000 due to grant funding received for the Federal Pipeline Safety Program.

Note: Numbers may not sum to total due to rounding.

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## ***Personnel Data***

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|                        | <b><u>FY 07</u></b><br><b><u>Actual</u></b> | <b><u>FY 08</u></b><br><b><u>Working</u></b> | <b><u>FY 09</u></b><br><b><u>Allowance</u></b> | <b><u>FY 08-09</u></b><br><b><u>Change</u></b> |
|------------------------|---|--|--|--|
| Regular Positions      | 135.00                                      | 135.00                                       | 142.00   | 7.00   |
| Contractual FTEs       | <u>5.00</u>                                 | <u>9.00</u>                                  | <u>6.00</u>                                    | <u>-3.00</u>                                   |
| <b>Total Personnel</b> | <b>140.00</b>                               | <b>144.00</b>                                | <b>148.00</b>                                  | <b>4.00</b>                                    |

### ***Vacancy Data: Regular Positions***

|                                   |      |       |
|-----------------------------------|------|-------|
| Turnover, Excluding New Positions | 5.69 | 4.01% |
| Positions Vacant as of 12/31/07   | 7.00 | 5.19% |

- The allowance includes seven additional employees – three Commission Advisors, two directors (Director of Electricity and a Director of Electric Supply and Generation) and two paralegal positions. The allowance also eliminates three contractual FTEs (two receptionists and one administrative specialist).
- As of December 31, 2007, the vacancy rate was 5.19%. Since December 31, 2007, one vacancy has been filled, thereby reducing the vacancy rate to 4.4%.
- Turnover expectancy is reduced from 5.22% to 4.01%.

## ***Analysis in Brief***

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### **Major Trends**

***The Public Service Commission’s Managing for Results Data Indicates Mixed Success:*** The percent of Public Service Commission (PSC) orders upheld on judicial review and the percent of work items completed within 30 days increased in fiscal 2007. By contrast, PSC’s performance in its Common Carrier Investigations Division decreased significantly in fiscal 2007.

### **Issues**

***Baltimore Gas & Electric (BGE) Rate Stabilization Plan:*** Chapter 5 of the 2006 special session automatically enrolled all BGE residential customers in a rate stabilization plan. The stabilization plan limited the monthly increase in the rates charged to residential customers on “standard offer service” (SOS) to 15% from July 1, 2006, through May 31, 2007. The plan also provided that as of June 1, 2007, BGE’s residential customers had the option to (1) pay full market price for SOS; or (2) voluntarily participate in a PSC approved intermediate level opt-in plan. Under the stabilization plan, all SOS residential customers began paying full market rates on January 1, 2008. On

January 30, 2008, Constellation Energy Group (Constellation) announced its plan to terminate the litigation standstill negotiated with the Office of the Attorney General regarding the credits that Constellation was required to give BGE customers under Senate Bill 1. Since January 2007, BGE has been crediting its 1.1 million customers approximately \$2.83 on their monthly utility bills. The credits, which are scheduled to be allocated over a ten-year period, were a concession made under Senate Bill 1 to address the projected rate hike. Constellation is seeking to cancel the \$386 million obligation under what the company alleges is an “unconstitutional taking.” **PSC should comment to the committees regarding the impact of the rate stabilization plan on BGE electric utility customers. PSC should also comment on the legitimacy of Constellation’s assertion that the credits provided under Senate Bill 1 constituted an unconstitutional taking.**

***PSC’s Interim Report on Stranded Costs, Customer Transition Charge Collection Payments, and Nuclear Decommissioning:*** In the second of a series of interim reports by PSC to the General Assembly, PSC addressed the impact to ratepayers from the deregulation process defined in the Electric Customer Choice and Competition Act of 1999. According to the report, there are three components of that settlement that are of concern: (1) the stranded cost determination; (2) rate payers’ obligation for decommissioning the Calvert Cliffs site; and (3) rate payers’ benefit of the price reduction and freeze. On January 17, 2008, Constellation issued a press release regarding PSC’s interim report to the General Assembly. According to the release, PSC’s interim report contained many deficiencies and omissions. **PSC should comment to the committees on its report findings. PSC should also comment on Constellation’s analysis and review of PSC’s interim report findings. Lastly, PSC should comment on whether the potential loss of customer credits under Senate Bill 1 is adequately counterbalanced by potential recoveries under the 1999 settlement.**

***Electric Universal Service Program:*** Chapters 3 and 4 of 1999 required PSC to establish a continuing, nonlapsing Electric Universal Service program (EUSP) to help electric customers with annual incomes at or below 150% of the federal poverty level. In response to anticipated electric utility rate increases, Chapter 5 of the 2006 special session increased the annual funding level for the EUSP from \$34 million to \$43 million in fiscal 2007 and to \$37 million thereafter. In its fiscal 2007 Annual Report regarding the EUSP, the Office of Home Energy Programs (OHEP) opined that funding in excess of the amount that is currently being administered for bill payment and arrearage retirement will be required to adequately fund the EUSP in fiscal 2009. OHEP also recommended statutory changes that would eliminate the \$1.5 million cap for arrearage retirement as well as the eligibility requirements for arrearage assistance. **PSC should comment to the committees on the current level of EUSP funding and projected funding in fiscal 2009 and 2010. PSC should also comment on the recommended statutory changes to the Public Utility Companies Article.**

***New Positions:*** The fiscal 2009 allowance includes funding for seven new positions. **PSC should comment to the committees on recent changes in the agency’s organizational structure, including anticipated staffing levels in subsequent fiscal years.**

## **Recommended Actions**

1. Concur with Governor's allowance.

## **Updates**

**2007 PSC Report on Independent Salary-setting Authority:** During the 2007 session, the General Assembly added budget bill language requiring PSC to submit a report outlining the legislative history behind the agency's ability to conduct routine reclassifications and promotions without Department of Budget and Management approval and a justification as to why this authority should be retained by PSC in the future. On December 21, 2007, PSC submitted the required report to the committees.

**Salary Increases:** The fiscal 2008 budget bill increased the base salaries of the PSC chairman and commissioners by approximately \$67,000 and \$24,000, respectively.

