Disbanding the Maryland Public Service Commission

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Introduction

On June 15, 2006, the Maryland Legislature voted to disband the existing Maryland Public Service Commission (PSC) and created a process for appointing new members whom Democratic leaders said would be more consumer friendly.

Maryland Senate President Thomas V. Mike Miller Jr. (D-Calvert) compared the action to removing a judge who had "refused to have fair hearings and refused to let the people have their say." He went on to say, "We need a Public Service Commission that's for the people instead of one that rolls over and plays lap dog for the utilities."

For his part, Maryland's Republican Governor Robert L. Ehrlich Jr. described the action as "decapitating" the PSC and predicted that the legislation would harm Maryland consumers. "What they (the Legislature) need to do is provide energy relief without threatening the energy supply. They need to learn from California, when the mistakes there almost brought the world's seventh-largest economy to its knees," said Chip DiPaula Jr., Ehrlich's chief of staff.

The governor vetoed the legislation, but on June 23 the state Senate and House voted to override the veto. Ehrlich described the legislative action as unconstitutional and promised a court challenge, which was launched June 26 by the Chairman of the PSC, Kenneth D. Schisler. Commissioner Harold Williams, the only sitting PSC commissioner to have been appointed by Ehrlich's predecessor, Governor Parris N. Glendening, a Democrat, refused to join his fellow commissioners in the lawsuit.

Background

In 1999 a bipartisan group of Maryland politicians, utility regulators and energy consumers signed on to an agreement to

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As of the completion of this case study, the full impact of the new Maryland law remains unresolved. Specifically, the Chairman of the PSC brought a suit against the legislature seeking to enjoin, as unlawful under the Maryland constitution, enforcement of that portion of the law requiring the firing of the incumbent commissioners. A Maryland appellate court has granted his request for a temporary injunction until the merits of his argument can be fully examined.

restructure the state's electric power sector. The agreement opened Maryland's electricity generation market to competition and separated Baltimore Gas & Electric's (BGE) generating assets from its remaining monopoly electricity distribution business. BGE would purchase electricity in an open competitive market and sell the electricity to its monopoly retail customers. As part of the agreement, BGE agreed to a 6.5 percent retail price decrease and a price freeze. Constellation Energy Group Inc., which owns BGE, explained that the rate freeze saved Maryland customers approximately $1 billion.

As part of the transition to competition, Constellation, like many other utilities in states that had opened electricity markets to competition, put its power-generation operations into an unregulated subsidiary, which entered into contracts nationwide web with a wide variety of customers, buying and selling to meet obligations that were four times as big as the parent company's generating capacity. Meanwhile BGE was required by Maryland regulations to purchase all of its electricity supply through an auction process.

By 2006 Constellation had become a FORTUNE 200 company, with revenue of $15.2 billion, and was the nation's largest competitive supplier of electricity to large commercial and industrial customers and the nation's largest wholesale power seller. It managed fuels and energy services for energy-intensive industries and utilities. It owned more than 100 generating units located throughout the United States, totaling approximately 12,000 megawatts of generating capacity, using primarily oil and natural gas (41 percent), nuclear (32 percent), and coal (23 percent).

In December 2005 Constellation announced an agreement to merge with Florida Power & Light (FPL) Group, an $11 billion energy company that owned the Florida electric utility FPL and other energy-related businesses in 26 states. FPL served 4.3 million customer accounts in Florida. FPL Energy, LLC, was FPL Group's wholesale electricity generating subsidiary. FPL Group generated electricity nationwide using oil and natural gas (73 percent), nuclear (13 percent), and wind (10 percent).

PSC's Pricing Decision

BGE's prices remained frozen from 1999 until July 1, 2006. During this period, energy costs around the world increased considerably, including BGE's costs for providing its Maryland customers with electricity and natural gas.

