

WHO'S GOT THE POWER?

Electricity Deregulation And Campaign Finance In Maryland State Government

**Elaine Orozco Hammond
Sean Dobson**

Updated June, 2008



In 1999, the Maryland General Assembly passed, and Governor Parris Glendening signed into law, the Electric Utility Industry Restructuring Act.

Electricity deregulation hurts the environment. Before deregulation, utilities had some incentive to encourage energy conservation because they were responsible for both the generation and transmission of electricity. They could avoid the regulatory and political headaches of building new power plants (as well as the cost of buying extra and high-priced power on the interstate spot market) by investing in efficiency and encouraging conservation. After deregulation, however, companies such as PEPCO and Baltimore Gas & Electric (the latter owned by the massive Constellation Energy Group) have either sold or spun off their power plants into separate companies and now simply provide electricity to homes and businesses through their power lines. As Ed Osann of the Natural Resources Defense Council explains, "Because their revenues are now based on how much power goes through the wires, there's no incentive for them to encourage conservation. And the companies that generate the power clearly don't have any incentive because they're operating those plants to sell all the power they can generate."¹

California-style electricity deregulation also hurts residential ratepayers. Proponents of the bill promised in 1999 that deregulation would create a competitive market for residential customers, which would keep prices down. But no competitors appeared to contest Maryland's electricity market. Thus, the pre-1999 regulated utilities serving most of Maryland – Pepco in the DC suburbs and BGE in metro Baltimore – are now private monopolies. As such, they are in a position to gouge ratepayers. And that is exactly what they are doing, hiking rates by hundreds of dollars per customer over the past two years.

The only solution to this debacle is full re-regulation of the electricity market. That means power generation and power transmission must be re-united under a single, regulated entity, be it a traditionally regulated utility or the State of Maryland itself.

But achieving re-regulation will be difficult. Gov. O'Malley has taken strong first steps to clean up the mess he inherited by appointing a pro-consumer Public Service Commission and forcing the monopolies to moderate some of their price gouging. But under the terms of the 1999 deregulation, it seems doubtful that the Public Service Commission – even with its new, pro-consumer majority -- has the authority to re-impose regulation. And even if the PSC has this authority, exercising it will almost certainly require a protracted legal struggle because BGE/Constellation and Pepco will undoubtedly fight in court to protect their respective monopolies. And even if state government (presumably through legislation) one day does re-impose regulation, the effort might well necessitate multi-billion dollar purchases of power plants to move them back under public control.

In short, all the evidence indicates that ratepayers in Maryland could be gouged for a long time and that taxpayers may well end up footing the bill for a multi-

billion dollar re-purchase of the power plants our lawmakers handed over to BGE and Pepco in 1999.

Why in the world did our elected representatives in Annapolis enact such a radical, unproven scheme whose loudest cheerleaders were the same special interests that stood to financially benefit from it?

Follow the Money Trail

In fairness to lawmakers, the go-go decade of the 1990s was the era of deregulation. Democrats and Republicans at the federal and state levels deregulated everything in sight: telecomm, financial markets, transportation systems, to name but a few. Nevertheless, Maryland's decision to hand over the literal engine of its economy – which over decades had been built up by ratepayer and taxpayer dollars -- to a handful of corporate executives based on an unproven theory was unprecedented and reckless.

So why did lawmakers do it?

Leading up to the vote during the 1999 session, public-interest advocates clearly explained the environmental and consumer pitfalls of deregulation. The fact that lawmakers ignored these arguments and instead rolled the dice on California-style electricity deregulation creates a terrible perception that they were unduly influenced by the sizable campaign contributions of the electricity generators and distributors who stood to reap a bonanza from deregulation. Specifically, utilities gave \$209,454 in campaign contributions to candidates running for state office in Maryland's 1998 election cycle.² Preliminary analysis shows that the bulk of the money went to incumbents, and the lion's share of this to Gov. Paris Glendening and top leaders in the General Assembly. The Progressive Maryland Education Fund is analyzing these data closely and will shortly publish a breakdown of how much money specific lawmakers received.

Does \$209,454 sound like a lot of money? It's chicken feed to behemoths like BGE and Pepco. But this small investment seems to have reaped **billions** of dollars for BGE and Pepco when they received an essentially public asset *for free*. BGE has already made plain its intentions to sell these assets to the highest bidder.

