

# 2011 Maryland General Assembly

*Prepared By: Alexander G. Núñez, Director, State Affairs, Constellation Energy*

The Maryland General Assembly convened its 428<sup>th</sup> Legislative Session on Wednesday, January 12, 2011. The 2011 Maryland General Assembly adjourned Sine Die, or “without a day” on April 11 at midnight.

In general, the Session’s energy-related legislation evidenced a continued strong interest in renewable energy policy, a moderate shift away from talks of remonopolization and toward advancing competitive retail electricity supply, and an acute focus on issues related to electric and gas utility infrastructure. The continuing trend of lower electricity prices, increased electricity customer switching to competitive supply, and relatively low and stable natural gas prices moved legislators’ attention from market structure issues. Ironically, the perception of lower retail energy prices was seen as an opportunity for some advocates to offer programs and policies that would effectively place surcharges on customers’ bills, including the Governor’s offshore wind bills, bills requiring utilities to purchase Solar Renewable Energy Credits (SRECSs) under long-term contracts, and several bills to fund clean energy and energy conservation programs with new surcharges. That said, legislators’ ultimate decisions on these issues were predicated on the preeminent concern of avoiding increases to customers’ electric bills. Lastly, severe political crisis in Montgomery County regarding electric delivery system reliability and outage restoration performance fostered several bills to impose reliability standards and increased penalties.

Please note that due to the need to define revised Congressional districts based on the 2010 Census before the end of the calendar year, Maryland will have a Special Session sometime before the next regular Session in January.

## **Governor’s Energy Agenda**

Regarding energy policy, the 2011 Session was centered on those elements of Governor O’Malley’s 2011 Legislative Package that related to energy and utilities law. Each of the following bills was adopted by the Administration as part of its 2011 Agenda:

- *Senate Bill 176/House Bill 167 – Maryland Electric Vehicle Infrastructure Council*
- *Senate Bill 177/House Bill 163 – Income Tax – Tax Credit for Electric Vehicle Recharging Equipment*
- *Senate Bill 179/House Bill 164 – Electric Companies – Pilot Program for Charging Electric Vehicles.*
- *Senate Bill 380/House Bill 860 - Electricity - Net Energy Metering*
- *Senate Bill 692/House Bill 391 - Maryland Electricity Service Quality and Reliability Act – Safety Violations*

- *Senate Bill 717/House Bill 933 - Renewable Energy Portfolio Standard - Renewable Energy Credits - Solar Water Heating Systems*
- *Senate Bill 861/House Bill 1054 - Maryland Offshore Wind Energy Act*
- *Senate Bill 881/House Bill 1227 - Economic Development Opportunities Program Account - Wind Turbine Manufacturing Facility*

### **Offshore Wind**

The Governor introduced four bills to promote the offshore wind industry in Maryland, *Senate Bill 861/House Bill 1054 - Maryland Offshore Wind Energy Act* (both failed) and *Senate Bill 881/House Bill 1227 - Economic Development Opportunities Program Account - Wind Turbine Manufacturing Facility* (both failed). Senate Bill 881 and House Bill 1227 would have enabled the state to offer up to \$50 million in incentives under the existing Economic Development Opportunities Program to attract a manufacturing facility to Maryland that: (1) would build offshore wind turbines or components necessary for offshore wind turbine projects; (2) would create or retain substantial employment; and (3) would make a capital investment of at least twice the amount of state incentives provided. The Governor withdrew Senate Bill 881 and House Bill 1227 from consideration on the eve of their bill hearings without explanation, although a lack of available state resources was the likely reason.

The Governor's most aggressive lobbying on energy policy focused on *Senate Bill 861/ House Bill 1054 - Maryland Offshore Wind Energy Act*. Senate Bill 861/House Bill 1054 would have required the Maryland Public Service Commission (Commission) to order Maryland's four investor-owned electric companies to enter into long-term power purchase agreements (PPAs) with one or more qualifying offshore wind generators: (1) located in the Atlantic Ocean; (2) at least 10 nautical miles from the Maryland shoreline; or (3) within the federal waters adjoining another state within the PJM region. The bill called for 400MW-600MW nameplate capacity under contracts for not less than 20 years. The contracts would have been approved by the Commission after receiving proposals from developers in response to a Request for Proposals. The investor-owned electric companies would have been required to sell energy, capacity, ancillary services, Renewable Energy Credits (RECs), and environmental attributes purchased under the PPAs into "available markets." The Commission would have established a "nonbypassable surcharge or other mechanism" to allow full and timely cost recovery for costs incurred by an investor-owned electric company and to ensure that costs or savings due to the required purchases and sales under the bill would be shared "equitably among all customers and across all distribution territories." For the very largest industrial consumers, the surcharge would not have applied to retail sales to a single customer in excess of 75,000 MWh/year of industrial process load.