**Audit Findings:** PSC has taken several steps toward addressing its July 2007 audit findings.

**C90G00**  
**Public Service Commission**

***Operating Budget Analysis***

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**Program Description**

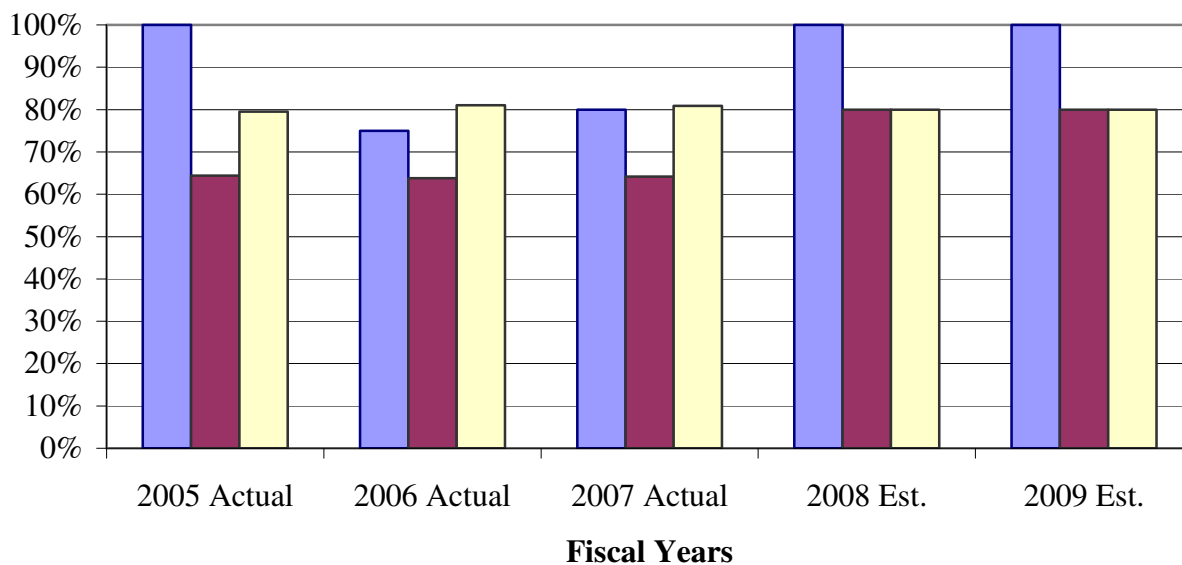
The Public Service Commission (PSC) regulates gas, electric, telephone, water, sewage disposal, and certain passenger transportation companies doing business in Maryland. PSC is authorized to hear and decide matters relating to (1) rate adjustments; (2) applications to exercise or abandon franchises; (3) applications to modify the type of scope of service; (4) approval of issuance of securities; (5) promulgation of new rules and regulations; and (6) quality of utility and common carrier service. PSC sets utility rates, collects and maintains records and reports of public service companies, reviews plans for service, inspects equipment, audits financial records, handles consumer complaints, promulgates and enforces rules and regulations, defends its decisions on appeal to State courts, and intervenes in relevant cases before federal regulatory commissions and federal courts. PSC is funded by special funds obtained through assessments on public service companies. PSC's key goals are:

- to ensure that gas and electric utility companies operate utility systems safely;
- to ensure that public service companies deliver reliable services;
- to conduct open and fair proceedings and render timely decisions in accordance with statutory mandates and applicable law; and
- to ensure that all Maryland consumers have adequate consumer protection.

**Performance Analysis: Managing for Results**

Overall, PSC's Managing for Results performance measures show mixed success. **Exhibit 1** shows the percent of PSC orders upheld on judicial review, the percent of work items completed within 30 days, and the percent of consumer protection complaints resolved within 60 days. In fiscal 2007, the percent of PSC orders upheld on judicial review and the percent of work items completed within 30 days increased to 80% and 64%, respectively. PSC attributes the aforementioned improvements to process changes resulting in greater efficiency as well as the agency's overall ability to issue factual, legally sufficient decisions.

**Exhibit 1  
General Administration  
Fiscal 2005-2009**

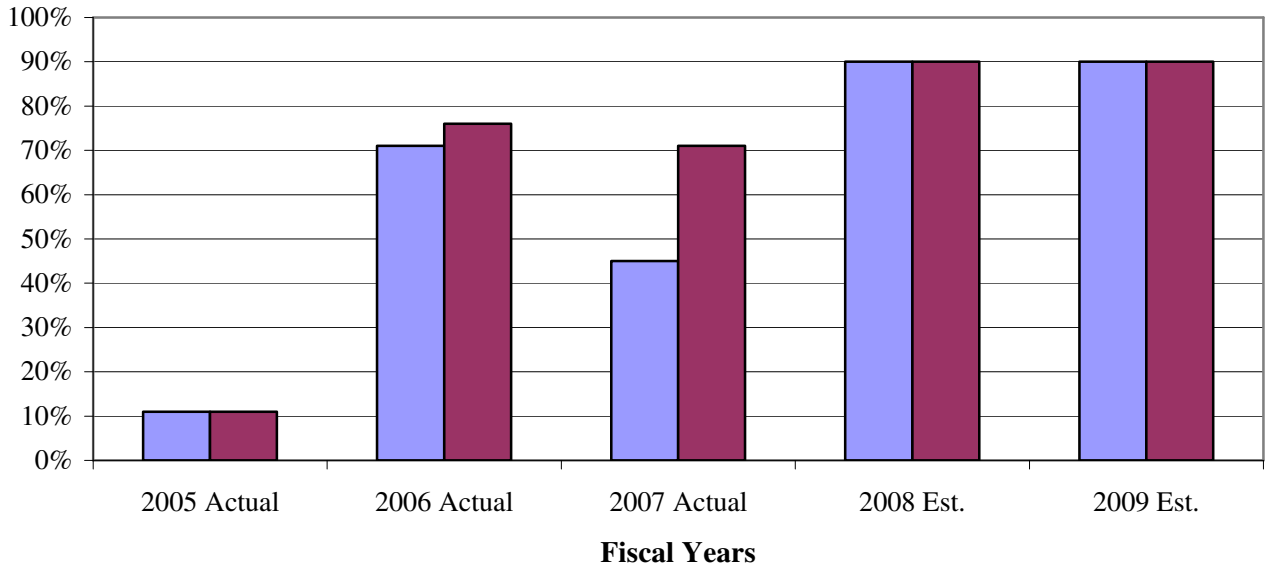


- Percent of Orders Upheld on Judicial Review
- Percent of Work Items Completed within 30-day Deadline
- Percent of Consumer Protection Complaints Resolved within 60 Days

Source: Public Service Commission

As shown in **Exhibit 2**, PSC’s performance in its Common Carrier Investigations Division decreased significantly in fiscal 2007. According to the agency, the magnitude of the decline was artificially inflated in 2007 due to modifications in the Common Carrier Division’s database. PSC reports that several modifications were made to the Common Carrier Division’s database which prohibited the agency from excluding (and consequently resolving) certain types of cases that were outside its jurisdiction (*e.g.*, complaints forwarded to the Motor Vehicle Administration). PSC is in the process of repairing the database to distinguish between these types of complaints going forward.

