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Joan Claybrook, President

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Before the Maryland Senate Finance Committee  
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**HB 1246: Transition Costs – Return to Baltimore Gas and Electric  
Company Customers – Condition of Approval to Construct a Nuclear  
Reactor**

Thank you for the opportunity to testify today on matters of importance to Maryland's electric utility ratepayers. Proposed legislation—HB 1246 and SB 448—would attempt to rectify one inequity of Maryland's deregulation law and address the inherent financial risks associated with nuclear power by conditioning the approval of Constellation Energy's proposed reactor on the return of hundreds of millions of dollars in "stranded cost" overcharges to the state's ratepayers. Public Citizen believes that the facts suggest Constellation Energy has unfairly benefited at the expense of ratepayers, and the approach of this legislation is a prudent step towards rectifying the problem.

Public Citizen is a national, nonpartisan nonprofit advocating sustainable and affordable energy on behalf of our 100,000 dues-paying households across the United States. Public Citizen has long been recognized a national leader raising concerns about the harm to ratepayers from both electric utility deregulation and nuclear power, and we have authored numerous reports on these subjects, including "The Failure of Electricity Deregulation: History Status and Needed Reforms" and "The Fatal Flaws of Nuclear Power: A General Issue Summary."

Public Citizen intervened along with several Maryland-based organizations, including Maryland PIRG, to oppose the proposed merger between FPL and Constellation Energy on the grounds that it threatened the state's customers with higher rates. During the course of our interventions before the Maryland Public Service Commission and the Federal Energy Regulatory Commission, we questioned whether Constellation Energy was unfairly profiting off of deregulated generation assets that once were fully regulated by the State of Maryland.

Subsequent data submissions by Constellation and its affiliates during investigations commissioned by Maryland regulators appear to validate the concerns we raised in 2006:



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that Constellation collected windfall profits under the guise of collecting “stranded costs” from ratepayers and may have violated the terms of the settlement under which the payments were authorized. If true, this abuse would justify a refund to Maryland ratepayers. When combined with the fact that the 1999 deregulation settlement also left Maryland ratepayers liable for decommissioning costs associated with the company’s nuclear reactors (at the same time that the valuable power produced from these plants was deregulated and therefore the rates charged to Maryland residents removed from state jurisdiction), it would be behoove the State of Maryland to, at a minimum, require the refund of “stranded cost” overcharges to ratepayers as a condition to allowing Constellation to build a new nuclear power plant. But such a conditional refund would only partially rectify past wrongs—it would do nothing to address the financial risks to Maryland taxpayers and ratepayers if Constellation builds yet another reactor in the state.

### **General Background**

Proponents of Maryland’s 1999 deregulation law<sup>1</sup> (Public Citizen was on record as opposing the law at the time) believed it would usher in an era of competition for electricity, with market forces replacing state-regulated rates to spur innovation, promoting cleaner energy generation and saving ratepayers millions of dollars. None of these promises came close to materialization. Instead, Maryland’s failed experience has joined a dozen other states in constituting one of the largest consumer rip-offs in history, with tens of billions of dollars in higher rates nationally and continued record profits for owners of unregulated generation assets. Even with record price increases for Maryland households, 98 percent of households in BGE’s service territory continue to receive their power from the incumbent provider<sup>2</sup> because retail competition is virtually non-existent.

In relation to the events at issue in today’s hearing, the 1999 law did the following:

1. Allowed the state-regulated utility Baltimore Gas & Electric (BGE) to transfer generation assets that were under full rate-regulated control of the State of Maryland to its new unregulated affiliate, Constellation Energy on July 1, 2000.
2. Constellation claimed that the power plants were worth less than the outstanding debt that BGE still owed on the plants, so the 1999 law allowed for BGE to collect the difference, known as “stranded costs,” which ultimately totaled \$975 million that BGE collected from Maryland ratepayers.
3. In exchange for ratepayers paying the nearly \$1 billion debt to BGE, households were to have their rates “frozen” until the debts were paid off, at which point “market” prices would prevail in the state.

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<sup>1</sup> HB 703 (1999), “The Electric Customer Choice and Competition Act”  
<http://mlis.state.md.us/1999rs/billfile/SB0300.htm>

<sup>2</sup> [www.psc.state.md.us/psc/electric/enrollmentrpt.htm](http://www.psc.state.md.us/psc/electric/enrollmentrpt.htm)



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4. Although BGE's Calvert Cliffs reactors would be transferred to its unregulated affiliate, the law required ratepayers—not Constellation shareholders—to be liable for costs associated with the eventual decommissioning of the plants, which was estimated to be \$920 million in 2006 and may rise to \$5 billion by 2030.

### **Deregulation: Boon for Constellation, Bust for Consumers**

Since taking over BGE's power plants in 2000, Constellation has posted cumulative profits of \$4.2 billion. Whereas only 18 percent of the company's profit in 1999 derived from its unregulated power sales, in 2007 83 percent of its profit came from its unregulated power plants. Constellation is essentially operating the same power plants that BGE had in 1999 but the State of Maryland no longer has the authority to regulate the rates, and Constellation's presence as the largest owner of power plants in the region allows it to make huge profits at the expense of Maryland ratepayers.

The prices charged by Constellation Energy on the coal, nuclear and hydro power plants formerly controlled by BGE most likely are fetching windfall profits because these relative low-cost power sources are able to charge extremely high profits in a market where expensive natural gas fired generation sets the price of electricity. Indeed, the Connecticut Attorney General recently concluded that Dominion Resources' deregulated nuclear power plants in that state are earning a 100 percent rate of return.<sup>3</sup>

Indeed, during the debate of BGE's proposed 72 percent rate increase in 2006, Constellation revealed that it won 70 percent of BGE's load obligations in the power auction<sup>4</sup>—a result clearly demonstrating the lack of adequate competition in the regional market, and raising particular concerns given the fact that Constellation and BGE are controlled by the same entity, seemingly providing endless collusive opportunities in the wholesale and power distribution market.