The possibility of rate shock for BGE's retail electricity customers on July 1 appears to have been a serious concern for the PSC. Six months prior to the scheduled expiration of the rate freeze, the PSC directed its staff to develop a transition mechanism for BGE's retail prices to rise to levels that reflected the market prices for energy. As the PSC said in its March 6, 2006, order adopting the initial transition plan, "The cost of fuel used to produce electricity is by far the largest factor in total operating cost for most generation facilities. Unfortunately, market prices for the fuels used to produce electricity have recently increased far beyond what could have been anticipated when the Act was passed and signed in 1999 or even when the Case No. 8908 process was finalized in 2003…The almost 150 percent price increase for natural gas and 230 percent price increase for fuel oil since 1999 provide a dramatic explanation for the recent upward pressure on wholesale electric supply prices. Although coal prices increased 'only' 28 percent, the generation fuel source at the margin is natural gas or fuel oil for a growing percentage of electric generation. Consequently, the relationship between gas and fuel oil prices and wholesale electric prices (and the resulting price increases or decreases) is already close and is growing even stronger."

Furthermore in its March 6 order, the PSC said it

sought "A competitively neutral plan (that would give) BGE residential customers time to adjust to higher bills…" But finding a way to do this proved to be difficult. Said one energy policy expert, Scott Hempling, of the problem facing BGE and its regulators: "The question is: What can you do now? There's not a lot of maneuvering room. I can't think of any way (to avoid large price increases). The only thing going on is talk about timing and whether interest should be paid (for any delayed cost recovery). The underlying costs are there."

In its March 6 order the PSC approved a Rate Stabilization Plan under which customers could choose to pay either higher prices immediately upon expiration of the freeze or a two-year phased-in price increase. Customers choosing market-based prices were expected to experience an immediate 40 to 81 percent price increase. (The full extent of the price increase was unknown because BGE had not completed its auction for purchasing power.) Customers in the phased in option would experience an immediate 21 percent price increase and then gradual increases through March 2007, after which time customers in the phased increases would pay higher prices than other customers because their price schedule would in effect pay BGE 5 percent interest on the delayed cost recovery. These higher prices would continue through May 2008, after which a true-up would occur and all customers would pay market-based prices. Certain low-income customers could elect a three-year phase-in plan. BGE and the PSC would conduct consumer education programs to help customers make their choices. Customers who did not make a choice would be enrolled in the phased plan.

In April after discussions with elected officials and consumers, BGE requested that the PSC modify its March 6 decision to provide phase-in customers with a three-year plan instead of the two-year plan. More specifically, BGE proposed that customers in the phased plan would experience a 19.4 percent increase on July 1, a 5 percent increase on January 1, 2007, and a projected 25 percent increase on June 1, 2007. On January 1, 2008, phase-in customers would begin paying market-based prices. Deferral payments would run from June 2007 through May 2009. Low-income customers could elect a four-year phase-in plan. Furthermore, customers who did not make a choice would pay market-based prices rather than be enrolled in the phased plan. BGE also offered to provide customers with a $600 million benefit from the merger with FPL Group, should the merger be approved and completed.

During the PSC's consideration of BGE's proposal, the City of Baltimore intervened and asked for additional investigations into BGE's practices and for changes in the PSC's hearing processes. MaryPIRG, a public interest group, concurred in the City's request for investigations and filed a Motion for Recusal of four commissioners, claiming that the commissioners had engaged in inappropriate *ex parte* communications with Governor Ehrlich's staff. The commissioners refused to recuse themselves because the Governor was not a party to the case. The PSC rejected the other requests, citing the need to resolve issues before the expiration of the freeze. The PSC approved BGE's proposal on April 28, with the exception that the PSC said BGE could not charge interest on deferred payments. Interest costs would be recovered through other means. Exhibit 4 is Attachment 1 to the PSC's April 28 order, which compares market-based prices to the phase-in plan prices.

On May 30 the Circuit Court for Baltimore City, responding to a petition by the City of Baltimore, vacated the PSC's April 28 order and recommended that the PSC consider extending the rate freeze. On June 2 the PSC issued an order rejecting the court's ratemaking suggestion as beyond the PSC's authority and directing BGE to implement the original March 6 decision. In doing so the PSC expressed its disappointment that because of the court's action consumers would have less time to investigate their options. By time

of this order, it was known that market-based prices would be 72 percent higher than prices charged during the freeze.

Political Reactions

The BGE price increases led to a political firestorm during the 2006 legislative session. “We're going to fire the Public Service Commission and end their public careers because they've acted as lapdogs, not watchdogs,” said Del. Peter Franchot, a Montgomery County Democrat running for state comptroller in a NewsChannel 8 TV interview. “We're going to appoint an independent counsel to look at the merger between BGE and Florida Power & Light.”