**Exhibit 2**  
**Common Carrier Investigations**  
**Percent of Complaints Resolved**  
**Fiscal 2005-2009**



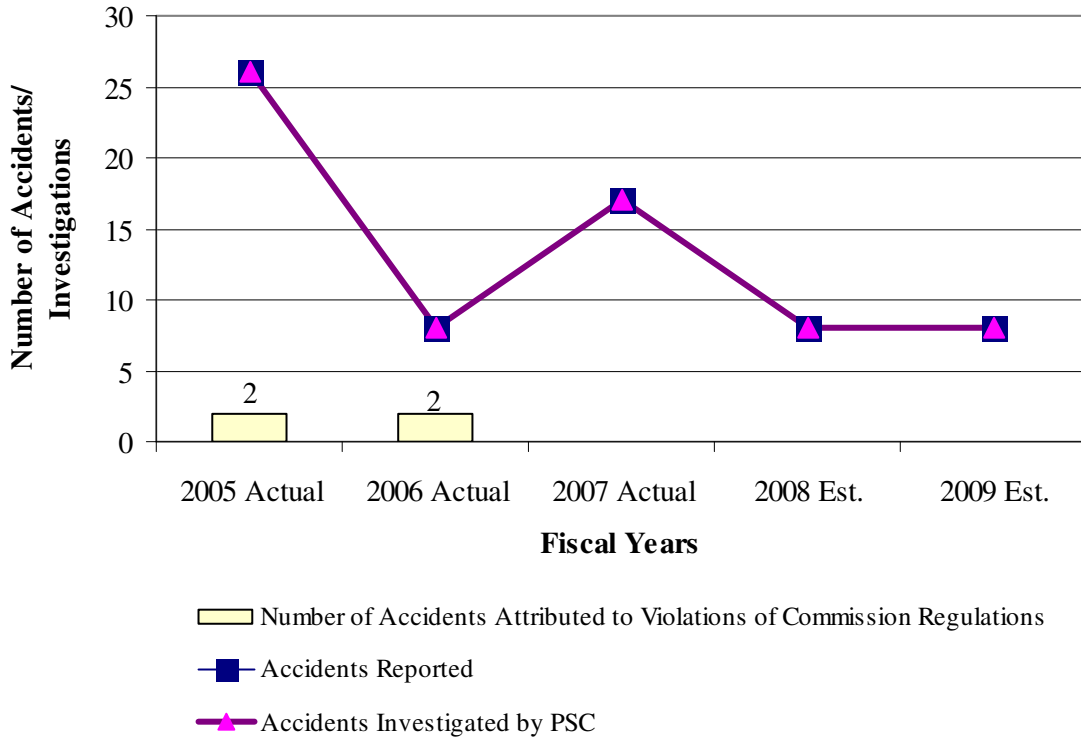
- Percent of Passenger-for-hire Complaints Resolved or Referred to the Hearing Examiner Division within 60 Days
- Percent of Taxicab Complaints Resolved or Referred to the Hearing Examiner Division within 60 Days

Note: The time frame for this measure was 30 days in fiscal 2007.

Source: Public Service Commission

**Exhibit 3** shows that the number of accidents reported and investigated by PSC increased in fiscal 2007. According to the agency, approximately 70% of the accidents reported in 2007 were electric utility related. PSC notes that the increase in the number of electric utility accidents was attributed to utility work being performed by out-of-state contractors. In order to reduce the number of accidents, PSC began working with certain utility companies to increase their awareness of the sufficiency of the safety practices utilized by outside contractors. According to PSC, the number of accidents reported has declined in the current fiscal year.

**Exhibit 3  
Engineering Investigations Division  
Accidents Reported  
Fiscal 2005-2009**



Source: Public Service Commission

**Governor’s Proposed Budget**

As illustrated in **Exhibit 4**, PSC’s fiscal 2009 allowance increases by \$1,232,548, or 9.3%, above the fiscal 2008 working appropriation. The net increase is primarily attributed to (1) a \$1.3 million increase in personnel expenditures due to the addition of seven new employees (\$441,278), health insurance and Other Post Employment Benefits expenditures (\$582,418), a reduction in turnover expectancy for existing employees (\$113,812), and employee increments and merit increases (\$107,914); (2) a \$53,909, or a \$1.24 increase in rent paid per square foot paid to the Department of General Services; and (3) a \$80,055 reduction in contractual employee expenses. The fiscal 2009 allowance eliminates three contractual full-time equivalent positions (two receptionists and one administrative specialist).

**Exhibit 4**  
**Governor’s Proposed Budget**  
**Public Service Commission**  
**(\$ in Thousands)**

| <b>How Much It Grows:</b>  | <b>Special<br/>Fund</b> | <b>Federal<br/>Fund</b> | <b>Total</b>  |
|----------------------------|-------------------------|-------------------------|---------------|
| 2008 Working Appropriation | \$13,210                | \$0                     | \$13,210      |
| 2009 Governor’s Allowance  | <u>14,417</u>           | <u>26</u>               | <u>14,443</u> |
| Amount Change              | \$1,207                 | \$26                    | \$1,233       |
| Percent Change             | 9.1%                    |                         | 9.3%          |

**Where It Goes:**

**Personnel Expenses**

|  |       |
|--|-------|
| Seven new positions – three advisors, two directors, and two paralegal positions ..... | \$441 |
| Health insurance – Other Post Employment Benefits .....                                | 461   |
| Health insurance – ongoing costs .....   | 121   |
| Turnover adjustments .....   | 114   |
| Increments, merit increases, and other pay adjustments .....                           | 108   |
| Employees’ retirement system .....   | 22    |
| Other.....   | 7     |

**Other Changes**

|   |     |
|---|-----|
| Net contractual full-time equivalent reduction.....             | -80 |
| Increased rent paid to the Department of General Services ..... | 54  |
| Washington Metropolitan Area Transit Commission.....            | 5   |
| Two new vehicles for the for-hire enforcement program.....      | -22 |
| Other.....  | 2   |

**Total** **\$1,233**

Note: Numbers may not sum to total due to rounding.

## ***Issues***

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### **1. Baltimore Gas & Electric (BGE) Rate Stabilization Plan**

#### **Background**

The Electric Customer Choice and Competition Act of 1999 (“Customer Choice Act”) restructured the electric utility industry in Maryland, introducing “customer choice” of an electric supplier. Customer choice allows the customer to purchase electricity generated by other sources and have the electricity delivered over transmission and distribution lines of the local electric utility. Before deregulation, the local electric utilities “bundled” the generation, transmission, and distribution of electricity and provided them to their customers within their geographically defined monopoly service territories. With customer choice, consumers who do not chose a competing electric supplier have the option to remain with their current supplier under what is known as the “standard offer service” (SOS). SOS customers pay a bid market price that is sufficient to provide the electric company with the opportunity to recover verifiable, prudently incurred costs to procure or produce the electricity plus a reasonable return.

#### **Baltimore Gas & Electric**

As a result of the Customer Choice Act, utility rates for residential customers of Maryland’s Baltimore Gas & Electric<sup>1</sup> were expected to increase approximately 72%, or \$743 per year for an average utility customer as of July 2006. In an effort to mitigate the potential rate shock to consumers, the General Assembly passed legislation during the 2006 special session to mitigate the anticipated electric utility increase. Chapter 5 of the 2006 special session (SB 1) automatically enrolled all BGE residential customers in a rate stabilization plan. The stabilization plan limited the monthly increase in the rates charged to residential customers on SOS to 15% from July 1, 2006, through May 31, 2007. The plan also required BGE customers to pay back<sup>2</sup> the deferred amount over a 10-year period, with interest. Under the plan, BGE’s residential customers had the option to (1) pay full market price for SOS beginning June 1, 2007; or (2) voluntarily participate in a PSC approved intermediate level opt-in plan. Customers that chose not to participate in the intermediate level plan experienced a 50%, or \$586 increase in their annual bill above the 15% rate increase customers experienced following the enactment of Chapter 5. Residential customers choosing to participate in the opt-in plan experienced utility rates that were approximately 18% lower than market rates during the months of June through September 2007 and 8% lower than market rates for the months of October through December 2007. Pursuant to legislation, all SOS residential customers began paying full market rates on January 1, 2008.

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<sup>1</sup> BGE serves more than one million business and residential electric customers.

<sup>2</sup> For a residential customer using 1000 kilowatt hours a month, it is estimated that it will cost an additional \$3 to \$6 per month to repay amounts deferred under Senate Bill 1.