A wide array of electricity consumers and business groups opposed these bills. The customers' concerns about new risks and added costs were key to driving legislators toward opposition. Customer opposition was augmented by the lobbying of industry groups such as P3, COMPETE, RESA, and EPSA.

After several work sessions, the Senate Finance Committee and the House Economic Matters Committee mutually decided to avoid a vote on the bills, and instead to study the issue further after the Session.

### **Electricity Service Quality and Reliability**

Spurred by discontent with electric delivery system reliability and outage restoration performance in Montgomery County, the legislature considered several bills to require the Commission to establish new reliability and service quality standards for electric companies, to require the Commission to be more proactive in regulating this area of electric company performance, and to authorize severe new penalties for an electric company's failure to meet prescribed standards. Governor O'Malley adopted *Senate Bill 692/House Bill 391 - Maryland Electricity Service Quality and Reliability Act – Safety* (both passed), sponsored by Senator Garagiola and Delegate Feldman, respectively, as a part of his 2011 Legislative Energy Package. The committees' work focused on these two bills, and largely sidelined several more extreme bills.

On the Senate Floor, an amendment to Senate Bill 692 was adopted to include a very dangerous provision to authorize the Commission to assess a penalty related to a reliability violation of up to 2.5% of the electric company's transmission and distribution *revenues* from the previous year. That amendment was stripped in conference committee. However, the conference committee raised the maximum per-violation per-day penalty to \$25,000 for safety violations and for civil penalties.

### **Renewable Energy**

The General Assembly was barraged by dozens of bills on renewable energy policy this year. Some bills sought financing for renewable energy projects and programs, but most bills were aimed at modifying the rules of Maryland's Renewable Energy Portfolio Standard (RPS) law. The legislature seems to be struggling with several competing policy goals, including incenting preferred sources, facilitating compliance with the RPS goals, and keeping compliance costs down.

#### **Solar Water Heating Systems**

*Senate Bill 717/ House Bill 933 - Renewable Energy Portfolio Standard - Renewable Energy Credits - Solar Water Heating Systems* (both passed), effective January 1, 2012, will enable each solar system commissioned on or after June 1, 2011 that uses solar radiation to heat water to be eligible to produce Solar Renewable Energy Credits (SRECs). Under current law, solar photovoltaic systems are interpreted to be the exclusive source of SRECs for compliance with Maryland's RPS law. The Governor's endorsement of these bills significantly facilitated their success, as did the sponsorship of the bills by important numbers of key committee members and other key legislators. These bills were actively supported by the solar water heating industry, many environmental advocates, and a surprising number of solar photovoltaic companies.

#### **Long-Term Contracts for SRECs**

*Senate Bill 715/House Bill 1123- Public Service Commission - Long-Term Contracts - Solar Renewable Energy Credits* (both failed) would have required the Commission to require or allow electric companies to obtain the Solar Renewable Energy Credits (SRECs) needed for Standard Offer Service (SOS) sales under long-term contracts. The bill was supported by a large number

of solar companies, including SunEdison, solar trade associations, and several environmental organizations. The Commission and the Office of People's Counsel (OPC) supported these bills with an amendment to remove any mandatory language regarding Commission action. The Senate Finance Committee held work sessions on Senate Bill 715 and voted 6-5 against the bill. The House Economic Matters Committee eventually followed suit.

#### Waste-to-Energy (Small Hydro, and Black Liquor)

Currently a Tier 2 renewable source under Maryland's RPS law, waste-to-energy (WTE) will become a Tier 1 renewable source under *Senate Bill 690 - Renewable Energy Portfolio - Waste-to-Energy (passed)*, effective October 1, 2011. The bill narrowly passed each Chamber after heavy floor debate. Under Senate Bill 690, to be eligible for RECs under Maryland's RPS law, WTE facilities will have to be connected with the electric distribution grid serving Maryland.

