

Chapter 780

(House Bill 514)

AN ACT concerning

**Energy Efficiency Programs – Calculation of Program Savings and
Consideration of Cost-Effectiveness**

FOR the purpose of requiring the Public Service Commission to require each electric company to procure or provide certain energy efficiency and conservation programs and services to its electricity customers on a certain savings trajectory ~~beginning with a~~ for the duration of certain program cycle cycles; establishing a baseline for the savings trajectory; requiring the Commission to update certain gross retail sales for certain plans; requiring the Commission to use the total resource cost test and the societal cost test when considering the cost-effectiveness of an energy efficiency and conservation program or service; requiring that certain nonenergy benefits be quantifiable and directly related to a certain program or service; requiring each electric company, after consulting with the Maryland Energy Administration, to submit a certain plan to the Commission on a certain date and with a certain frequency; ~~defining certain terms~~ requiring the Commission to determine the advisability of certain matters relating to energy efficiency and conservation programs beginning in a certain program cycle; and generally relating to energy efficiency programs.

BY repealing and reenacting, with amendments,

Article – Public Utilities

Section 7-211

Annotated Code of Maryland

(2010 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Public Utilities

7-211.

(a) (1) In this section the following words have the meanings indicated.

(2) “Affiliate” has the meaning stated in § 7-501 of this title.

(3) “Demand response program” means a program established by an electric company that promotes changes in electric usage by customers from their normal consumption patterns in response to:

(i) changes in the price of electricity over time; or

(ii) incentives designed to induce lower electricity use at times of high wholesale market prices or when system reliability is jeopardized.

(4) “Electricity consumption” and “electricity consumed” mean the sum of retail electricity sales to all customers and reported electricity losses within the electric distribution system.

(5) “Peak demand” means the highest level of electricity demand in the State measured in megawatts during the period from May 1 to September 30 on a weather-normalized basis.

(6) “Per capita electricity consumption” means the result calculated by dividing the total gigawatt-hours of electricity consumed by electricity customers in the State as of December 31 of a year, as determined by the Commission, by the population of the State as of December 31 of that year, as determined by the Department of Planning.

(7) “Plan” means an electricity savings and demand reduction plan and cost recovery proposal.

(8) “Provide heating, ventilation, air conditioning, or refrigeration services” has the meaning stated in § 9A-101 of the Business Regulation Article.

(b) The General Assembly finds and declares that:

(1) energy efficiency is among the least expensive ways to meet the growing electricity demands of the State; and

(2) to provide affordable, reliable, and clean energy for consumers of Maryland, it is the goal of the State to achieve the following energy efficiency, conservation, and demand response targets, based on 2007 electricity consumption:

(i) a 15% reduction in per capita electricity consumption by the end of 2015; and

(ii) a 15% reduction in per capita peak demand by the end of 2015.

(c) Beginning with the 2008 calendar year and each year thereafter, the Commission shall calculate:

(1) the per capita electricity consumption for that year; and

(2) the peak demand for that year.

(d) Subject to review and approval by the Commission, each gas company and electric company shall develop and implement programs and services to encourage and

promote the efficient use and conservation of energy by consumers, gas companies, and electric companies.

(e) As directed by the Commission, each municipal electric utility and each electric cooperative that serves a population of less than 250,000 in its distribution territory shall include energy efficiency and conservation programs or services as part of their service to their customers.

(f) The Commission shall:

(1) require each gas company and electric company to establish any program or service that the Commission deems appropriate and cost effective to encourage and promote the efficient use and conservation of energy;

(2) adopt rate-making policies that provide cost recovery and, in appropriate circumstances, reasonable financial incentives for gas companies and electric companies to establish programs and services that encourage and promote the efficient use and conservation of energy; and

(3) ensure that adoption of electric customer choice under Subtitle 5 of this title does not adversely impact the continuation of cost-effective energy efficiency and conservation programs.

(g) **(1)** Except as provided in subsection (e) of this section, on or before December 31, 2008, by regulation or order, the Commission shall:

[(1)] (I) to the extent that the Commission determines that cost-effective energy efficiency and conservation programs and services are available, for each affected class, require each electric company to procure or provide for its electricity customers cost-effective energy efficiency and conservation programs and services with projected and verifiable electricity savings that are designed to achieve a targeted reduction of at least 5% by the end of 2011 and 10% by the end of 2015 of per capita electricity consumed in the electric company's service territory during 2007; and

[(2)] (II) require each electric company to implement a cost-effective demand response program in the electric company's service territory that is designed to achieve a targeted reduction of at least 5% by the end of 2011, 10% by the end of 2013, and 15% by the end of 2015, in per capita peak demand of electricity consumed in the electric company's service territory during 2007.