## Recent Developments

On January 30, 2008, Constellation Energy Group (Constellation) announced its plan to terminate the litigation standstill negotiated with the Office of the Attorney General regarding the credits that Constellation was required to give BGE customers under Senate Bill 1. Since January 2007, BGE has been crediting its 1.1 million customers approximately \$2.83 on their monthly utility bills. The credits, which are scheduled to be allocated over a 10-year period, were a concession made under Senate Bill 1 to address the projected rate hike. At that time, Constellation was pursuing plans to merge with Florida Power & Light Company, and the credits were offered in return for State approval of the merger. However, the merger has since been called off, and the company avers that it should no longer have to provide the credits to customers. Constellation is seeking to cancel the \$386 million obligation under what the company alleges is an “unconstitutional taking.”

**PSC should comment to the committees regarding the impact of the rate stabilization plan on BGE electric utility customers. PSC should also comment on what its role will be in response to litigation initiated by Constellation.**

## 2. PSC’s Interim Report on Stranded Costs, Customer Transition Charge Collection Payments, and Nuclear Decommissioning

In the second of a series of interim reports by PSC to the General Assembly, PSC addressed the impact to ratepayers from the deregulation process defined in the Customer Choice Act which restructured the electric utility industry in Maryland. Highlights from the report are discussed below.

### Summary of BGE Settlement

In November 1999, despite having no adjudicatory hearing on the matter, PSC approved a broad settlement of BGE’s restructuring plan. According to the report, there are three components of that settlement that are of concern: (1) the stranded cost determination; (2) rate payers’ obligation for decommissioning the Calvert Cliffs site; and (3) rate payers’ benefit of the price reduction and freeze. According to the report, the settlement appears to have been seriously imbalanced in favor of BGE and Constellation Energy Group. (See **Exhibit 7**)

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### Exhibit 7 Cost Benefit Analysis of BGE Settlement Agreement

| <u>Settlement Component</u>        | <u>Ratepayer Cost</u>  | <u>Ratepayer Benefit</u> |
|------------------------------------|------------------------|--------------------------|
| Stranded Costs                     | \$975,000,000          | -                        |
| Unfunded Decommissioning Liability | 491,000,000            | -                        |
| Rate Relief (1996-2006)            | -                      | 315,600,000              |
| <b>Net Ratepayer Costs</b>         | <b>\$1,150,400,000</b> |                          |

Source: Interim report of the Public Service Commission to the Maryland General Assembly (January 17, 2008)

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## **Stranded Cost Determination and the Price Freeze**

The Customer Choice Act directed PSC to determine whether the entities taking BGE's generation assets would take them with "stranded costs" (e.g., transfer costs). Stranded costs are the value of potential losses an electric utility incurs as a result of transferring assets from a rate-regulated structure to one in which the assets operate in an unregulated competitive market. In a regulated environment, utilities are granted an agreed-upon rate of return<sup>3</sup> on their assets pursuant to regulatory proceedings. When generating assets are transferred to an unregulated environment, the competitive market provides revenues to the plants in the form of wholesale electricity sales. According to the report, the basic test for measuring stranded costs compares the amount of a utility's generation assets in a regulated environment against their value in a competitive market. The comparison is made by taking the difference between the utility's "regulated" or "book value" and its fair market value. The determination of an asset's fair market value is central to the determination of the stranded costs associated with generating assets.

According to the report, BGE's settlement provided that the company could recover \$528 million (after tax) in stranded costs from customers (to be transferred to Calvert Cliff plants), which would be collected through a line item on customers' bills. Aside from an expressed concern regarding whether the stranded cost figures used in the original settlement were calculated properly, the report also notes that (1) BGE collected in excess of \$900 million from rate payers as opposed to \$528 million; and (2) stranded cost payments received from ratepayers may not have been used in the manner intended. In short, BGE used the stranded cost payments from ratepayers to fund losses incurred in supplying electricity to customers during the rate freeze as opposed to paying stranded costs associated with the operation of the Calvert Cliff plants. In PSC's view, the greatest benefit of the stranded cost settlement to ratepayers was the extended rate caps, or price freeze. However, BGE's actions thwarted that benefit when the company had ratepayers fund their own rate freeze by using over \$500 million in customer transition charge collection payments to offset the cost of purchasing power from its own affiliate, Constellation.

## **Decommissioning Liability**

The BGE settlement left the financial obligation of decommissioning the two nuclear generating units at the Calvert Cliffs site to ratepayers. According to the report, ratepayers were responsible for funding a total of \$520 million (measured in 1993 dollars) to the Calvert Cliffs' Nuclear Decommissioning Trust Fund at a rate of approximately \$19 million per year. Under the settlement, ratepayers remain liable for the full \$520 million (adjusted by the Nuclear Regulatory Commission's adjustment factor) until the plants are decommissioned.<sup>4</sup> A review of the record from 1999 reveals that decommissioning costs were consistently expressed as \$520 million in "1993 dollars" as opposed to the current value of the liability in 1999 dollars – \$779 million. According to the report, the \$19 million cap accompanied by the failure to properly apply the inflation factor has

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<sup>3</sup> As a general matter, regulated utilities are entitled to recover their costs, including investments in its generating plants, through the collection of rates from the public that are approved by the regulator.

<sup>4</sup> At the time of the settlement, licenses were set to expire in 2014 and 2016. However, the expiration date has since been extended until 2034 and 2036 and according to the report, the decommissioning of the site itself could occur much later.

resulted in a severely underfunded ratepayer liability. Based on the application of the inflation factor and other escalators approved in the settlement, ratepayers' liability was determined to be approximately \$920 million in 2006 dollars. The report also notes that data obtained from BGE shows that when the plants are finally decommissioned, ratepayer liability could exceed \$5 billion.

### **Recent Developments**

On January 17, 2008, Constellation issued a press release regarding PSC's interim report to the General Assembly. According to the release, PSC's interim report contained many deficiencies and omissions, including the following:

- The report wrongly assumes that the stakeholders involved in the Customer Choice Act were unaware of the financial implications of their actions. All of the relevant parties were highly competent and knew the difference between before and after-tax dollars and the time value of money;
- The report incorrectly suggests that the General Assembly should consider undoing cases fully litigated to final judgment in Maryland's courts. The stranded cost issue, which was fully adjudicated twice at the circuit court and appellate level, has been upheld by Maryland's courts;
- The report fails to adequately discuss the expert testimony of PSC staff and the Office of the People's Counsel regarding residential ratepayers' bills. Experts testified that residential customers' bills were no higher than they would have been had there been no stranded costs. According to the press release, stranded costs did not increase customers' bills; in fact, residential customer bills were decreased by 6.5% and frozen for six years as a result of the settlement. As illustrated in **Appendix 5**, the rate freeze provided approximately \$2 billion in benefits to ratepayers;
- The report is misleading with respect to ratepayer liability for nuclear decommissioning. The Calvert Cliffs nuclear decommissioning trusts comply with the U.S. Nuclear Regulatory Commission requirements, which are designed to ensure adequate funding for decommissioning. Furthermore, the issue of nuclear decommissioning has been examined at various regulatory proceedings since 1985 when BGE began filing annual decommissioning reports;
- The report omits the fact that the 1999 settlement relieved ratepayers of the obligation of maintaining and upgrading the Calvert Cliffs plants. Constellation will be required to invest over \$2 billion in capital expenditures in the plants by 2010; and
- The report overlooks the fact that inter-company transactions regarding stranded costs were for the benefit of BGE and had no impact on customer bills.