Governor Ehrlich appeared to be proactive during the legislative session trying to find solutions that would be acceptable to Constellation and its customers. The company seemed to be willing to make concessions. According to the Washington Post on June 8: “In its earlier talks with Maryland Gov. Robert L. Ehrlich (R), Constellation said it would be willing to chip in -- $600 million by its reckoning -- but added that its payments to reduce consumer costs would depend on the successful completion of its acquisition by FPL Group. Constellation said it would effectively be sharing some of the merger benefits with Maryland consumers, a move to boost the merger's prospects. FPL said this week that planning for the merger is on hold while the dispute continues in Maryland.”

However, some of the company’s financial filings provided fodder for the political debate. As reported by the Washington Post, around June 1 Constellation revealed that the former BGE electric generating plants, which in 1999 were estimated to have a value of $2.3 billion when they were spun off by BGE into an unregulated Constellation subsidiary, were now worth $4.3 billion. Constellation explained that it had invested $900 million into the former BGE plants and that the improved value was a reasonable reward for the risks the company had assumed by agreeing to deregulation, but lawmakers were suspicious that the assets were undervalued in 1999.

The governor, legislative leaders, and Constellation worked on a legislative solution during the normal legislative session, but no legislation was passed.

New Law

The Legislature held a special session in June to address the electricity price issue. The governor expressed his hope that the Legislature would pass the compromise bill that had failed to come to a vote when the Legislature adjourned in April, but the legislative leaders had other plans. Legislative hearings included testimony from two Maryland Democrats -- Baltimore Mayor Martin O'Malley and Montgomery County Executive Douglas M. Duncan – who were running to unseat the Republican Ehrlich. According to Electric Utility Week, the key features of the legislation that passed with a veto-proof majority were:

- “The current PSC would be disbanded and replaced by five members chosen by the governor from a list of 10 names provided by the presiding officers of the legislature to begin new staggered terms starting July 1… The measure also switches from the governor to the attorney general the authority to appoint a people’s counsel.
- “Beginning July 1, 2006, through May 31, 2007, BGE residential rates will go up 15%. Beginning June 1, 2007, customers may choose to go to full market rates or opt in to a rate stabilization plan designed to ‘smooth the transition to full market rates ... without adversely affecting the creditworthiness of the electric company.’
- “Standard-offer service for BGE residential electric customers will be at full market rate

beginning January 1, 2008.

- "Utilities may build, buy and operate generating plants. Maryland companies were required to divest their power plants when the state passed a retail competition bill in 1999.
- "Utilities remain obliged to provide standard-offer service and obtain supply through auctions. They will be able to stagger the auctions, however, to avoid locking all supply into a single price period, and they will also be able to do bilateral deals outside the auctions. The PSC will be able to let utilities reject some or all bids in the auctions.
- "Rate increases of 20% or more for any utility are subject to commission proceedings to determine how to phase in the increase.
- "A deferral of costs from the phase-in plan would be treated as a regulatory asset to be recovered with a rate stabilization plan or any other plan approved by the PSC.
- "Upon request by an electric cooperative or on its own, the PSC must initiate proceedings to examine options for a rate stabilization plan to help opt-in residential customers adjust to market rates.
- "As a means of rate relief, customers for a 10-year period would not pay nuclear decommissioning charges, which amount to about $18 million a year, or SOS administrative charges.
- "Cross-subsidization activities are prohibited as part of the proposed FPL-Constellation merger.
- "Final PSC action on the Constellation/FPL merger cannot occur until the new commission is seated."

Reactions to the Situation

Harry Trebing, an economics professor emeritus at Michigan State University and former head of the Institute of Public Utilities, explained the situation this way to the Baltimore Sun: "'I think it's a sense of despair.' The same legislative bodies that were sold on deregulation a few years ago are finding the transition to a free market more expensive than expected and are looking for someplace to direct their anger. Utilities and regulators are prime targets."

Other experts remarked that the Legislature's actions threaten the concept of regulatory independence. State and federal utility regulators are generally relatively insulated from politics by staggered terms so that no single head of the executive branch, either the President or a governor, can replace the entire commission. It is also hard, if not impossible, to remove a commissioner for political reasons: Most utility laws state that a commissioner cannot be removed except for cause, such as the commission of a felony. Many states also require a balance of political parties be represented in a regulatory commission.

