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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 754 Session of  
2009

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INTRODUCED BY BOSCOLA, FERLO, LOGAN, HUGHES, WILLIAMS, FONTANA,  
KITCHEN, TARTAGLIONE AND O'PAKE, APRIL 3, 2009

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REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,  
APRIL 3, 2009

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AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania  
2 Consolidated Statutes, providing for an extension of rate  
3 caps.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Section 2804(4) of Title 66 of the Pennsylvania  
7 Consolidated Statutes is amended to read:

8 § 2804. Standards for restructuring of electric industry.

9 The following interdependent standards shall govern the  
10 commission's assessment and approval of each public utility's  
11 restructuring plan, oversight of the transition process and  
12 regulation of the restructured electric utility industry:

13 \* \* \*

14 (4) The following caps on electric utility rates shall  
15 apply:

16 (i) For a period of 54 months from the effective  
17 date of this chapter or until an electric distribution  
18 utility is no longer recovering its transition or

1 stranded costs through a competitive transition charge or  
2 intangible transition charge and all the customers of an  
3 electric distribution utility can choose an alternative  
4 provider of electric generation, whichever is shorter:

5 (A) the total charges of an electric  
6 distribution utility for service to any customer who  
7 purchases generation from that utility shall not  
8 exceed the total charges that have been approved by  
9 the commission for such service as of the effective  
10 date of this chapter; and

11 (B) for customers who purchase generation from a  
12 supplier other than the electric distribution  
13 utility, the charges of the utility for non-  
14 generation services that are regulated as of the  
15 effective date of this chapter, exclusive of the  
16 competitive transition charge and intangible  
17 transition charge, shall not exceed the non-  
18 generation charges that have been approved by the  
19 commission for such service as of the effective date  
20 of this chapter.

21 (ii) In addition to the rate cap set forth in  
22 subparagraph (i), [for a period of nine years from the  
23 effective date of this chapter or until an electric  
24 distribution utility is no longer recovering its  
25 transition or stranded costs through a competitive  
26 transition charge or intangible transition charge and all  
27 customers of an electric distribution utility can choose  
28 an alternative provider of electric generation, whichever  
29 is shorter] until January 1, 2013, the generation  
30 component of a utility's charges to customers who

1 purchase generation from the utility, including the  
2 competitive transition charge and intangible transition  
3 charge, shall not exceed the generation component charged  
4 to the customers [that has been approved by the  
5 commission for such service as of the effective date of  
6 this chapter] on December 31, 2007.

7 (iii) An electric distribution utility may seek, and  
8 the commission may approve, an exception to the  
9 limitations set forth in subparagraphs (i) and (ii) only  
10 in any of the following circumstances:

11 (A) The electric distribution utility meets the  
12 requirements for extraordinary rate relief under  
13 section 1308(e) (relating to voluntary changes in  
14 rates).

15 (B) Either the electric distribution utility is  
16 required to begin payment under contracts with  
17 nonutility generation projects that have received  
18 commission orders, has been unable to mitigate such  
19 costs, such costs are not recoverable in a  
20 competitive generation market and such costs were not  
21 previously covered in the competitive transition  
22 charge or intangible transition charge, or the  
23 utility prudently incurs costs related to  
24 cancellation, buyout, buydown or renegotiation of  
25 nonutility generating project obligations of the  
26 utility consistent with section 527 (relating to  
27 cogeneration rules and regulations) and such costs  
28 were not previously covered in the competitive  
29 transition charge or intangible transition charge.  
30 Costs related to cancellation, buyout, buydown or

1           renegotiation shall be recovered from ratepayers over  
2           a period not to exceed three years, unless the  
3           commission determines within its discretion to  
4           require a longer recovery period due to the magnitude  
5           of such costs, but shall be accounted for by the  
6           utility on a levelized basis over the total period in  
7           which the generation portion of the utility's rates  
8           are capped.

9           (C) The electric distribution utility is subject  
10          to significant increases in the rates of Federal or  
11          State taxes or other significant changes in law or  
12          regulations that would not allow the utility to earn  
13          a fair rate of return.

14          (D) The electric distribution utility is subject  
15          to significant increases in the unit rate of fuel for  
16          utility generation or the price of purchased power  
17          that are outside of the control of the utility and  
18          that would not allow the utility to earn a fair rate  
19          of return.

20          (E) The electric distribution utility is  
21          directed by the commission or an independent system  
22          operator or its functional equivalent to make  
23          expenditures to repair or upgrade its transmission or  
24          distribution system.

25          (F) The electric distribution utility seeks to  
26          increase its allowance for nuclear decommissioning  
27          costs to reflect new information not available at the  
28          time the utility's existing rates were determined,  
29          and such costs are not recoverable in the competitive  
30          generation market and are not covered in the

1 competitive transition charge or intangible  
2 transition charge, and such costs would not allow the  
3 utility to earn a fair rate of return.

4 (G) As permitted by paragraph (16).

5 (iv) Consistent with the requirements of due  
6 process, the commission may expedite proceedings that  
7 invoke the provisions of subparagraph (iii).

8 (v) If an electric distribution utility rolls its  
9 energy cost rate into base rates at a combined level that  
10 does not exceed its combined level of such rates which  
11 have been approved by the commission as of the effective  
12 date of this chapter, the utility shall not be required  
13 to reduce its capped rates below the capped level upon  
14 the complaint of any party if the commission determines  
15 that any excess earnings achieved under the cap are being  
16 utilized to mitigate transition or stranded costs for the  
17 benefit of ratepayers or to offset other known and  
18 measurable cost increases that would be recoverable under  
19 traditional ratemaking but are not included within the  
20 capped rates.

21 (vi) This paragraph shall not apply to new services  
22 offered for the first time after the effective date of  
23 this chapter.

24 (vii) Notwithstanding the provisions of subparagraph  
25 (ii), if the commission approves an increase in the  
26 generation component of a utility's charge to customers  
27 prior to December 31, 2007, the utility may increase the  
28 generation component charged to customers under the  
29 commission's approval, and such increased charge shall be  
30 capped until January 1, 2013.

1           \* \* \*

2       Section 2. This act shall take effect in 60 days.