### **Stranded Cost Shenanigans**

Collusive arraignments may not be limited to power auctions, as an analysis performed on behalf of the State of Maryland<sup>5</sup> found that BGE may have schemed with its affiliates to violate the terms of the stranded cost bailout by having the newly deregulated affiliates overcharge BGE for power, and BGE may have used the stranded cost payments to cover its "losses" (which were not real, since it was being overcharged by itself) rather than actually paying down debt associated with selling assets at a "loss."

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<sup>3</sup> <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=10795073>

<sup>4</sup> [www.sec.gov/Archives/edgar/data/1004440/000110465906038686/a06-12885\\_1ex99d1.htm](http://www.sec.gov/Archives/edgar/data/1004440/000110465906038686/a06-12885_1ex99d1.htm)

<sup>5</sup> "Analysis of Retail Restructuring in Maryland: Electricity Rates, Stranded Costs from Generation Asset Divestiture, and Decommissioning Funding," January 16, 2008, [www.psc.state.md.us/psc/Reports/Kaye%20Scholer%20Stranded%20Costs%20Analysis.pdf](http://www.psc.state.md.us/psc/Reports/Kaye%20Scholer%20Stranded%20Costs%20Analysis.pdf)



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Here's how it appears to have worked: BGE "sold" Calvert Cliffs (to itself, Constellation) at a "loss." BGE was then supposed to collect "stranded cost" payments to make up for the "loss." But instead of compensating for the loss of the value of the asset transfer, it appears as though BGE applied the "stranded cost" payments to make up for losses BGE was incurring on buying overpriced power from itself (Constellation). Indeed, page 64 of the report<sup>6</sup> commissioned by the State of Maryland notes that BGE reported paying \$55 per MWh in 2000 and \$45 in 2001 when it was buying power from itself, but it paid less—\$42 per MWh—in 2006 when it supposedly secured power from the "competitive" market (also, fuel prices were lower in 2000 and 2001 relative to 2006). The fact that BGE was paying significantly more when it had its own discretion to secure power from itself may indicate the company was overcharging itself—which would not have been difficult, since the Federal Energy Regulatory Commission doesn't effectively regulate power sellers and the State of Maryland could not regulate them. If indeed Constellation conspired to overcharge BGE—and thereby unfairly raise rates to Maryland consumers and misuse the stranded cost payments—then there may be grounds to force the company to refund the money to ratepayers.

### **Nuclear Decommissioning Deconstructed**

If Constellation seeks to build a new nuclear power plant, Maryland and federal taxpayers could be on the hook for billions of dollars. Florida Power & Light just informed the Florida Public Service Commission that it estimates the cost of a new reactor ranges from \$6 billion to \$12 billion each, while an October 2007 report by the credit rating agency Moody's<sup>7</sup> estimates the cost for a new reactor at between \$8 billion and \$9.5 billion. With a market capitalization of only \$15.4 billion, Constellation Energy cannot build a new nuclear power plant unless the public either pays for it or guarantees all the risk. Given the prospect of continued federal budget deficits, Constellation is already putting pressure on Maryland ratepayers and taxpayers to pay for new reactors.

But Constellation already received a big subsidy from Maryland ratepayers under the 1999 deregulation law. Even though the existing reactors at Calvert Cliffs were transferred from BGE to the unregulated Constellation Energy affiliate, the costs associated with the eventual decommissioning of a dangerous, highly radioactive facility are left with the ratepayers of Maryland. Ratepayer liability for the decommissioning costs were estimated at \$920 million in 2006, and are estimated to balloon to \$5 billion when the reactors are decommissioned after 2030. Considering this looming financial burden for which Maryland ratepayers—not Constellation shareholders—are responsible, it would not appear to be prudent policy to allow Constellation to build a brand new

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<sup>6</sup> [www.psc.state.md.us/psc/Reports/Kaye%20Scholer%20Stranded%20Costs%20Analysis.pdf](http://www.psc.state.md.us/psc/Reports/Kaye%20Scholer%20Stranded%20Costs%20Analysis.pdf)

<sup>7</sup> "New Nuclear Generation in the United States."



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nuclear power plant—which is inherently risky, as the U.S. Congressional Budget Office estimated a default rate of 50 percent for these new plants<sup>8</sup>—unless the massive financial burden Maryland ratepayers already face with Constellation’s existing reactors is first resolved.

Constellation Energy has already fired the first salvo, suing the State of Maryland over the constitutionality of June 2006 legislation<sup>9</sup> that required BGE to provide nearly \$400 million in credits. Constellation is claiming that their corporate rights and protections provided to them under the 1999 deregulation law have been violated with the 2006 legislation. But if the Maryland General Assembly can find that Constellation colluded with its affiliate BGE to mislead the state about the way in which the company spent and collected stranded cost payments, then perhaps the State will have some leverage with which to rectify the great injustices that have occurred courtesy of the 1999 deregulation law.

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<sup>8</sup> “Energy Policy Act of 2003,” May 7, 2003, Page 11, [www.cbo.gov/ftpdocs/42xx/doc4206/s14.pdf](http://www.cbo.gov/ftpdocs/42xx/doc4206/s14.pdf)

<sup>9</sup> 1:08-cv-00565-AMD, “Baltimore Gas and Electric et al v Busch, et al,” U.S. District Court, Baltimore.