Investor reactions to the legislative action were predictable. According to Electric Utility Week, "Standards & Poor's Director Aneesh Prabhu said the legislation passed by the Maryland General Assembly technically assures cost recovery, although on a deferred basis, but it creates a greater business risk because the lawmakers signaled that activities will come under a higher level of scrutiny as evidenced by their firing of the PSC…. Fitch Ratings analysts expressed similar concerns. 'While the legislation eliminates some of the uncertainty regarding future rate increases, Fitch's concerns with the legislation include the dismissal and replacement of all current PSC members, the large deferred energy balance created for BGE, and the long-term rate reductions or tariff offsets mandated for the utility,' added Associate Director Ari Kagan and Director Justin Bowersock. 'The legislature's firing of the PSC raises concerns about the composition and independence of a new commission and ongoing political constraints upon timely recovery of any future utility cost increases.'"

BGE identified positive elements in the new law. The law allows the utility to securitize deferred

higher power costs. This guarantees recovery of the full price increase, according to Mayo Shattuck, chairman, president and CEO of Constellation Energy. In a letter to shareholders about the legislation, he said, "We don't know what approach the new PSC will follow, but we are guaranteed a total return on BGE's wholesale power costs. This is critical for the rating agencies. We must maintain investment grade credit so we can borrow the capital needed to invest in BGE's infrastructure and Constellation's growing businesses."

On July 12 Moody's Investors Service downgraded BGE close to junk status. Moody's said the firing of the PSC was "a highly unusual event in the modern history of the U.S. regulated utility industry" and said it lacked confidence in the Legislature to allow BGE to recover its energy costs.

Commissioner Karen Smith, appointed by Ehrlich, resigned on June 29. In July a court granted the Chairman's motion for a temporary restraining order on the replacement of the commissioners. □

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Exhibit 1.

Divide Looms Over Rate Relief

Legislators Hope Special Session Will Result in Compromise

By Matthew Mosk and John Wagner
Washington Post Staff Writers
Sunday, June 11, 2006; C10

Maryland's Republican governor and the Democratic-controlled General Assembly are intent on delivering relief from hefty summer electricity bills, but they return to Annapolis this week deeply divided on how exactly to accomplish it.

Legislative leaders say they hope to use a rare special session, set to begin Tuesday, to do more than just push off the pain of looming price increases with a plan to defer much of the 72 percent hike that would hit 1 million Baltimore Gas and Electric Co. customers next month.

The Democratic leaders are considering sweeping changes that include dismissing the state's utility regulars and restocking the Public Service Commission with members considered more consumer-friendly -- a change they said could benefit homeowners across the state.

But top aides to Gov. Robert L. Ehrlich Jr. say "decapitating" the PSC could signal to power companies that Maryland is too volatile a place to do business and unintentionally put the state's electric grid in jeopardy.

"What they need to do is provide energy relief without threatening the energy supply," said Chip DiPaula Jr., Ehrlich's chief of staff. "They need to learn from California, when the mistakes made there almost brought the world's seventh-largest economy to its knees."

Coming amid the 2006 campaign season, the looming confrontation could turn a special session that members of both political parties had sought eagerly into a week freighted with political risk.

"They've got to fix it," said Barbara Hoffman, a former Democratic state senator who now works as an Annapolis lobbyist. "This is a bona fide pocketbook issue. And if it doesn't get resolved, every politician in town knows they'll face consequences."

The standoff could yield a repeat of the special session Ehrlich called in late 2004 to address spiraling medical malpractice insurance rates. In the end, the governor vetoed a bill that produced many of the changes he sought because he couldn't stomach one element of the legislature's plan -- the way it was funded. The General Assembly then overrode his veto.

Republicans said the legislature needs to set the modest goal of restoring a compromise plan for rate relief that passed the House in April but died in the Senate the final day of the regular legislative session. Reaching for more, they said, could bring instability and, at its worst, the kind of rolling blackouts that plagued California.

