

BY: Finance Committee

AMENDMENTS TO SENATE BILL 844

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “Senator Middleton” and substitute “The President (By Request – Administration) and Senators Middleton, Pipkin, Rosapepe, Brochin, Conway, Dyson, Exum, Forehand, Frosh, Haines, Harrington, Muse, Peters, Pinsky, Raskin, Simonaire, Stone, and Zirkin”; in line 4, after “of” insert “requiring an electric company to develop and submit to the Public Service Commission a certain long-range plan regarding the electric company’s electricity needs;”; in the same line, strike “Public Service”; in the same line, strike “assemble and”; in line 5, after “needs;” insert “requiring the Commission to issue certain orders upon completion of certain evaluations; authorizing the Commission to direct an investor-owned electric company to acquire a certain site by condemnation under a certain provision of law;”; in line 8, after “services;” insert “providing that the grant of a certificate of public convenience and necessity constitutes authority for an electric company to acquire certain property by condemnation in accordance with certain provisions of law;”; strike beginning with “requiring” in line 9 down through “contract;” in line 18 and substitute “requiring the Commission, on a certain determination, to order one or more investor-owned electric companies to construct an electric generation facility, procure the necessary electricity in a certain manner, or procure other electricity resources; requiring that the price of certain electricity be regulated by the Commission under certain cost-of-service regulation principles; authorizing the Commission to adopt a non-bypassable surcharge or other mechanism under certain circumstances; prohibiting an electric generation facility from being constructed in the State unless the electric generation facility is constructed in accordance with certain provisions of laws subject to certain exceptions; authorizing the Commission to allow an electric cooperative to construct, acquire, or lease and operate all or part of certain facilities, subject to certain regulation by the Commission; authorizing the Commission to require or allow certain electric companies to contract for a certain output under certain circumstances; requiring the Commission to develop and implement a certain plan for residential and

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small commercial customers to transition from a certain program of customer choice; requiring the Commission to consider whether an investor-owned electric company shall offer a certain option for green power to its residential and small commercial customers; requiring the Commission to initiate a certain proceeding; requiring the Commission to report on a certain investigation and transition plan by a certain date;”; in lines 18 and 19, strike “a certain provision” and substitute “certain provisions”; in line 19, strike “defining a certain term;” and substitute “providing certain applications of certain provisions;”; in line 24, strike “and 7-207” and substitute “, 7-207, and 7-208(h)”; after line 26, insert:

“BY repealing and reenacting, without amendments,
Article – Public Utility Companies
Section 7-208(a) and (e)
Annotated Code of Maryland
(2008 Replacement Volume and 2008 Supplement)”;

and in line 29, strike “7-518” and substitute “7-5A-01 through 7-5A-06, to be under the new subtitle “Subtitle 5A. Electric Industry Regulation””.

On page 2, after line 2, insert:

“Preamble

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

WHEREAS, After almost 10 years after the enactment of the electric industry restructuring law in the State, competitive retail electric markets have not developed as envisioned under the electric restructuring law and almost all residential and small commercial customers receive their electricity supply from electric companies under standard offer service, relying on those companies to provide reliable electricity supply in a manner that is designed to obtain the best price in light of market conditions at the time of procurement and the need to protect these customers from excessive price increases; and

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

WHEREAS, There continue to be concerns with the reliability of Maryland's energy supply and the transmission capacity needed to meet Maryland citizens' demand for energy; and

WHEREAS, Deregulation has not produced a desired economic result or ensured the availability of affordable energy for Maryland energy consumers; and

WHEREAS, The use of integrated resource planning provides an approach to ensure that the means to meet Maryland's energy needs are reliable, cost effective, and consistent with State economic and environmental policies; and

WHEREAS, It is the intent of the General Assembly that regulation of electricity supply for residential and small commercial customers not adversely impact the market for electricity from renewable sources or the goals and objectives of the renewable portfolio standard established under Chapters 487 and 488 of the Acts of 2004; now, therefore”.