**PSC should comment to the committees on its report findings. PSC should also comment on Constellation’s analysis and review of PSC’s interim report findings. Lastly, PSC should comment on whether the potential loss of customer credits under Senate Bill 1 is adequately counterbalanced by potential recoveries under the 1999 settlement.**

### **3. Electric Universal Service Program**

#### **Background**

Chapters 3 and 4 of 1999 required PSC to establish a continuing, nonlapsing Electric Universal Service program (EUSP) to help electric customers with annual incomes at or below 150% of the federal poverty level. The EUSP, which is administered by the Department of Human Resources (DHR) Office of Home Energy Programs (OHEP), has three components: (1) bill payment assistance to help participants pay current electricity bills; (2) arrearage retirement payments to assist participants with paying past due electric bills; and (3) weatherization to provide electric energy efficiency measures to reduce future electric bills. Chapter 468 of 2005 transferred responsibility for the low-income weatherization component of the EUSP from DHR to the Department of Housing and Community Development (DHCD). PSC is responsible for overseeing the program as it is administered by OHEP and DHCD.

In response to anticipated electric utility rate increases, Chapter 5 of the 2006 special session increased the annual funding level for the EUSP from \$34 million to \$43 million in fiscal 2007 and to \$37 million thereafter. Additionally, the legislation increased the income level eligibility requirement from 150% to 175% of the federal poverty level. **Appendix 6** provides a breakdown of the funding sources for the EUSP.

In October 2007, OHEP submitted its annual report to PSC regarding the EUSP. Several of the report’s highlights include the following:

- Approximately \$48 million was issued in benefits for bill payment assistance in fiscal 2007, an increase of 41% above fiscal 2006.
- A total of 101,795 applications were received for EUSP during fiscal 2007, an increase of 9.3% over the previous fiscal year.
- Applications certified during fiscal 2007 for EUSP increased to 93,323, or 12.1%, due in part to higher income guidelines. The average bill payment assistance benefit issued was \$518.
- Arrearage retirement assistance payments totaled approximately \$5.1 million. The average arrearage benefit issued was \$486.

## OHEP Recommendations

While projecting the future need for EUSP comes with many limitations, as illustrated in **Exhibit 5**, OHEP has opined that funding in excess<sup>5</sup> of the \$36 million that is currently being administered for bill payment and arrearage retirement will be required to adequately fund the EUSP in fiscal 2009. In addition, OHEP recommends an incremental increase to keep pace with the expected growth and enrollment to reach the anticipated increased need<sup>6</sup> by fiscal 2010. Finally, OHEP recommended statutory changes that would eliminate the \$1.5 million cap for arrearage retirement and modify the eligibility requirements for arrearage assistance. Currently, EUSP participants are only allowed to apply once for arrearage assistance.

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### Exhibit 5 Projected Funding Levels for the EUSP

|                         | <u>Fiscal 2008</u>  | <u>Fiscal 2009</u>  | <u>Fiscal 2010</u>  |
|-------------------------|---------------------|---------------------|---------------------|
| Bill Payment Assistance | \$50,125,509        | \$51,629,274        | \$53,178,153        |
| Arrearage Retirement    | 2,500,000           | 4,500,000           | 4,500,000           |
| Administration Expenses | 3,960,374           | 4,079,185           | 4,201,561           |
| <b>Total</b>            | <b>\$56,585,883</b> | <b>\$60,208,459</b> | <b>\$61,879,714</b> |

EUSP: Electric Universal Service Program

Note: The projected funding level assumes EUSP will serve approximately 98,000 participants in fiscal 2009.

Source: *Fiscal 2007 Annual Report to the Public Service Commission*, Department of Human Resources, Office of Home Energy Program

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## PSC's Staff Responses to OHEP's Recommendations

PSC's staff issued several responses regarding OHEP's EUSP recommendations. **Exhibit 6** provides a tabular representation of several of PSC staff's responses to OHEP's recommendations.

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<sup>5</sup> OHEP's projections do not address the weatherization component administered by DHCD. The weatherization component receives \$1 million annually from the EUSP.

<sup>6</sup> EUSP's goal is to meet 50% of eligibility need.

## **Exhibit 6**

### **PSC Responses to OHEP EUSP Recommendations**

#### **OHEP Recommendation**

In its annual report to PSC, OHEP recommended statutory language that would (1) eliminate the \$1.5 million cap on the arrearage component of EUSP; and (2) provide that the responsibility for allocating the arrearage retirement component of EUSP be returned to PSC. OHEP recommended that PSC be authorized to allocate a certain amount of EUSP funding for arrearage assistance up to a maximum dollar amount of \$6 million. OHEP also recommended that the eligibility requirements for arrearage retirement be modified to allow participants to apply for assistance once every seven years. Currently, participants are only allowed to apply once for assistance.

OHEP recommended statutory language stating that EUSP is to provide “bill assistance at a minimum of 50% of the determined need” be removed or revised to clearly delineate its meaning.

OHEP recommended an annual incremental increase to EUSP to keep pace with the expected growth and enrollment to reach the anticipated increased need by fiscal 2010.

OHEP recommended that PSC institute proceedings to update COMAR regulations for the Utility Service Protection Plan (USPP), including provisions for incorporating EUSP into USPP guidelines. USPP protects Maryland Energy Assistance Program participants that comply with certain requirements from termination in the winter.

EUSP: Electric Universal Service Program  
OHEP: Office of Home Energy Programs

Source: Staff Comments regarding the EUSP (*See* Case No. 8903)

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#### **Staff Response**

PSC’s staff supported an increase in the arrearage retirement component of EUSP and did not oppose a grant of arrearage assistance to the same EUSP participant once every seven years. To the extent that PSC’s staff position deviated from OHEP was with regard to PSC’s role as arbiter of the amount to be allocated for arrearage assistance. PSC staff supports a \$6 million cap on arrearage and recommends that surplus funds remaining at the end of the fiscal year be carried over into the first quarter of the next fiscal year for bill assistance or arrearage retirement. PSC also noted that the aforementioned recommendations would require a statutory change.

Staff noted that it was surprised at OHEP’s recommendation to delete a certain phrase from its enabling legislation. Staff supported the retention of the language noting that payment of 50% of EUSP participants’ bills on average is a reasonable interpretation of the phrase. According to staff, this is what OHEP has done for several years.

While noting the uncertainty of predictions, PSC’s staff has estimated that \$62 million would be required to serve approximately 98,000 participants, or 29% of the eligible EUSP population in fiscal 2009. If funding for this increase were to be derived entirely from residential ratepayers, the residential surcharge would increase from \$0.37 monthly to approximately \$1.85.

Staff’s position is that the USPP should be specifically targeted to participants with heating issues. The expansion of USPP to all electric terminations, regardless of the cause or time or year, could weaken its effectiveness regarding winter terminations.

**PSC should comment to the committees on the current level of EUSP funding and projected funding in fiscal 2009 and 2010. PSC should also comment on the recommended statutory changes to the Public Utility Companies Article.**

#### **4. New Positions**

The fiscal 2009 allowance includes \$441,278 for seven new positions. **Appendix 7** provides an illustration of the agency's proposed organizational structure. **PSC should comment to the committees on recent changes in the agency's organizational structure, including anticipated staffing levels in subsequent fiscal years.**

## ***Recommended Actions***

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1. Concur with Governor's allowance.