"I am hoping that we'll have legislation very similar to what was before the Senate at the end of the session," said Sen. Allan H. Kittleman (R-Howard). "I'm hopeful they won't use this as an election-year ploy."

But Democrats vowed to press the need for regulators who, as House Speaker Michael E. Busch put it, "are more concerned about Main Street than Wall Street."

Busch said that as he campaigned door-to-door in his Annapolis neighborhood recently, he heard the same refrain on almost every front stoop: "Please, please, help us with our electric bills."

After weeks of reflection and planning, Busch (D-Anne Arundel) and Senate President Thomas V. Mike Miller Jr. (D-Calvert) announced the special session to consider emergency legislation that would, at a minimum, spread out the pain of a 72 percent rate hike for BGE customers, including households in Anne Arundel, Howard and parts of Montgomery and Prince George's counties.

Pepco's customers in Montgomery and Prince George's saw rates climb 39 percent this month, but lawmakers say they have little leverage to change that increase.

Busch and Miller said the bill they will present to lawmakers tomorrow could force BGE's parent company, Constellation Energy Group, to return the more than $500 million that customers have paid in the six years since the legislature deregulated the energy market. And it could involve spreading out the rate increase by having Constellation borrow millions of dollars; ratepayers would be asked to gradually pay off that debt through a monthly charge.

The most controversial element, one Busch and Miller said is essential, involves disbanding the state regulatory commission. A circuit judge ruled that the five-member PSC had acted without regard to consumer concerns when approving BGE's proposed rate hike.

And when the panel was given the option by the court to temporarily freeze rates, it opted instead to restore an unpopular rate-relief plan that included interest.

Miller compared the commissioners to judges who had violated their oaths. "What we would be doing would be like removing a judge who talked with one side before deciding the case. And a judge who refused to have fair hearings and refused to let the people have their say," Miller said. "We need a Public Service Commission that's for the people instead of one that rolls over and plays lap dog for the utilities."

But Ehrlich and GOP lawmakers said they believe the proposal to remove the commissioners is akin to removing a judge who issued a ruling lawmakers didn't like. DiPaula said Democrats are casting about for someone to blame to deflect attention from legislators' 1999 vote to deregulate the industry, which started the state down this path. "They're looking for a scapegoat," he said.

The parrying over the future of the PSC is reminiscent of the stalemate on another high-profile issue.

In 2004, Ehrlich spent nine months traveling the state and visiting with doctors to drum up public interest in reining in escalating medical malpractice insurance costs.

Declaring the issue a crisis that threatened patients' access to health care, Ehrlich summoned lawmakers back to Annapolis -- only to veto the bill they produced.

Ehrlich said his chief objection was that lawmakers chose to pay for the rate relief by imposing a tax on HMOs.

The legislature overrode Ehrlich's veto, delivering a stinging defeat that left questions about the governor's willingness to compromise, given that the final version of the bill had the backing of the state's two largest associations that represent doctors and hospitals.

The special session over electricity rates, however, carries added pressure by virtue of its timing -- five months before the state's gubernatorial election.

Among the consumers hardest hit by BGE's rate increases are blue-collar voters, many of whom live in the counties ringing Baltimore. These counties are home to many of the Democrats who backed Ehrlich in large numbers four years ago, making him Maryland's first Republican governor in a generation.

Democratic strategists believe that bringing enough of these voters back into the fold could assure victory in November.

The potency of the issue was underscored when one of Ehrlich's potential challengers, Baltimore Mayor Martin O'Malley (D), launched his first television ads last week portraying the mayor as fighting for working-class families against Ehrlich and the power companies.

O'Malley's Democratic rival, Montgomery County Executive Douglas M. Duncan, has also sought to show leadership and gain political leverage on the issue, even though his constituents are primarily served by Pepco.

On Friday, Duncan sent lawmakers a nine-point plan for what they should do during the session.

"As this special session begins, I urge you to once again, as you did with the medical malpractice crisis, work together to craft a long-term solution that will relieve the fears of Marylanders and build a foundation for a long-term solution to this issue," Duncan wrote.

Ehrlich aides said the governor's hope is to emerge with a plan similar to the one that the legislature left on the table in April.

But even if that doesn't happen, DiPaula said he believes that voters will credit Ehrlich for helping craft that plan and for coming back to forge a second agreement with BGE.