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On page 2, in line 7, after “(a)” insert “(1) (I)”; strike beginning with “**IN**” in line 7 down through “**GENERATING**” in line 10 and substitute “**BIENNIALY OR AS THE COMMISSION REQUIRES, AN ELECTRIC COMPANY SHALL DEVELOP AND SUBMIT TO THE COMMISSION A LONG-RANGE PLAN REGARDING THE ELECTRIC COMPANY’S ELECTRICITY**”; after line 11, insert:

“(II) AN ELECTRIC COMPANY’S LONG-RANGE PLAN SHALL ADDRESS EACH OF THE ISSUES SPECIFIED IN PARAGRAPH (4) OF THIS SUBSECTION.

(2) THE COMMISSION SHALL EVALUATE THE LONG-RANGE PLANS OF THE ELECTRIC COMPANIES REGARDING ELECTRICITY NEEDS AND THE MEANS TO MEET THOSE NEEDS.

(3) (I) ON COMPLETION OF THE EVALUATION UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE COMMISSION SHALL ISSUE ORDERS AS APPROPRIATE TO EACH ELECTRIC COMPANY TO IMPLEMENT A PLAN.

(II) EACH ORDER SHALL INCLUDE:

1. A SCHEDULE FOR THE IMPLEMENTATION OF THE PLAN; AND

2. A REQUIREMENT THAT THE ELECTRIC COMPANY REPORT ON THE STATUS OF THE IMPLEMENTATION OF THE PLAN.

(4) AN ELECTRIC COMPANY, IN DEVELOPING ITS PLAN, AND THE COMMISSION, IN DEVELOPING AN ORDER, SHALL CONSIDER:

(I) FOR A NEW ELECTRICITY GENERATION FACILITY, THE APPROPRIATE TYPE OF FUEL OR TYPE OF RENEWABLE ENERGY SOURCE;

(II) IN ADDITION TO THE REQUIREMENTS OF § 7-211 OF THIS SUBTITLE, THE NEED TO DEPLOY ENERGY EFFICIENCY, CONSERVATION, AND DEMAND RESPONSE PROGRAMS;

(III) IN CONSIDERATION OF THE RENEWABLE PORTFOLIO ENERGY STANDARD UNDER SUBTITLE 7 OF THIS TITLE, THE APPROPRIATE ELECTRICITY SUPPLY MIX FOR THE STATE;

(IV) THE POTENTIAL IMPACT ON RATES AND CHARGES PAID BY CUSTOMERS;

(V) THE POTENTIAL IMPACT ON THE SERVICES AND CONDITIONS OF THE OPERATION OF THE ELECTRIC COMPANY; AND

(VI) ANY OTHER ISSUES THE COMMISSION CONSIDERS RELEVANT IN RELATION TO THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY.

(5) BY REGULATION OR, NOTWITHSTANDING TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE, BY ORDER, THE COMMISSION SHALL ADOPT PROCEDURES TO IMPLEMENT THIS SECTION.”;

in line 22, after “to” insert “MEET EXPECTED CONSUMER DEMAND AND TO”; and after line 30, insert:

“(5) THE COMMISSION MAY DIRECT AN INVESTOR-OWNED ELECTRIC COMPANY TO ACQUIRE BY CONDEMNATION, IN ACCORDANCE WITH

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TITLE 12 OF THE REAL PROPERTY ARTICLE, A SITE THAT IS SUITABLE FOR AN ELECTRIC POWER GENERATION FACILITY.

On page 5, strike in their entirety lines 9 through 12, inclusive; in lines 13 and 25, strike “(g)” and “(h)”, respectively, and substitute “**(F)**” and “**(G)**”, respectively; and after line 30, insert:

“7-208.

(a) This section applies to any person:

(1) constructing a generating station and its associated overhead transmission lines designed to carry a voltage in excess of 69,000 volts; or

(2) exercising the right of condemnation in connection with the construction.