## **Updates**

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### **1. 2007 PSC Report on Independent Salary-setting Authority**

During the 2007 session, the General Assembly added budget bill language requiring PSC to submit a report outlining the legislative history behind the agency's ability to conduct routine reclassifications and promotions without Department of Budget and Management (DBM) approval and a justification as to why this authority should be retained by PSC in the future. On December 21, 2007, PSC submitted its report to the budget committees outlining its findings, summarized below.

#### **Legislative History**

PSC is an independent State agency charged by law with regulating companies that provide electric, gas, telecommunications, water, and sewage disposal. Currently, PSC has 135 authorized regular positions, of which more than half are positions that require specialized skills and knowledge of utility regulation. Prior to the establishment of the independent salary authority granted to PSC in 2000, PSC's personnel was subject to the grade and salary structure established for all other State employees.

Chapter 647 of 2000 gave independent salary-setting authority to PSC for certain positions<sup>7</sup> within the agency. According to PSC, prior to the enactment of this legislation, PSC had difficulty attracting and retaining qualified employees with extensive knowledge regarding utility regulation. A salary study conducted by PSC in 1999 revealed that the agency's salary scale for senior level employees with certain skill sets was less than every State and federal agency in the region that employed persons with comparable skills. The report notes that prior to the enactment of the independent salary-setting authority, PSC lost a number of its experienced senior-level employees, including its General Counsel, Chief Hearing Examiner, and Executive Secretary.

#### **PSC's Process for Submitting Reclassifications and Salary Increases**

Under Maryland law<sup>8</sup>, PSC is required to submit salary plan changes that involve increases or decreases in salary ranges other than routine reclassifications, promotions, or general salary increases to the Secretary of DBM (Secretary). Reportable changes include the creation or abolition of classes, changing classes from one established range to another, changes in salary guidelines to administer pay schedules, and the creation of new pay schedules or pay ranges. These changes are due to the Secretary at least 45 days before the effective date of the salary plan change. Once a change has been submitted, the Secretary is required to review the proposed change and advise PSC regarding whether the change would have an adverse effect on comparable State jobs within 15 days before the effective date of the proposed change.

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<sup>7</sup> PSC was granted the authority to determine the compensation of the following personnel: the Executive Director; the General Counsel; the special appointment attorneys in the Office of General Counsel; the Executive Secretary; the Chief Hearing Examiner; each License Hearing Office; and all PSC personnel in positions that are (i) management service; and (ii) professional and technical classifications unique to PSC.

<sup>8</sup> See Public Utilities Company Article § 2-108.

In cases where a salary adjustment includes a routine reclassification or promotion (*e.g.*, Staff Attorney I to Staff Attorney II), PSC approves the salary increase and submits the appropriate paperwork to DBM with no further action from the Secretary. However, when changes in salary plans include non-routine<sup>9</sup> increases or decreases that were not approved by the General Assembly, PSC submits a request to the Secretary detailing the need to implement the change subject to PSC's authority. Again, the Secretary is responsible for reviewing the request and confirming that the change will not have an adverse impact on comparable State jobs.

## **Conclusion**

According to the report, the General Assembly established PSC's independent salary-setting authority in an effort to address the difficulty that PSC was having in recruiting and retaining employees with specialized skills and experience. According to PSC, despite its independent salary-setting authority, the agency continues to have difficulty in both recruiting and retaining skilled employees. PSC notes that if its independent salary-setting authority were to be eliminated, the agency would have difficulty attracting and retaining qualified employees. As such, PSC should be allowed to retain its independent salary-setting authority.

## **2. Salary Increases**

The fiscal 2008 budget bill increased the base salaries of the PSC chairman and commissioners by approximately \$67,000 and \$24,000, respectively. **Exhibit 9** provides a salary comparison of the top-ranking utility officials in the region.

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<sup>9</sup> An example of when PSC has made such request is in April 2003, PSC submitted a request to the Secretary detailing the need to implement pay parity for its attorneys. PSC explained the need to retain the valued and difficult-to-replace attorneys. After appropriate review, PSC adjusted the salary grade for all of its attorneys by two grades.

**Exhibit 9**  
**Salary Comparison of Top Ranking Utility Officials in the Region**

| <u>State</u>     | <u>Salary of Chairperson</u> | <u>(#) and Salaries of Other Commissioners</u> |
|------------------|------------------------------|--|
| Maryland         | \$188,700/year               | (4) \$127,500/year                             |
| Virginia         | 160,409/year                 | (1) \$158,652/year                             |
| Washington, DC   | 146,573/year                 | (2) \$139,063/year                             |
| New Jersey*      | 140,730/year                 | (4)\$110,659 – \$125,062/year                  |
| North Carolina** | 133,531/year                 | (6) \$119,901/year                             |
| New York         | 127,000/year                 | (4) \$109,800/year                             |
| Pennsylvania     | 97,000/year                  | (3) \$95,000/year                              |
| West Virginia    | 85,000/year                  | (2) \$85,000/year                              |

\*Salary is as of December 2006

\*\*Salary is for fiscal 2007-2009

Source: Department of Legislative Services

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### 3. Audit Findings

PSC's July 2007 audit disclosed several findings: (1) annual assessments billed to public utility companies were not calculated in accordance with the intent of State law; (2) PSC paid certain contracts and legal judgments without Board of Public Works approval; (3) PSC lacked adequate control over cash receipts and related accounts receivable; (4) PSC failed to transfer delinquent accounts to DBM's Central Collection Unit (CCU) in a timely fashion; (5) PSC failed to complete a physical inventory of certain equipment; and (6) PSC failed to establish adequate control over corporate purchasing cards. **Exhibit 10** provides a tabular representation of the Office of Legislative Audit's audit findings and PSC's response to those findings.

**Exhibit 10**  
**The Public Service Commission’s July 2007 Audit Findings and Responses**

**Office of Legislative Audits Finding**

PSC failed to calculate annual assessments billed to public utility companies for the expenses of the PSC and the Office of the People’s Counsel in accordance with the intent of State law. As a result, PSC accumulated approximately \$2.2 million in excess collections in the Public Utility Regulation Fund as of June 2006.

PSC paid certain contracts and legal judgments without the approval of the Board of Public Works (BPW) and other applicable control agencies.

PSC lacked adequate control over cash receipts and related accounts receivable. Additionally, PSC did not deposit cash receipts in a timely manner.

PSC failed to transfer delinquent accounts to DBM’s Central Collection Unit (CCU) in a timely fashion. As of December 2006, PSC had not transferred accounts totaling \$255,000, some of which had been delinquent for up to 10 years.

PSC did not comply with certain requirements contained in the Department of General Services *Inventory Control Manual*. Specially, PSC failed to conduct a physical inventory of its sensitive equipment since 2004. Additionally, PSC failed to maintain an equipment control account.

**PSC Response**

PSC reports that it plans to comply fully with the letter and spirit of the law. PSC plans to consult with counsel to analyze the issues presented in the audit report and determine the appropriate disposition of any excess collections in the Public Utility Regulation Fund.

PSC reports that the agency will submit all future judgments to the Department of Budget and Management (DBM) and the BPW as appropriate. PSC also reports that it is in the process of reviewing matters related to the payment of sole source procurements to determine the extent to which the source of funding for a contract or settlement may influence PSC’s obligation to seek approval from other agencies prior to proceeding.