Did we say "for free"? Actually, lawmakers paid the utilities \$528 million in "stranded costs" to take the power plants based on the notion – pushed by BGE lobbyists – that the plants were dinosaurs which would cost BGE money to maintain. In fact, the plants have turned out to be gold mines for BGE.

The General Assembly did the right thing last year when it blocked the sale of BGE to Florida Power & Light. But even if lawmakers and the PSC block future attempts to auction off BGE's assets to the highest bidder, the executives of a now un-regulated BGE are much freer to give themselves multimillion dollar pay raises at the expense of ratepayers – and that is exactly what they have done since 1999.³

\$209,454 in campaign contributions can produce billions in assets for BGE and Pepco and multimillion dollar pay raises for their top executives? Try getting return-on-investment like that in the stock market! Why should corporations bother producing goods and services that customers actually want when it sure looks like they can reap billion-dollar windfalls by playing footsie with politicians? No wonder corporate America is giving more and more in campaign contributions and spending more and more on lobbying lawmakers.

In 1999, lawmakers created a terrible perception that their decision to deregulate Maryland's electricity system was unduly influenced by massive campaign contributions from utilities during the 1998 election.

Towards A Solution: Voluntary, Public Funding of Campaigns

Lawmakers need to not only re-regulate Maryland's electricity market. They need to prove to the public that monstrous giveaways like this can never happen again.

They can achieve the latter goal right now by enacting voluntary, public funding of campaigns as practiced in Maine and Arizona. This reform, which has worked well through four election cycles in Maine and Arizona, insulates lawmakers from the undue influence of big donors by creating a publicly funded way to run for office. Connecticut will implement this reform for its 2008 election.

This successful, proven reform makes it possible to pass laws to benefit all the voters, not just the energy monopolies, HMOs, and other special interests that write the big checks to elected officials. It is a proven, sensible way to change the status quo so that voters can take back control of politics and make elected officials accountable.

Here's how it works:

- To participate in the voluntary, publicly funded system, a candidate must demonstrate broad community support by collecting several hundred small contributions in the district she wishes to represent.
- If successful, she receives enough money from the public Treasury to wage a competitive campaign and agrees to accept no private donations.
- If a privately financed opponent outspends her, she receives offsetting funds to keep pace, up to a certain limit.

Advantages of Public Funding of Campaigns:

- It enables citizens with community support but ordinary financial means to run for office.

- It frees candidates and lawmakers from incessant fundraising, giving them more time to listen to regular voters.
- Participation in the publicly funded system is voluntary; by leaving the private campaign finance system alone, the Act is immune to judicial challenge.
- Publicly funded candidates who win owe nothing to the insurance companies, energy monopolies, and other special interests that fund campaigns under the current system. In this way, public funding of campaigns would reduce the real or perceived undue influence of deep-pocket special interests in Annapolis.
- Thus, it would restore voter confidence in government, which, according to opinion polls, continues to decline in the Era of Abramoff and, here in Maryland, in light of the secret recordings of indicted former state Sen. Tommy Bromwell, who described in lurid detail a state Senate overly cozy with corporate special interests.

An official Maryland state study commission recommended in 2004 that our state adopt the Maine/Arizona model.⁴ Sen. Paul Pinsky and Del. Jon Cardin have introduced legislation based on the study commission's recommendation. It passed the House in 2006 and fell one vote short of passing the Senate in 2007. Sen. Pinsky and Del. Cardin will introduce the legislation again next year.

In Maine and Arizona, more than half of all lawmakers ran as publicly funded candidates in the 2006 election. As such, they owe no favors, real or perceived, to deep-pocket special interests. Only when Maryland enacts this proven reform can our citizens feel secure that a travesty like electricity deregulation will never happen again in our state.

¹ Phone interview with Osann.

² Campaign finance data available at website of National Institute on Money in State Politics at: <http://www.followthemoney.org/>

³ *Too Many Lobbyists?* Report by Progressive Maryland Education Fund, 2004, p. 5, available at: <https://progressivemaryland.org/files/public/documents/reports/2004//Too%20Many%20Lobbyists.pdf>

⁴ See report at:

<https://progressivemaryland.org/files/public/documents/reports/2004//Final%20Report%20of%20the%20Study%20Commission%20on%20Public%20Funding%20of%20Campaigns%20in%20Maryland.pdf>