(e) Within 90 days after the conclusion of the hearing on an application under this section, the Commission shall:

(1) (i) grant a certificate of public convenience and necessity unconditionally;

(ii) grant the certificate, subject to conditions the Commission determines to be appropriate; or

(iii) deny the certificate; and

(2) notify all interested parties of its decision.

(h) The grant of a certificate by the Commission to any person under subsection (e) of this section constitutes:

(1) authority for the person to dredge and construct bulkheads in the waters or private wetlands of the State and to appropriate or use the waters; [and]

(2) registration and a permit to construct, as required under Title 2, Subtitle 4 of the Environment Article; AND

(3) AUTHORITY FOR AN ELECTRIC COMPANY TO ACQUIRE PROPERTY BY CONDEMNATION, IN ACCORDANCE WITH TITLE 12 OF THE REAL PROPERTY ARTICLE, AS APPROVED BY THE COMMISSION TO MEET THE NEEDS OF CONSTRUCTION AUTHORIZED UNDER THE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

AMENDMENT NO. 3

On pages 5 and 6, strike beginning with line 31 on page 5 through line 7 on page 6, inclusive, and substitute:

“SUBTITLE 5A. ELECTRIC INDUSTRY REGULATION.

7-5A-01.

THIS SUBTITLE APPLIES TO THE ELECTRIC INDUSTRY IN THE STATE AND SUPERSEDES ANY PROVISION UNDER SUBTITLE 5 THAT CONFLICTS WITH THIS SUBTITLE.

7-5A-02.

THE GENERAL ASSEMBLY FINDS AND DECLARES THAT IT IS THE GOAL OF THE STATE TO RETURN TO A REGULATED ELECTRIC MARKET.

7-5A-03.

(A) ON A DETERMINATION THAT IT IS IN THE PUBLIC INTEREST, THE COMMISSION SHALL ORDER ONE OR MORE INVESTOR-OWNED ELECTRIC COMPANIES TO:

(1) CONSTRUCT AN ELECTRIC GENERATION FACILITY;

(2) PROCURE THE NECESSARY ELECTRICITY THROUGH:

(I) A BILATERAL CONTRACT WITH ANOTHER PERSON FOR ALL OR PART OF THE OUTPUT OF:

1. A NEW ELECTRIC GENERATION FACILITY LOCATED IN THE STATE; OR

2. A NEW ELECTRIC GENERATION FACILITY OR SYSTEM LOCATED IN THE STATE, OUTSIDE THE STATE, OR OFFSHORE THAT PROVIDES ELECTRICITY FROM RENEWABLE ENERGY SOURCES;

(II) A COMPETITIVE BIDDING PROCESS IN WHICH THE INVESTOR-OWNED ELECTRIC COMPANY WILL SOLICIT BIDS FOR ALL OR PART OF THE OUTPUT OF:

1. A NEW ELECTRIC GENERATION FACILITY LOCATED IN THE STATE; OR

2. A NEW ELECTRIC GENERATION FACILITY OR SYSTEM LOCATED IN THE STATE, OUTSIDE THE STATE, OR OFFSHORE THAT PROVIDES ELECTRICITY FROM RENEWABLE ENERGY SOURCES;

(3) PROCURE OTHER NEW ELECTRICITY RESOURCES, INCLUDING ENERGY EFFICIENCY, CONSERVATION, AND DEMAND RESPONSE RESOURCES; OR

(4) ANY COMBINATION OF ITEMS (1) THROUGH (3) OF THIS SUBSECTION.

(B) THE PRICE OF ELECTRICITY THAT IS ACQUIRED UNDER SUBSECTION (A) OF THIS SECTION AND IS SOLD TO A RETAIL RESIDENTIAL OR SMALL COMMERCIAL CUSTOMER OF AN INVESTOR-OWNED ELECTRIC COMPANY SHALL BE REGULATED BY THE COMMISSION UNDER COST-OF-SERVICE REGULATION PRINCIPLES IN ACCORDANCE WITH TITLE 4 OF THIS ARTICLE.