PSC reports that it is in compliance with the audit’s finding and that cash receipts are currently deposited daily.

PSC reports that is has begun transmitting uncollectible accounts to CCU and that interest will be charged (as appropriate) on unpaid accounts going forward.

PSC reports that as of the audit’s publication, all property, including sensitive equipment has been inventoried. PSC also reports that an inventory account has been established per the audit’s recommendation.

**Office of Legislative Audits Finding**

PSC lacked adequate control over its corporate purchasing cards. Specifically, the employee designated as the Purchasing Card Program Administrator (*i.e.*, the person that approves and orders new credit cards) also received cards from the bank. Additionally, this person reconciled the monthly bank statements to related charges recorded on the State's accounting records without independent review and approval. As a result of these conditions, this employee could order a card and make unauthorized purchases without being readily detected by PSC management.

Source: Office of Legislative Audits; Public Service Commission

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**PSC Response**

PSC reports that it has taken steps to have credit cards delivered to its fiscal officer and that the agency will implement a review and approval process for monthly reconciliations.

## ***Current and Prior Year Budgets***

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### **Current and Prior Year Budgets Public Service Commission (\$ in Thousands)**

|                                  | <b><u>General<br/>Fund</u></b> | <b><u>Special<br/>Fund</u></b> | <b><u>Federal<br/>Fund</u></b> | <b><u>Reimb.<br/>Fund</u></b> | <b><u>Total</u></b> |
|----------------------------------|--------------------------------|--------------------------------|--------------------------------|-------------------------------|---------------------|
| <b>Fiscal 2007</b>               |                                |                                |                                |                               |                     |
| Legislative<br>Appropriation     | \$0                            | \$12,853                       | \$0                            | \$0                           | \$12,853            |
| Deficiency<br>Appropriation      | 0                              | 0                              | 0                              | 0                             | 0                   |
| Budget<br>Amendments             | 0                              | 158                            | 0                              | 0                             | 158                 |
| Reversions and<br>Cancellations  | 0                              | -3                             | 0                              | 0                             | -3                  |
| <b>Actual<br/>Expenditures</b>   | <b>\$0</b>                     | <b>\$13,008</b>                | <b>\$0</b>                     | <b>\$0</b>                    | <b>\$13,008</b>     |
| <b>Fiscal 2008</b>               |                                |                                |                                |                               |                     |
| Legislative<br>Appropriation     | \$0                            | \$13,024                       | \$0                            | \$0                           | \$13,024            |
| Cost<br>Containment              | 0                              | 0                              | 0                              | 0                             | 0                   |
| Budget<br>Amendments             | 0                              | 187                            | 0                              | 0                             | 187                 |
| <b>Working<br/>Appropriation</b> | <b>\$0</b>                     | <b>\$13,211</b>                | <b>\$0</b>                     | <b>\$0</b>                    | <b>\$13,211</b>     |

Note: Numbers may not sum to total due to rounding.

**Fiscal 2007**

In fiscal 2007, the total budget for PSC increased by \$155,361. This increase was the net result of a \$158,055 cost-of-living adjustment (COLA) that was centrally budgeted in DBM and a \$2,694 special fund cancellation due to unrealized operating expenditures.

**Fiscal 2008**

The fiscal 2008 working appropriation increased by \$186,815 due to a COLA that was centrally budgeted in DBM.

## ***Audit Findings***

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|                              |                                     |
|------------------------------|-------------------------------------|
| Audit Period for Last Audit: | January 9, 2004 – December 10, 2006 |
| Issue Date:                  | July 2007                           |
| Number of Findings:          | 7                                   |
| Number of Repeat Findings:   | 2                                   |
| % of Repeat Findings:        | 28.6%                               |
| Rating: (if applicable)      | n/a                                 |

***Finding 1:*** Annual assessments billed to public utility companies were not calculated in accordance with the intent of State law.

***Finding 2:*** PSC awarded a sole source contract and paid a legal judgment without approval from the Board of Public Works.

***Finding 3:*** **Controls over cash receipts and accounts receivable were inadequate.**

***Finding 4:*** PSC did not deposit cash receipts in a timely manner.

***Finding 5:*** PSC did not transfer delinquent accounts to DBM's CCU as required.

***Finding 6:*** **PSC did not complete a physical inventory of sensitive equipment and did not maintain an equipment control account, as required.**

***Finding 7:*** PSC lacked adequate controls over its corporate purchasing cards.

\*Bold denotes item repeated in full or part from preceding audit report.

**Object/Fund Difference Report  
Public Service Commission**

| <u>Object/Fund</u>                      | <u>FY07<br/>Actual</u> | <u>FY08<br/>Working<br/>Appropriation</u> | <u>FY09<br/>Allowance</u> | <u>FY08-FY09<br/>Amount Change</u> | <u>Percent<br/>Change</u> |
|---|------------------------|---|---------------------------|------------------------------------|---------------------------|
| <b>Positions</b>                        |                        |   |                           |                                    |                           |
| 01 Regular                              | 135.00                 | 135.00                                    | 142.00                    | 7.00                               | 5.2%                      |
| 02 Contractual                          | 5.00                   | 9.00                                      | 6.00                      | -3.00                              | -33.3%                    |
| <b>Total Positions</b>                  | <b>140.00</b>          | <b>144.00</b>                             | <b>148.00</b>             | <b>4.00</b>                        | <b>2.8%</b>               |
| <b>Objects</b>                          |                        |   |                           |                                    |                           |
| 01 Salaries and Wages                   | \$ 9,778,353           | \$ 10,899,876                             | \$ 12,173,388             | \$ 1,273,512                       | 11.7%                     |
| 02 Technical and Spec. Fees             | 273,647                | 336,072                                   | 256,017                   | -80,055                            | -23.8%                    |
| 03 Communication                        | 171,885                | 172,536                                   | 172,039                   | -497                               | -0.3%                     |
| 04 Travel                               | 109,978                | 123,600                                   | 123,600                   | 0                                  | 0%                        |
| 07 Motor Vehicles                       | 140,208                | 148,492                                   | 127,388                   | -21,104                            | -14.2%                    |
| 08 Contractual Services                 | 976,345                | 228,233                                   | 230,553                   | 2,320                              | 1.0%                      |
| 09 Supplies and Materials               | 144,743                | 58,250                                    | 58,250                    | 0                                  | 0%                        |
| 10 Equip. – Replacement                 | 71,399                 | 31,835                                    | 31,765                    | -70                                | -0.2%                     |
| 11 Equip. – Additional                  | 56,014                 | 0   | 0                         | 0                                  | 0.0%                      |
| 12 Grants, Subsidies, and Contributions | 384,889                | 419,544                                   | 424,708                   | 5,164                              | 1.2%                      |
| 13 Fixed Charges                        | 900,438                | 791,967                                   | 845,245                   | 53,278                             | 6.7%                      |
| <b>Total Objects</b>                    | <b>\$ 13,007,899</b>   | <b>\$ 13,210,405</b>                      | <b>\$ 14,442,953</b>      | <b>\$ 1,232,548</b>                | <b>9.3%</b>               |
| <b>Funds</b>                            |                        |   |                           |                                    |                           |
| 03 Special Fund                         | \$ 13,007,899          | \$ 13,210,405                             | \$ 14,416,953             | \$ 1,206,548                       | 9.1%                      |
| 05 Federal Fund                         | 0                      | 0   | 26,000                    | 26,000                             | N/A                       |
| <b>Total Funds</b>                      | <b>\$ 13,007,899</b>   | <b>\$ 13,210,405</b>                      | <b>\$ 14,442,953</b>      | <b>\$ 1,232,548</b>                | <b>9.3%</b>               |

Note: The fiscal 2008 appropriation does not include deficiencies.