#### Poultry Litter-to-Energy

Poultry Litter-to-Energy (PLTE) was back on the table in the 2011 Session. Sponsored by Senator Astle at Fibrowatt's request and with the active support of Attorney General Gansler, *Senate Bill 964 - Renewable Energy - Poultry Litter - Net Energy Metering and Renewable Energy Portfolio Standard* (failed) would have created a Tier 1 carve out for PLTE and would have attempted to make PLTE eligible for net energy metering. While this bill was supported by the Attorney General, it was withdrawn and will be introduced again in 2012.

#### Wind Development in Garrett County

Despite the successful construction of Constellation Energy's Criterion Wind Project and Synergics' Roth Rock Wind Project in Garrett County in 2010, the Garrett County Commissioners pursued regulation of future wind projects. As a result of the election of 2010, each of the three prior commissioners was replaced. The new commissioners are concerned with uncontrolled and unregulated wind energy development. At the request of the county commissioners, Senator Edwards and Delegate Beitzel introduced *Senate Bill 252/House Bill 116 - Garrett County - County Commissioners - Commercial Wind Turbines* (both failed), which would have authorized the Garrett County Commissioners to enact an ordinance that: (1) regulates the setback of a commercial wind turbine structure; and (2) sets a fee for decommissioning a commercial wind turbine structure. The bills failed in their committees of origin.

Senator Edwards also introduced *Senate Bill 314 - Public Utility Companies - Generating Stations – Wind* (failed), which would have effectively repealed the law passed in 2007 that provides an exemption from the requirement to obtain a CPCN for the construction of land-based generating stations that are wind fueled, do not exceed 70MW, and only sell electricity on the wholesale market. If Senate Bill 314 had passed, all future commercial wind projects would need to obtain a CPCN. Senate Bill 314 failed to leave the Senate Finance Committee.

#### Rural Legacy Area – Prohibitions on Substations

Delegate Stein introduced *House Bill 1241 – Natural Resources – Rural Legacy Area – Prohibited Uses* (failed) to prohibit the construction of a shopping center, an electric power station or substation, or any other nonagricultural use in a Rural Legacy Area, if the new use would exceed five acres. Introduced on behalf of the Valley's Planning Council, the bill was a direct attack on a BGE's proposed Emory Grove substation, to be located north of Reisterstown in Baltimore County. The unrelated elements of the bill were included to obscure the very

narrow intent to stop the Emory Grove substation. If House Bill 1241 had been enacted, the Emory Grove Substation and a portion of a related transmission line project would be illegal under state law. BGE was supported in its opposition to House Bill 1241 by the Maryland Association of Counties, the Maryland Home Builders Association, and the Maryland Association of Industrial and Office Properties. The bill failed in committee.

### **CPCNs for Qualified Generator Lead Lines**

*Senate Bill 691/House Bill 590- Public Service Commission - Certificate of Public Convenience and Necessity – Renewable Source Generator Lead Line* (both passed) address the Commission’s recent decision that Big Savage LLC was not eligible to obtain a CPCN to construct a transmission line to interconnect an out-of-state wind generating facility to a Maryland substation. In what became Case No. 9222, the Commission determined that Maryland Law does not authorize the Commission to grant a nonelectric company a CPCN for the construction of an overhead transmission line greater than 69 kilovolts. Senate Bill 691/House Bill 590 provide the Commission the authority that it determined it lacked in Case No. 9222 to allow a non-electric company to construct a “qualified generator lead line.” The electric companies amended the bill to ensure the continued initial opportunity for electric companies to construct qualified generator lead lines, while still not precluding a non-electric company from obtaining a CPCN to build a qualified generator lead line, if the electric company opts not to build the line.