(C) TO THE EXTENT ELECTRICITY THAT IS ACQUIRED UNDER SUBSECTION (A) OF THIS SECTION PROVIDES RELIABILITY OR ECONOMIC BENEFIT TO THOSE CUSTOMERS WHOSE ELECTRICITY IS NOT ACQUIRED UNDER SUBSECTION (A) OF THIS SECTION, THE COMMISSION MAY ESTABLISH A NON-BYPASSABLE SURCHARGE OR OTHER MECHANISM TO ENSURE EQUITABLE COST SHARING AMONG ALL CUSTOMERS AND ACROSS ALL DISTRIBUTION TERRITORIES.

7-5A-04.

(A) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (D) OF THIS SECTION, THIS SECTION DOES NOT APPLY TO:”.

On page 6, strike in their entirety lines 11 and 12, inclusive; in line 13, strike “(5)” and substitute “(3)”; in the same line, strike “LESS THAN 30” and substitute “70”; in the same line, after “MEGAWATTS” insert “OR LESS”; in line 17, strike “§ 7-301” and substitute “§ 7-306”; in lines 15, 17, and 19, strike “(6)”, “(7)”, and “(8)”,

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respectively, and substitute “(4)”, “(5)”, and “(6)”, respectively; in line 18, strike “OR”; and in line 20, after “GOVERNMENT” insert “; OR”

(7) AN ELECTRIC GENERATION FACILITY FOR WHICH APPLICATION WAS MADE TO THE COMMISSION ON OR BEFORE JULY 1, 2009, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR AN ELECTRIC GENERATION FACILITY UNDER SUBTITLE 2 OF THIS TITLE.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN ELECTRIC GENERATION FACILITY MAY NOT BE CONSTRUCTED IN THE STATE UNLESS THE ELECTRIC GENERATION FACILITY IS CONSTRUCTED IN ACCORDANCE WITH AN ORDER UNDER § 7-5A-03 OF THIS SUBTITLE.

(2) THE COMMISSION MAY ALLOW AN ELECTRIC COOPERATIVE OR A MUNICIPAL ELECTRIC UTILITY TO CONSTRUCT, ACQUIRE, OR LEASE AND OPERATE ALL OR A PART OF A GENERATION FACILITY AND TRANSMISSION FACILITIES NECESSARY TO INTERCONNECT THE GENERATING FACILITY WITH THE ELECTRIC GRID, SUBJECT TO REGULATION BY THE COMMISSION UNDER COST-OF-SERVICE REGULATION PRINCIPLES IN ACCORDANCE WITH TITLE 4 OF THIS ARTICLE.

(C) AN ELECTRIC GENERATION FACILITY DESCRIBED UNDER SUBSECTION (A) OF THIS SECTION MAY PARTICIPATE UNDER § 7-5A-03(A)(2) OF THIS SUBTITLE.

(D) ON REQUEST FROM AN OWNER OF AN ELECTRIC GENERATION FACILITY UNDER SUBSECTION (A) OF THIS SECTION, ON A DETERMINATION THAT IT IS IN THE PUBLIC INTEREST, THE COMMISSION MAY REQUIRE OR ALLOW ONE OR MORE ELECTRIC COMPANIES TO CONTRACT FOR THE OUTPUT OF THE ELECTRIC GENERATION FACILITY, WITH THE COST OF THE CONTRACT

REGULATED BY THE COMMISSION UNDER COST-OF-SERVICE REGULATION PRINCIPLES IN ACCORDANCE WITH TITLE 4 OF THIS ARTICLE, IF, AS OF THE DATE OF THE REQUEST, THE ELECTRIC GENERATION FACILITY:

(1) HAS A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PENDING;

(2) HAS BEEN ISSUED A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BUT HAS NOT BEGUN TO OPERATE; OR

(3) HAS AN APPLICATION PENDING FOR, OR HAS BEEN GRANTED, AN EXCEPTION FROM THE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIREMENT UNDER § 7-207 OF THIS TITLE”.