**Fiscal Summary  
Public Service Commission**

| <u>Program/Unit</u>                                | <u>FY07<br/>Actual</u> | <u>FY08<br/>Wrk Approp</u> | <u>FY09<br/>Allowance</u> | <u>Change</u>       | <u>FY08-FY09<br/>% Change</u> |
|--|------------------------|----------------------------|---------------------------|---------------------|-------------------------------|
| 01 General Administration and Hearings             | \$ 6,877,722           | \$ 6,494,634               | \$ 7,246,648              | \$ 752,014          | 11.6%                         |
| 02 Telecommunications Division                     | 501,049                | 656,154                    | 548,138                   | -108,016            | -16.5%                        |
| 03 Engineering Investigations                      | 1,181,477              | 1,032,930                  | 1,198,119                 | 165,189             | 16.0%                         |
| 04 Accounting Investigations                       | 479,552                | 590,107                    | 578,991                   | -11,116             | -1.9%                         |
| 05 Common Carrier Investigations                   | 1,240,508              | 1,275,330                  | 1,434,776                 | 159,446             | 12.5%                         |
| 06 Washington Metropolitan Area Transit Commission | 303,461                | 338,116                    | 343,280                   | 5,164               | 1.5%                          |
| 07 Rate Research and Economics                     | 518,028                | 600,319                    | 760,537                   | 160,218             | 26.7%                         |
| 08 Hearing Examiner Division                       | 756,904                | 744,703                    | 797,698                   | 52,995              | 7.1%                          |
| 09 Staff Attorney                                  | 679,145                | 882,941                    | 945,532                   | 62,591              | 7.1%                          |
| 10 Integrated Resource Planning Division           | 470,053                | 595,171                    | 589,234                   | -5,937              | -1.0%                         |
| <b>Total Expenditures</b>                          | <b>\$ 13,007,899</b>   | <b>\$ 13,210,405</b>       | <b>\$ 14,442,953</b>      | <b>\$ 1,232,548</b> | <b>9.3%</b>                   |
| Special Fund                                       | \$ 13,007,899          | \$ 13,210,405              | \$ 14,416,953             | \$ 1,206,548        | 9.1%                          |
| Federal Fund                                       | 0                      | 0                          | 26,000                    | 26,000              | N/A                           |
| <b>Total Appropriations</b>                        | <b>\$ 13,007,899</b>   | <b>\$ 13,210,405</b>       | <b>\$ 14,442,953</b>      | <b>\$ 1,232,548</b> | <b>9.3%</b>                   |

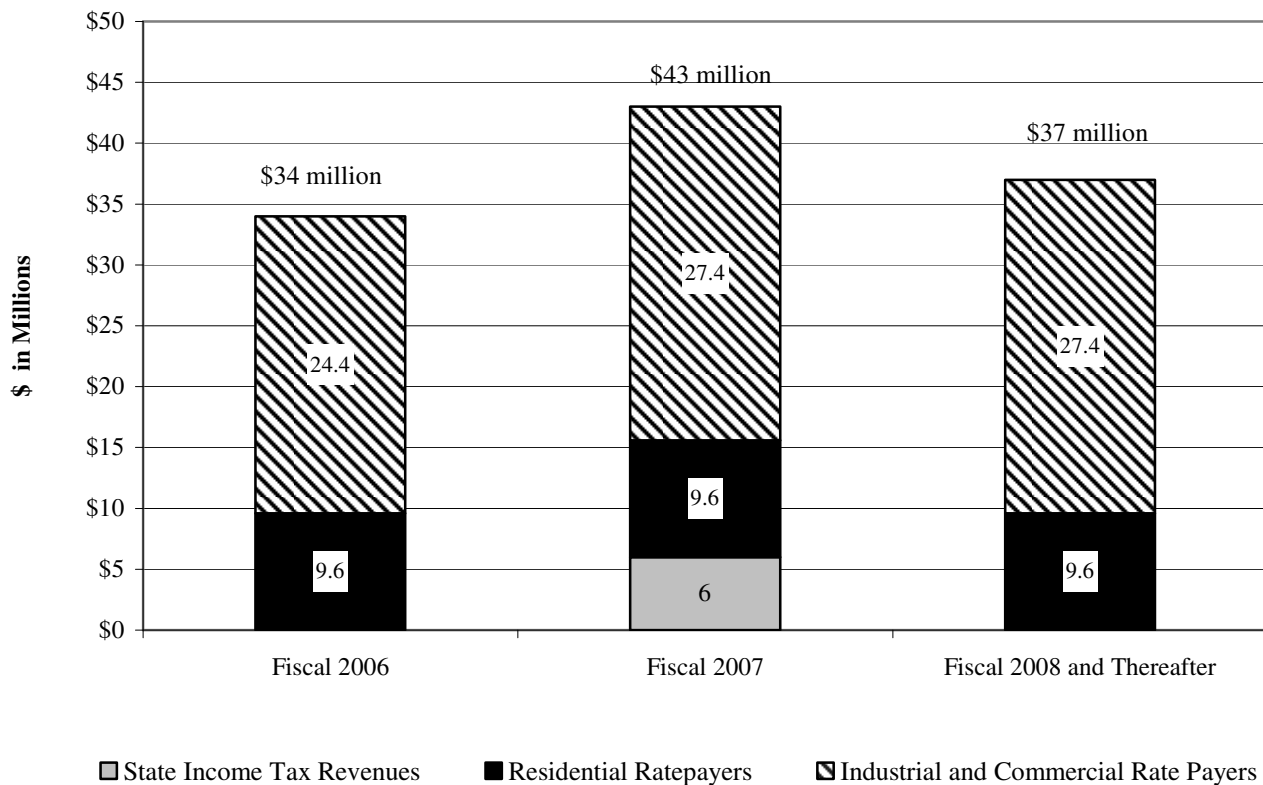
Note: The fiscal 2008 appropriation does not include deficiencies.

### Constellation’s Cost Benefit Analysis of BGE Settlement Agreement

| <u>Settlement Component</u>  | <u>Ratepayer Cost</u>  | <u>Ratepayer Benefit</u> |
|--|------------------------|--------------------------|
| Net Impact of Stranded Costs on Customer Bills<br>(applies to commercial customers only) | \$155,000,000          | –                        |
| Unfunded Decommissioning Liability   |                        | –                        |
| Residential Rate Relief (1996-2006)  | –                      | \$316,000,000            |
| Realization of Residential, Industrial, and Commercial<br>Price Protection               | –                      | 1,300,000,000            |
| Accelerated Depreciation   | –                      | 300,000,000              |
| Eclectic Universal Service Program   | –                      | 73,000,000               |
| <b>Net Ratepayer Benefit</b>   | <b>\$1,834,000,000</b> |                          |

Source: Constellation Energy Group

**Electric Universal Service Program  
Funding Source  
Fiscal 2006-2008**



Source: Department of Legislative Services

# Maryland Public Service Commission

January 01, 2008 (Revised with Proposed New Positions)