"No matter how this comes out," DiPaula said, "the governor has demonstrated that while others jump up and down and criticize, he has offered solutions."

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Exhibit 2.

Md. Rate-Relief Session Stokes Governor's Race

By John Wagner and Matthew Mosk
Washington Post Staff Writers
Wednesday, June 14, 2006; B01

The scene that played out in a crowded Annapolis hearing room yesterday left little doubt about just how potent the issue of electricity costs has become for the two Maryland Democrats running for governor.

For nearly two hours, Baltimore Mayor Martin O'Malley and Montgomery County Executive Douglas M. Duncan sat waiting to offer just five minutes of testimony each in support of a rate-relief plan that will be considered during an extraordinary special session today.

"I urge you to pass this bill," said O'Malley, a bank of television cameras trained on him.

"I stand ready and willing to help you in any way," Duncan pledged just a few minutes later, seeking not to be outdone by his Democratic rival in a contest to unseat Gov. Robert L. Ehrlich Jr. (R).

Over the course of a long election season, Duncan and O'Malley have traveled the state, trading barbs over education and crime and pledging to clean up the environment, manage growth and curb sprawl.

But this week -- with three months remaining until the primary -- all paths are pointing to Annapolis, and debate has focused on one key issue: delivering relief to Marylanders who face a 72 percent spike in electricity rates next month from Baltimore Gas and Electric.

"Neither one could afford not to be there," said Del. Curtis S. Anderson (D-Baltimore). "It's a personal issue, and it's a political issue. They couldn't appear to be uninterested."

Ehrlich, meanwhile, skipped yesterday's hearing, instead using a series of television interviews to reiterate his reservations about the bill -- which would also dismantle the state's regulatory commission and change the way utilities buy and sell power -- and to lay responsibility clearly on the lawmakers.

"They own this," Ehrlich said. "This is their package. They are going to have to defend this to the people."

It was part of an effort to distance himself from the General Assembly, in effect gambling that lawmakers will drop the ball this week, leaving consumers with a worse deal than he alone negotiated with BGE this spring.

But Democrats said Ehrlich's absence from yesterday's hearing sent a contrary message.

"I see that as further proof of his inability to get things done -- and his inability to lead," Duncan said.

The more than 1 million central Marylanders served by BGE have the most at stake in coming days. But how voters perceive the leadership shown by all three gubernatorial candidates could resonate well into the fall -- and some suggest those impressions could be key for swing voters.

That helps explain why O'Malley's appearance in Annapolis was his second in two days.

On Monday, the mayor and his city's top lawyer briefed a panel of Baltimore-area legislators on a lawsuit filed by the city that has forced the Public Service Commission to take another look at whether BGE's increase is justified. Many lawmakers say the lawsuit was pivotal to their decision to return to Annapolis.

"It opened doors that the General Assembly could not open," Sen. Leo E. Green (D-Prince George's) told O'Malley.

Aides to the mayor said it is impossible to know how attitudes over BGE will drive voters' behavior in the Sept. 12 Democratic primary and two months later in the general election. But they say that Ehrlich's stance on the issue, coupled with pocketbook issues such as college tuition costs, could make him vulnerable.

"I think the question that's on the minds of all Marylanders is whether their state government is on their side," O'Malley said. "There's a great deal of anxiety about that across the state among middle-class families, and this issue is the most glaring to date."

Duncan, whose constituents are primarily served by Pepco, began calling for a special session long before O'Malley embraced the idea. And Duncan's testimony yesterday included calls for longer-term reforms that would help customers across the state, part of an effort to position himself above the fray between the mayor and the governor.

Ehrlich took an early leadership role, helping to negotiate an initial compromise plan, and, when that failed in the final hours of the legislature's regular session, brokering a second agreement with BGE.

But his decision to skip yesterday's hearing seemed to encapsulate his strategy with respect to the special session -- he's waiting to see what the legislature produces.

The governor can afford to stand back, said chief of staff Chip DiPaula Jr., because he has helped broker two deals. But restraint now may prove risky, lawmakers in both parties said, because there may be no scenario that would allow both the governor and the legislature to declare victory.

"It's like two gunfighters stepping into a dusty street," Anderson said. "One of them wins. One of them loses."