On page 6, after line 20, insert:

“7-5A-05.

(A) THE COMMISSION SHALL DEVELOP AND IMPLEMENT A PLAN FOR RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS TO TRANSITION FROM A PROGRAM OF CUSTOMER CHOICE OF ELECTRICITY SUPPLY AND ELECTRICITY SUPPLY SERVICES ESTABLISHED UNDER SUBTITLE 5 OF THIS TITLE.

(B) THE TRANSITION PLAN SHALL SPECIFY:

(1) A SCHEDULE FOR THE TRANSITION THAT TAKES INTO ACCOUNT EXISTING CONTRACTS FOR RETAIL RESIDENTIAL AND SMALL COMMERCIAL ELECTRICITY SUPPLY AND ELECTRICITY SUPPLY SERVICES;

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(2) ANY CHANGES NEEDED FOR THE PROCUREMENT OF ELECTRICITY SUPPLY AND ELECTRICITY SUPPLY SERVICES FOR RESIDENTIAL AND SMALL COMMERCIAL STANDARD OFFER SERVICE; AND

(3) RECOMMENDATIONS FOR:

(I) CHANGES TO THE LAW THAT ARE OBSOLETE OR INCONSISTENT WITH THE TRANSITION PLAN;

(II) RESTORATION OF APPLICABLE LAW REPEALED UNDER CHAPTERS 3 AND 4 OF THE ACTS OF 1999; AND

(III) CHANGES TO THE LAW THAT ARE NECESSARY TO ENSURE COMPLIANCE WITH THE RENEWABLE ENERGY PORTFOLIO STANDARD UNDER SUBTITLE 7 OF THIS TITLE.

(C) THE COMMISSION SHALL CONSIDER WHETHER TO REQUIRE OR ALLOW AN INVESTOR-OWNED ELECTRIC COMPANY TO OFFER TO ITS RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS THE OPTION TO PURCHASE GREEN POWER ELECTRICITY SUPPLY DERIVED FROM TIER 1 RENEWABLE SOURCES BEYOND THE REQUIREMENTS OF THE RENEWABLE ENERGY PORTFOLIO STANDARD UNDER SUBTITLE 7 OF THIS TITLE.”.

On pages 6 and 7, strike in their entirety the lines beginning with line 21 on page 6 through line 29 on page 7, inclusive.

On page 7, before line 30, insert “**7-5A-06.**”; in line 30, strike “(E)”; and in line 32, strike “SECTION” and substitute “**SUBTITLE**”.

AMENDMENT NO. 4

On page 7, after line 32, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) (1) On or before July 1, 2009, the Public Service Commission shall initiate a proceeding to investigate the electricity needs of the State.

(2) The Commission’s investigation shall include an evaluation of:

(i) whether the Commission should direct the construction of one or more electric generation facilities and, if so, the appropriate electric capacity and type of fuel;

(ii) whether the Commission should direct, in addition to the requirements of § 7-211 of the Public Utility Companies Article, the implementation of alternative electricity supply resources such as energy efficiency, conservation, and demand response; and

(iii) any other issues the Commission considers relevant.

(b) On or before February 1, 2010, the Public Service Commission shall provide a status report to the Governor and, in accordance with § 2-1246 of the State Government Article, to the Senate Finance Committee and the House Economic Matters Committee of the General Assembly on:

(1) the Commission’s investigation of electricity needs under subsection (a) of this section; and

(2) the transition plan developed by the Commission for residential and small commercial customers under § 7-5A-05 of the Public Utility Companies Article as enacted by this Act.”;

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in line 33, strike “2.” and substitute “3.”; and in line 34, strike “July” and substitute “June”.