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COMMENT

GETTING THE LIGHTS BACK ON:
AN ANALYSIS OF THE MARYLAND ENERGY SERVICE
QUALITY AND RELIABILITY ACT’S IMPACT ON
UTILITY LIABILITY AND CONSUMER RIGHTS

By: Elizabeth Payne*

INTRODUCTION

In the midst of one of the most ferocious winter storms in Mid-Atlantic history, thousands of Washington D.C. area residents sat helplessly as their homes suddenly went dark.¹ Power lines became victims of the storm, unable to survive the barrage of rapidly falling wet snow. As households huddled together in the dark, watching the snow and wind create white-out conditions, many assumed the power would be back by morning.

In reality, at least four days came and went before power was finally restored to many neighborhoods.² Some families viewed the long blackout as a minor inconvenience, utilizing fireplaces and generators, or self-evacuating to places that had electricity. For the less fortunate, the outage resulted in long days of near-freezing temperatures in darkened apartments, cut off from the world. These unlucky ones, often lower-income families, had no fireplaces or generators, and could not leave until the city’s public transportation system reopened.³

The situation worsened as a second blizzard slammed into the area just three days after the first storm, and before power returned to many D.C.

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2 See id.
3 The blizzards resulted in shutting down all local bus routes, along with 40 above-ground Metro stations, and remained closed for days. See Carlos Hamann, Powerful Blizzard Shuts Down U.S. Capital, GOOGLE NEWS (Feb. 5, 2010), http://www.google.com/hostednews/afp/article/ALeqM5j3HVBFhkH4c9T1IAxNkxjbR0A. Some of the above-ground stations serve some of D.C.’s poorest neighborhoods, including Branch Avenue, Suitland, Capitol Heights, and New Carrollton. See WMATA, http://wmata.com/getting_around/SnowMap.pdf (last revised May 23, 2007) (showing which stations close after eight inches of snow accumulates).
neighborhoods. Many residents learned electricity would not be restored for a week, and the Washington Post's online comment boards filled with complaints by furious area residents. The majority of the comments came from D.C. and Maryland residents, who constituted the Potomac Electric Power Company's ("PEPCO") customer base. Where is PEPCO, they asked, and why is it taking so long? How could Virginia's power companies seemingly restore power faster, despite having more outages? How were people expected to survive in dark, cold homes, especially through another blizzard?

While this scenario might seem extreme, anyone who weathered the 2010 "Snowmageddon" storms in southern Maryland lived through such an ordeal. Thousands in Maryland faced days without power after the February 2010 blizzards that delivered a one-two punch and dumped over two feet of snow on the D.C. area in less than a week. Then, after a series of violent thunderstorms tore through the region in August 2010, PEPCO customers in Montgomery and Prince George's counties lost power for days. The company claimed the storms took it by surprise, but angry residents demanded accountability.

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7 See Jason Samenow, Amazing Mid-Atlantic Snow Statistics, WASH. POST CAPITAL WEATHER BLOG (Feb. 12, 2010, 12:30 PM), http://voices.washingtonpost.com/capitalweathergang/2010/02/amazing_mid-atlantic_snow_stat.html. The Capital Weather Blog, a popular weather forecasting site, created the Snowpocolypse (December 2009 blizzard), Snowmageddon (February 5–6 2010 blizzard) and Snowverkill (February 9–10, 2010 blizzard) nicknames, which were then picked up by national news organizations.

8 See Flaherty, supra note 5. Over 205,000 PEPCO customers lost power by the end of the 2010 blizzards. Virginia's Dominion Power reported 140,000 outages by the end of the second storm, and BGE reported 135,000. Id.

This scenario is not unique to the Maryland suburbs surrounding Washington. Baltimore Gas and Electric ("BG&E") also received heavy criticism for its storm responses, which included a week-long restoration after 2011’s Hurricane Irene. Nor is this problem unique to Maryland, as Connecticut suffered from similar problems after the surprise 2011 “Snowtober” nor’easter. Many customers, tired of throwing out spoiled food, living in cold homes, or forced to move to hotels, offices, or anyplace warm, undoubtedly wondered how such a slow response could be legal. Does the law afford them any rights as customers? Are these companies being held to any standard of responsibility by legislators or regulators?