Ehrlich stopped short of saying his objections to the bill would lead to a veto, a move that comes with its own risks if Democrats paint the governor as on the side of power companies rather than consumers.

Although Republican lawmakers have traditionally kept in lock step with Ehrlich, some say they cannot afford to leave this session without a rate relief plan, regardless of the governor's stance.

"The legislators have met the people and realized they've got pitchforks and the torches are lit," said Del. Patrick L. McDonough (R-Baltimore County).

Staff writer Ann E. Marimow contributed to this report.

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Exhibit 3

Meddling in utility panels criticized

Lack of commission independence said to hurt consumers

Baltimore Sun, June 12, 2006

BY PAUL ADAMS
SUN REPORTER

State utility commissions, historically, have been sedate institutions. Regulators could often count on two things: anonymity and job security.

But commissioners today are apt to find picketers outside their offices or homes, and their average tenure nationally is less than 3 1/2 years.

In several states - including Maryland - where prices are rising as the effects of electricity deregulation take hold, consumer and political backlash is growing. Not since the upheaval in the nuclear power industry after the 1979 accident at Pennsylvania's Three Mile Island froze nuclear plant construction and spurred higher rates have regulators faced such scorn.

Some warn that growing political interference with commissions could make it more difficult to find well-qualified nominees. That could pose problems in deregulated states that potentially face years of difficult solutions to rising energy costs.

Some Maryland lawmakers have said firing the five appointed members of the state's Public Service Commission will be a top priority when the General Assembly convenes Wednesday in a special session to tackle the projected 72 percent average rate increase for Baltimore Gas and Electric customers.

The commission, which works full time, is designed to be a quasi-judicial body that takes testimony, analyzes facts and makes decisions about rates and other matters.

Outright firings have been rare in more than a century of utility regulation in the United States. But in an era when all forms of energy are soaring in price, concerns are growing about regulatory independence - a bedrock principal of utility oversight and one that the power industry depends on to attract investors.

"I think it's a sense of despair," said Harry Trebing, an economics professor emeritus at Michigan State University and former head of the Institute of Public Utilities. The same legislative bodies that were sold on deregulation a few years ago are finding the transition to a free market more expensive than expected and are looking for someplace to direct their anger, Trebing said. Utilities and regulators are prime targets.

Most states take steps to insulate commissions from politics by staggering their terms so that no one governor can replace the entire board. States also make it hard, if not impossible, to remove a member for political reasons.

In many states, commissions must be made up of members of both parties to ensure balance. In about a dozen

states, commissioners are directly elected by voters, and in two - Virginia and South Carolina - they are elected by state legislatures.

"They do yeoman's service, and it is not glorious and not popular in the sense that they get to preside over rate increases," Stephen L. Teichler, a utility and regulatory law expert with Duane Morris in Washington, said of utility commissioners in general. "They often get a bad rap for things beyond their control."

A generation ago, new safety requirements led to massive cost overruns for utility projects, driving up consumer rates. Utility commissioners in California found their offices overrun by protesters in one instance. Others received threatening calls in the middle of the night, and a commissioner in an Eastern state had his mailbox blown up, recalled Charles Gray, executive director of the National Association of Regulatory Utility Commissioners.

"There was a visceral reaction," Gray said.

But retribution against regulators is a dangerous game, industry experts said. It can have long-term consequences - for the utilities being regulated and their customers, experts said. Commissioners who constantly fear for their jobs are less likely to make decisions based on independent reasoning, the theory goes.

"If the commissioners are always concerned that if they do something considered unpopular that they'd be sanctioned or even removed, that impacts their independence," said Kenneth Rose, an Ohio-based industry consultant.

Maryland's commission was hardly immune from accusations of political patronage and industry connections throughout years of Democratic appointments. But critics of Republican Gov. Robert L. Ehrlich Jr. contend his naming of Kenneth D. Schisler as its chairman was destructive because of the staff upheaval that followed.

Schisler fired five top PSC staffers for what some allege were political reasons, which the chairman denies. The firings made waves in the relatively small world of utility regulators, who generally rely on professional staff for expert advice and analysis.

"To come in and run them off was kind of outrageous," said Doug Jones, professor of economics and public utility regulation at Ohio State University.