(2) (I) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, ~~BEGINNING WITH~~ FOR THE DURATION OF THE 2018-2020 AND 2021-2023 PROGRAM CYCLE CYCLES, BY REGULATION OR ORDER, THE COMMISSION SHALL, TO THE EXTENT THAT THE COMMISSION DETERMINES THAT COST-EFFECTIVE ENERGY EFFICIENCY AND CONSERVATION PROGRAMS AND SERVICES ARE AVAILABLE, FOR EACH AFFECTED CLASS, REQUIRE EACH ELECTRIC COMPANY TO PROCURE OR

PROVIDE FOR ITS ELECTRICITY CUSTOMERS COST-EFFECTIVE ENERGY EFFICIENCY AND CONSERVATION PROGRAMS AND SERVICES WITH PROJECTED AND VERIFIABLE ELECTRICITY SAVINGS THAT ARE DESIGNED ON A TRAJECTORY TO ACHIEVE A TARGETED ANNUAL INCREMENTAL GROSS ENERGY SAVINGS OF AT LEAST 2.0% PER YEAR, CALCULATED AS A PERCENTAGE OF THE ELECTRIC COMPANY'S 2016 WEATHER-NORMALIZED GROSS RETAIL SALES AND ELECTRICITY LOSSES.

(II) THE SAVINGS TRAJECTORY SHALL USE THE APPROVED 2016 PLANS SUBMITTED UNDER SUBSECTION (H)(2) OF THIS SECTION AS A BASELINE FOR AN INCREMENTAL INCREASE OF A RATE OF .20% PER YEAR UNTIL THE MINIMUM 2.0% PER YEAR SAVINGS RATE IS ACHIEVED.

(III) THE GROSS RETAIL SALES AGAINST WHICH THE SAVINGS ARE MEASURED SHALL:

1. REFLECT SALES ASSOCIATED WITH CUSTOMER CLASSES SERVED BY UTILITY-ADMINISTERED PROGRAMS ONLY; AND ~~SHALL~~

2. BE UPDATED BY THE COMMISSION FOR EACH PLAN SUBMITTED UNDER SUBSECTION (H)(2) OF THIS SECTION.

(IV) THE TARGETED ANNUAL INCREMENTAL GROSS ENERGY SAVINGS SHALL BE ACHIEVED BASED ON THE 3-YEAR AVERAGE OF AN ELECTRIC COMPANY'S PLAN SUBMITTED UNDER SUBSECTION (H)(2) OF THIS SECTION.

(h) (1) (i) On or before July 1, 2008, and every 3 years thereafter, each electric company shall consult with the Maryland Energy Administration regarding the design and adequacy of the electric company's plan to achieve the electricity savings and demand reduction targets specified in subsection (g) of this section.

(ii) An electric company shall provide the Maryland Energy Administration with any additional information regarding the plan, as requested.

(2) On or before September 1, 2008, and every 3 years thereafter, an electric company shall submit its plan to the Commission that details the electric company's proposals for achieving the electricity savings and demand reduction targets specified in subsection (g) of this section for the 3 subsequent calendar years.

(3) The Commission shall consider any written findings provided by the Maryland Energy Administration regarding the design and adequacy of the plan.

(4) Each electric company shall provide annual updates to the Commission and the Maryland Energy Administration on plan implementation and progress towards

achieving the electricity savings and demand reduction targets specified in subsection (g) of this section.

(5) (i) The plan shall include a description of the proposed energy efficiency and conservation programs and services and the proposed demand response program, anticipated costs, projected electricity savings, and any other information requested by the Commission.

(ii) The plan shall address residential, commercial, and industrial sectors as appropriate, including low-income communities and low- to moderate-income communities.

(iii) 1. If, in connection with a program or service, the electric company proposes to provide heating, ventilation, air conditioning, or refrigeration services for its customers, the plan shall include procedures for the competitive selection of heating, ventilation, air conditioning, or refrigeration service providers.

2. On request by the electric company and for good cause shown, the Commission may waive the requirement that the electric company competitively select heating, ventilation, air conditioning, or refrigeration providers under subsubparagraph 1 of this subparagraph.

(6) The plan and any updates shall include a certification or recertification by the electric company that, if an affiliate of the electric company provides heating, ventilation, air conditioning, or refrigeration services through any existing contract or obligation in connection with a program or service, the customers of the electric company's regulated services will not subsidize the operations of the affiliate.

(7) The Commission shall review each electric company's plan to determine if the plan is adequate and cost-effective in achieving the electricity savings and demand reduction targets specified in subsection (g) of this section.

(i) ~~(1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:~~

~~(II) "PARTICIPANT NONENERGY BENEFITS" INCLUDE REDUCED BUILDING OPERATING COSTS, INCREASED PROPERTY VALUES, AND IMPROVED COMFORT, IMPROVED HEALTH, AND IMPROVED SAFETY.~~

~~(III) "SOCIETAL NONENERGY BENEFITS" INCLUDE INCREASED JOB CREATION, INCREASED GROWTH IN TAX RECEIPTS, IMPROVED LABOR PRODUCTIVITY, INCREASED HOUSING VALUES, IMPROVED NEIGHBORHOOD STABILITY, AND REDUCED EMISSIONS.~~

~~(IV) "UTILITY NONENERGY BENEFITS", FOR PURPOSES OF SCREENING LOW INCOME PROGRAMS, INCLUDE IMPROVED BILL PAYMENTS AND REDUCED CUSTOMER ARREARAGES.~~