### **Gas and Electric Companies – Use of Trade Name or Trademark.**

Since the mid - 1990’s, the Alliance for Fair Competition has come to Annapolis attempting to restrict BGE HOME from using BGE’s trade name and trademark. This Session, Senator Klausmeier introduced *Senate Bill 697 - Gas and Electric Companies – Use of Trade Name or Trademark* (failed) to prohibit a person who is an affiliate of a gas and electric company to use, as part of that person’s trade name or trademark, the trade name or trademark of a gas and electric company unless the person remits royalties of at least 10 percent of the person’s gross receipts. Amendments were offered to reduce the royalties percentage to 2 percent of gross receipts with the proceeds going to supplement the state’s Electric Universal Service Program. In light of the very long history of this dispute, the narrow aim at BGE HOME, the Commission’s existing rules regarding royalties and its pending Case No. 9235, and concerns about preemption by the federal Lanham Act, the Senate Finance Committee narrowly defeated Senate Bill 697.

### **STRIDE Bill**

*Senate Bill 332/House Bill 856 - Strategic Infrastructure Development and Enhancement Program (STRIDE)* (both failed) were sponsored on behalf of Washington Gas Light (WGL) and were tailored after a Virginia initiative that passed in 2010. The bills would have authorized a gas company to recover costs associated with gas infrastructure replacement projects through a surcharge on customers’ bills. The bills would have allowed the Commission to isolate infrastructure replacement costs proposals from unrelated issues often found in a formal base rate case. WGL, BGE, Columbia Gas, Elkton Gas, and Chesapeake Utilities supported the bills. The bills were strongly opposed by the Commission, OPC, and the Apartment and Office Building Association (AOBA).

The bill hearings went well in each committee and the members seemed more supportive of the bills than would have been previously thought. Ultimately, however, the Commission’s

atypically assertive lobbying against the bill led to the bills' withdrawal from further consideration.

### **Electricity Market Legislation**

#### **Pipkin Bills**

Three days after hearing them, the Senate Finance Committee defeated each of Senator Pipkin's on energy matters. Each of these bills would have marked a varying degree of increased regulation of the electricity supply market. These bills included *Senate Bill 459 – Public Service Commission – Electric and Gas Consumers* (defeated 7-4); *Senate Bill 460 – Nuclear Power Transparency Act of 2011* (defeated 10-1); *Senate Bill 521 – Electricity Market – Goal of the State – Best Possible Price for Ratepayers through Reregulation* (defeated 9-2); *Senate Bill 734 – Public Service Commission – Electric Companies – Long-Range Plans* (defeated 7-4). Similar versions of most of these bills failed in recent Sessions.

#### **Customer Education**

*Senate Bill 244/House Bill 597 – Public Service Commission – Customer Education on Customer Choice* (both passed) will require the Commission to educate customers about retail customer choice for electricity. Notwithstanding the Commission's December 2010 posting of a new link on its website to some information on customer choice, legislators agreed with Senator Pugh and Delegate Davis that the Commission's voluntary actions had not been sufficient. The sole opposition to these bills came from AOBA.

#### **Customer Account Information**

Also a reintroduction of similar legislation from 2010, *House Bill 596 - Electric Companies and Gas Companies - Customer Account Information* (failed) and the similar *Senate Bill 704 - Electric Companies and Gas Companies – Residential Customer Account Information* (failed) would have required each investor-owned electric company and gas company, on request, to provide competitive suppliers with specified customer account information for its residential customers (and under House Bill 596 only, small commercial customers) under specified conditions. Notice and an opportunity to “opt-out” of having their customer information shared with competitive suppliers would have been offered to each customer. The OPC, the Attorney General and AOBA opposed the bills.

#### **Residential Electricity Supply Contracts**

*House Bill 1080 – Electricity Suppliers – Residential Supply Contracts – Consumer Protections* (failed) would have prohibited a residential electricity supply contract from containing an automatic renewal clause, unless the customer was given the opportunity to reject the provision before entering into the contract and the customer could cancel the renewal at any time up to 30 days before the day of the automatic renewal. Also, an early termination fee or penalty would have to have decreased by an equal amount monthly so that the customer owes no termination fee at the end of the contract. Lastly, the bill would have prohibited an electricity supplier from refusing to provide service to a person because the person previously canceled a residential electricity supply contract.