Jones believes that the Maryland PSC failed to properly devise a plan to phase in higher utility rates in the transition to deregulation. Still, he said, the concept of commission independence should be inviolable.

"I would almost always say that, other than impeachment, no matter how poorly they perform, that [firing] should never happen," he said.

If utilities feel they can't get a fair shake from state regulators, experts said, they might be wary of investing in new power plants or other infrastructure. In addition, credit reporting agencies such as Moody's, Standard & Poor's and Fitch keep detailed records of the actions taken by each state's utility commissions, assigning a grade to each one. Those seen as too unpredictable get a low grade, which can result in a lower credit rating for every utility in a state. That leads to higher borrowing costs, which are passed to consumers in their rates.

That's what happened to BGE and other Maryland utilities after lawmakers first threatened this year to fire PSC commissioners and interfere with a merger between BGE's corporate parent, Constellation Energy Group, and a Florida-based utility owner. Credit reporting agencies quickly downgraded the utility's debt and have threatened to take further action if the feud persists.

A similar situation arose in Illinois, where rate caps imposed as part of the state's move to deregulation will expire next year. Regulators voted to require utility Commonwealth Edison to procure power in an energy auction similar to the one that led to BGE's rate increase.

Illinois Gov. Rod R. Blagojevich pressured the chairman of the Illinois Commerce Commission to resign. He eventually nominated the head of a consumer advocacy group, a known auction foe, to replace him. The day the news hit, utility investors meeting in New York went into a panic, believing that credit downgrades for all Illinois utilities were coming.

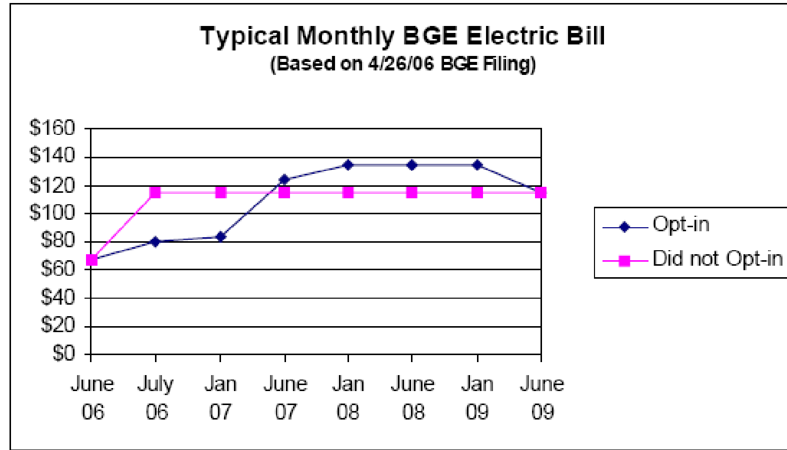
"These kinds of things move markets, it's true," said Gray, of the regulatory trade group.

The Illinois Senate refused to confirm Blagojevich's choice after heavy lobbying by utilities, who feared they couldn't get a fair hearing from the commission under the new leadership. A different nominee was approved, but some say the episode illustrates how utility commissions have been breached by politics as deregulation spreads.

"I think the perception of the public is that the Commerce Commission has favored utilities perhaps more than they should," said David Kolata, executive director of the Illinois Citizen's Board, whose former boss, Martin Cohen, was Blagojevich's rejected choice for the commission. "I certainly don't think it's a coincidence that the first known consumer advocate ever appointed to the commission became the first commissioner ever rejected by the Senate."

Exhibit 4

Attachment 1



Typical Monthly BGE Electric Bill
(Based on 4/26/06 BGE Filing)

	June 06	July 06	Jan 07	June 07	Jan 08	June 08	Jan 09	June 09
Opt-in	$67	$80	$84	$124	$134	$134	$134	$115
Did not Opt-in	$67	$115	$115	$115	$115	$115	$115	$115

Bills on and after June-07 assume no change in SOS price compared to July-06

Bills do not include possible merger related credit or any other change in non-SOS rates compared to current non-SOS rates

This example is not applicable to low-income customers. Amount due on customer bills for low-income customers receiving energy assistance (EUSP, MEAP or another program) will be significantly lower than amounts shown above and repayment period for low-income Opt-in customers stretches over three years rather than the two shown above.