~~[(1)] (2)~~ In determining whether a program or service encourages and promotes the efficient use and conservation of energy, the Commission shall consider the:

(i) cost-effectiveness OF THE RESIDENTIAL SECTOR SUBPORTFOLIO AND THE COMMERCIAL AND INDUSTRIAL SECTOR ~~PORTFOLIO~~ SUBPORTFOLIO BY UTILIZING:

1. THE TOTAL RESOURCE COST TEST IN ORDER TO COMPARE THE ELECTRICITY SAVINGS AND DEMAND REDUCTION TARGETS OF THE PROGRAM OR SERVICE WITH THE RESULTS OF SIMILAR PROGRAMS OR SERVICES IMPLEMENTED IN OTHER JURISDICTIONS, INCLUDING:

A. PARTICIPANT NONENERGY BENEFITS; AND

B. UTILITY NONENERGY BENEFITS; AND

2. THE SOCIETAL COST TEST IN ORDER TO DETERMINE WHETHER COST-EFFECTIVENESS REQUIREMENTS ~~ARE~~ WILL BE MET PROSPECTIVELY, INCLUDING:

A. PARTICIPANT NONENERGY BENEFITS;

B. UTILITY NONENERGY BENEFITS; AND

C. SOCIETAL NONENERGY BENEFITS;

(ii) impact on rates of each ratepayer class;

(iii) impact on jobs; and

(iv) impact on the environment.

(2) NONENERGY BENEFITS CONSIDERED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE QUANTIFIABLE AND DIRECTLY RELATED TO A PROGRAM OR SERVICE.

~~[(2)] (3)~~ (3) The Commission shall monitor and analyze the impact of each program and service to ensure that the outcome of each program and service provides the best possible results.

~~[(2)]~~~~[(4)]~~ (4) In monitoring and analyzing the impact of a program or service under paragraph ~~[(2)]~~~~[(3)]~~ (3) of this subsection, if the Commission finds that the outcome of the program or services may not be providing the best possible results, the Commission shall direct the electric company to include in its annual update under subsection (h)(4) of this section specific measures to address the findings.

~~[(4)]~~~~[(5)]~~ (5) An electric company that enters into a contract or obligation with an affiliate of the electric company to provide heating, ventilation, air conditioning, or refrigeration services in connection with a program or service shall notify the Commission within 30 days after entering into the contract or obligation that the electric company:

(i) has entered into a contract or obligation with an affiliate of the electric company; and

(ii) certifies that the customers of the electric company's regulated services will not subsidize the operations of the affiliate.

(j) (1) At least once each year, each electric company and gas company shall notify affected customers of the energy efficiency and conservation charges imposed and benefits conferred.

(2) The notice shall be provided by publication on the company's website and inclusion with billing information such as a bill insert or bill message.

(k) On or before March 1 of each year, the Commission, in consultation with the Maryland Energy Administration, shall report, subject to § 2-1246 of the State Government Article, to the General Assembly on:

(1) the status of programs and services to encourage and promote the efficient use and conservation of energy, including an evaluation of the impact of the programs and services that are directed to low-income communities, low- to moderate-income communities to the extent possible, and other particular classes of ratepayers;

(2) a recommendation for the appropriate funding level to adequately fund these programs and services; and

(3) in accordance with subsection (c) of this section, the per capita electricity consumption and the peak demand for the previous calendar year.

(l) Notwithstanding any other law, the Commission may not require or allow an electric company to require an electric customer to authorize the electric company to control the amount of the electric customer's electricity usage, including through control of the electric customer's thermostat.

(m) (1) On or before June 30, 2013, by regulation or order, the Commission shall establish a pilot program for electric customers to recharge electric vehicles during off-peak hours.

(2) (i) An electric company may request to participate in the pilot program.

(ii) The Commission shall make every effort to include at least two electric companies in the pilot program.

(3) The pilot program shall include incentives for residential, commercial, and governmental customers to recharge electric vehicles in a manner that will:

(i) increase the efficiency and reliability of the electric distribution system; and

(ii) lower electricity use at times of high demand.

(4) Incentives may include:

(i) time-of-day pricing of electricity;

(ii) credits on distribution charges;

(iii) rebates on the cost of charging systems;

(iv) demand response programs; or

(v) other incentives approved by the Commission.

(5) On or before February 1, 2015, the Commission shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, to the General Assembly on the experience of the pilot program and the Commission's findings.

SECTION 2. AND BE IT FURTHER ENACTED, That, beginning on or before September 1, 2017, and every 3 years thereafter, each electric company shall, after consulting with the Maryland Energy Administration, submit its plan for achieving annual incremental gross energy savings to the Commission as required under § 7-211(h) of the Public Utilities Article.

SECTION 3. AND BE IT FURTHER ENACTED, That, on or before July 1, 2022, the Public Service Commission shall determine the advisability of maintaining the methodology and magnitude of the savings trajectory established in § 7-211(g)(2) of the Public Utilities Article, as enacted by this Act, as the basis for designing cost-effective energy efficiency and conservation programs and services in subsequent program cycles that the Commission shall authorize beginning with the 2024-2026 program cycle.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2017.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 27, 2017.