### **Electricity Supply Service Rights Auction**

*House Bill 1322 – Electric Companies and Electric Cooperatives – Standard Offer Service – Service Rights Auction* (failed) would have required the Commission to study and make recommendations regarding the advisability of establishing an auction among retail electricity suppliers for the right to provide electric service to electric customers using Standard Offer Service in certain service territories and allowing electric cooperatives to participate or establishing a separate auction for such entities. This bill was sponsored at the request of Direct Energy.

### **Electric Vehicles**

Three sets of bills to promote the deployment of electric vehicles in Maryland were included in Governor O'Malley's Energy Agenda for 2011.

#### **Maryland Electric Vehicle Infrastructure Council**

*Senate Bill 176/House Bill 167 – Maryland Electric Vehicle Infrastructure Council* (both passed) establish, effective July 1, 2011, the Maryland Electric Vehicle Infrastructure Council, to consist of at least 27 individuals, of whom three would be representatives of Maryland electric companies and the majority of which would be state or local officials or other public sector representatives. The Council has 10 specific charges aimed at promoting electric vehicle deployment in Maryland and one general goal to “pursue other goals and objectives that promote the utilization of electric vehicles in Maryland.” An interim report of the Council's work and recommendations is due by January 1, 2012, with a final report due by December 1, 2012. Absent further legislative action, the Council will cease to exist after June 30, 2013.

#### **Income Tax Credits for Electric Vehicle Recharging Equipment**

*House Bill 163 – Income Tax – Tax Credit for Electric Vehicle Recharging Equipment* (passed) will establish, effective July 1, 2011, for tax years 2011, 2012, and 2013, a state income tax credit equal to 20% of the cost of any “qualified electric vehicle recharging equipment” placed in service during the tax year, up to a maximum credit for any tax year of \$400 per system or the state income tax due. The credits will be funded by Strategic Energy Investment Fund (SEIF) revenues from Regional Greenhouse Gas Initiative (RGGI) allowance auctions. Individuals will be eligible for not more than one recharging system and corporations will be eligible for not more than 30 recharging systems.

#### **Pilot Program for Charging Electric Vehicles**

*Senate Bill 179/House Bill 164 – Electric Companies – Pilot Program for Charging Electric Vehicles* (both passed) will require the Commission, by June 30, 2013, by order or regulation, to establish a pilot program providing incentives for residential, commercial, and industrial electric customers to recharge electric vehicles in a manner that: (1) increases the efficiency and reliability of the electric distribution system; and (2) lowers electricity use at times of high demand. Incentives may include time-of-day pricing, demand response programs, distribution charge credits, rebates against the cost of charging systems, and other incentives approved by the Commission. The Commission is required to report to the Governor and the General Assembly regarding the pilot program by February 1, 2015. An amendment to the bill clarifies that it does not limit the authority of the Commission to receive, consider, and approve pilot programs proposed prior to the deadlines in the bill.

### **Net Energy Metering**

In response to some solar installers' misunderstanding the impact of the net energy metering legislation negotiated during the 2010 Session, *Senate Bill 380/House Bill 860 – Electricity - Net Energy Metering* (both passed) were introduced to “fix” the law. These bills were endorsed by the Governor and were considered part of his 2011 Energy Agenda. Effective June 1, 2011, the bills alter the way an eligible customer-generator may accrue credits from excess generation from a dollar basis to a kWh basis. Eligible customer-generators may accrue net excess generation for a 12-month accrual period and electric companies must carry forward net excess generation until the customer's electricity consumption eliminates the net excess generation or the 12-month accrual period expires. The bill repeals existing provisions that govern payment for excess generation and establishes new rates and payment conditions for a customer's net excess generation at the end of the 12-month accrual period. The bill also repeals the authority of the Commission to require the use of a dual meter for certain customer-generators and establishes a monthly payment option for customers of certain electric cooperatives.

### **Municipal Aggregation**

Delegate Jim Hubbard once again introduced legislation to enable municipal aggregation of retail electricity customers. Unlike in years past, this year's bill, *House Bill 987 – Electric Industry – Local Aggregation* (failed) did not authorize the local government to aggregate customers through an “opt-out” model. House Bill 987 merely would have removed §7-510(f) of the Public Utilities Article, which prohibits a local government from acting as an aggregator unless the Commission determines that there is no sufficient competition within the jurisdiction. Delegate Hubbard withdrew the bill prior to the hearing, presumably for a lack of support.