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Pols see silver lining in Constellation deal

Bailout benefits Buffett, but not the state, Sens. Pipkin and Rosapepe say

by Marcus Moore | Staff Writer

The deal that would sell Constellation Energy Group to a company controlled by magnate Warren E. Buffett has some lawmakers from both parties renewing their call for increased competition or even reregulation of the industry.

Last week, Constellation's board of directors agreed to be bought for \$4.7 billion by Buffett's MidAmerican Energy Holdings Co., based in Des Moines, Iowa.

The deal now has to be approved by Constellation's shareholders and federal and state regulatory agencies, including the state's Public Service Commission.

While the agreement might have saved Constellation and senior management, the "question is, 'Can we bring Maryland assets back under Maryland regulation as this deal moves forward?'" said Sen. E.J. Pipkin (R-Dist. 36) of Elkton. "Now that this deal is happening, clearly things are changing."

In an op-ed published Tuesday in The Baltimore Sun, Pipkin and Sen. James C. Rosapepe (D-Dist. 21) of College Park said that deregulation did not benefit residents, who saw their electricity bills increase 72 percent in a year.

With Pepco in mind, Rosapepe and Pipkin in April proposed scrapping deregulation and requiring that rates charged by all new electric power plants be regulated by the state PSC.

Electric deregulation, approved by the General Assembly in 1999, was aimed at lowering the cost of power by creating competition. Companies competing to provide power to residents would drive down the cost, the thinking went.

In their op-ed piece, Rosapepe and Pipkin said that the Constellation bailout can go ahead "only if the Public Service Commission rules that it is in the public interest."

"Clearly, a deal that protects the management of Constellation, which almost bankrupted the company, is not in the public interest," they wrote. "Thus, if it follows the law, the PSC cannot approve this bailout."

Instead of approving Buffett's proposal, the state should solicit private investors to buy Constellation, Rosapepe said. That way, at least there would be competition to purchase the company, he added.

Ultimately, he doesn't believe the shareholders will approve the deal.

Meanwhile, Progressive Maryland, a liberal advocacy group, called the proposed sale a "golden opportunity" for Maryland to undo electric deregulation.

In a statement, the group said it would like to see a requirement that, "as part of his purchase of Constellation, Buffett sell Constellation's Maryland power plants back to a regulated BGE at their new, affordable price."

"Buffett can keep the rest of Constellation's sprawling empire outside of Maryland," the statement continued.

Electricite de France, a shareholder in Constellation, TPG Capital LP and Kohlberg Kravis Roberts offered to pay \$6.2 billion for the group, 32 percent more than what Buffett's group offered. On Monday, Constellation decided to stick with MidAmerican's offer.

"Everybody in Maryland knows that deregulation has been a catastrophe," Rosapepe said. "I am confident based on my conversations with private investment groups that there will be a number of deep-pocketed investors interested in buying Constellation and scrapping deregulation."

Lawmakers voted this past session to settle a lawsuit with Constellation. Twenty-seven senators voted to reregulate rates.

Deregulation has not worked for the state, said Senate President Thomas V. Mike Miller Jr., who voted against reregulation.

Electricity rates did not increase for seven years before "the caps came off" two years ago, he said.

"It (deregulation) was hampered from the start," said Miller (D-Dist. 27) of Chesapeake Beach. "In other states, deregulation has not brought a significant price reduction."

In November, three consulting firms compiled a report for the PSC that examined deregulation efforts in Connecticut, Delaware, Illinois, and New Jersey.

"Retail customers will always bear the ultimate costs for producing electricity to serve the required demand, and irreducible uncertainty about the future creates an element of investment risk," the report said.

On Thursday, PSC chairman Douglas R.M. Nazarian said the group would issue its own report to lawmakers Dec. 1 that looks into reregulation and considers the implications of establishing a long-term goal for energy efficiency and conservation, among other things.

"We are not going to sit and wait for the free market to solve Maryland's problems," Nazarian said. "I'm not going to let the lights go out on my watch."