After facing a massive backlash from both local media and constituents, Maryland legislators took action. In early 2011, the General Assembly passed the Maryland Electricity Service Quality and Reliability Act ("ESQR"). The statute, which went into effect on July 1, 2012, required the Maryland Public Service Commission ("PSC") create and hold Maryland utility companies to new reliability standards. Special requirements and reports for weather-related outages may also be enacted. But what will this law actually do? Why are power companies in Maryland taking days to get

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10 See Stephens & Davis, supra note 9. The D.C. Metro area typically has severe and damaging thunderstorms in the late summer months. See id.
12 See Dave Collins & Stephen Singer, October Snowstorm Outages Remain, Thousands In Connecticut Enter Second Week Without Power, HUFFINGTON POST (Nov. 7, 2011, 9:26 PM), http://www.huffingtonpost.com/20111107/connecticut-outages-enter-second-week_n_1079489.html. A surprise October Nor’Easter dropped almost a foot of snow on New England, leaving approximately 830,000 Connecticut homes without power. After restoration efforts took almost two weeks, many residents demanded government action, much like Maryland residents did after the 2009-2010 blizzards. See id.; see Morse, supra note 9.
15 See Fiscal Policy Note, supra note 13. ESQR requires that the PSC base the new reliability and service quality standards on national ranking systems, and creates a state goal that each electric company provide the highest levels of service quality and reliability in a cost-effective manner. Fiscal Policy Note, supra note 13, at 1-2.
16 See Fiscal Policy Note, supra note 13, at 2, 4.
the lights back on? Why does it seem that Maryland’s utilities move slower than those in Virginia? Most importantly, what legal rights do citizens have, and can they be compensated for their damages?

This comment addresses these questions and analyzes the new requirements set forth by ESQR. Section II examines the previous statutory and regulatory requirements Maryland imposed on electric utilities, and explores whether the current policy of emphasizing low electricity rates is the best way to ensure customer satisfaction and reliable service. Section III then looks at case law to see how the courts have dealt with claims relating to utilities. This section then examines ESQR as part of the legal framework and addresses how the statute will correct previously identified problems. Part IV compares Maryland’s laws and regulations to Virginia’s, to see if statutory and legal differences explain the differing utility response times after the storms. Finally, the comment concludes with considering whether ESQR is the best method of fixing slow utility response times.

II. BACKGROUND AND HISTORICAL DEVELOPMENT

A. The Regulatory Scheme

Understanding electric utility company liability issues requires a basic knowledge of how utility regulation works. Power companies were originally privately owned corporations regulated by the free market. These companies began forming “natural monopolies” due to the costs of providing electric power to customers. A natural monopoly exists when only one company could supply all of the demand for the area it serves. Public utility companies, including electric, telephone, and water services, are common natural monopolies.

As these natural monopolies formed, self-regulation through the free market faltered. The reliability and quality of electric service dropped, causing customer dissatisfaction. The government soon intervened, seeing electric company monopolies as necessary, but also needing outside regulation. The State protected citizens by keeping costs low and requiring utilities to advance certain legislative goals for the public’s benefit. In return, states protected the utilities’ profits through the creation of favorable

18 See id.
20 See id.
21 See Rudy, supra note 17, at 1391.
22 Id. at 1390.
23 Id. at 1391.
24 See id. at 1392.
State legislatures crafted regulatory systems, governed by an oversight commission, to maintain the fragile balancing of regulatory benefits.

Service agreements called “tariffs” lay at the heart of the relationship between public utility companies and state regulatory committees. These tariffs are essentially standard contracts, stating how much a power company may charge, along with other service terms. Power companies create these tariffs, and commonly use them as a sheltering mechanism through the inclusion of protective terms and conditions.

One key tariff protection is the liability indemnity clause ("LIC"), which most power companies write into its tariffs. LICs block lawsuits by stipulating when a company can be found liable for its negligence. Railroad companies originally created LICs to allocate risks between the company and its customers. In 1884, the Supreme Court upheld a railroad company LIC, and opened the door for other utilities to adopt their use. LICs are now a commonly used contractual safeguard for utility companies.

B. A Valuation of Goals

Regulatory systems do not simply change the state-utility relationship, but allow states to set a utility’s rates in exchange for government protection. Most of the company’s practices also fall under the state’s power, where they are usually regulated by an administrative agency. Regulatory commission oversight ensures utility companies operate in compliance with the state’s legislative goals. Such goals supposedly protect states and consumers while guaranteeing regulated utilities do not engage in harmful or irresponsible practices.

Legislatures tend to focus on three goals for energy utilities: environmental conservation, service reliability or quality, and electricity

25 Id. at 1391.
26 See Rudy, supra note 17, at 1391.
27 Id. at 1380 n.8.
28 Id. at 1380 n.8.
29 Id. at 1385.
30 Id. at 1381 n.10; see infra at Part C for further analysis on LICs.
31 Id. at 1383-84.
32 Id. at 1382 (citing Hart v. Pa. R.R. Co., 112 U.S. 331, 343 (1884)).
33 Rudy, supra note 17 at 1383-84 (citing Hart, 112 U.S. at 343).
34 See Rudy, supra note 17, at 1382.
35 See Rudy, supra note 17, at 1392.
36 Id. at 1391-92.
37 Id. at 1392 n.70.
38 Id. at 1391.
affordability. Theoretically, a state could equally emphasize each of these goals. In practice, most states pick one as the top priority and rank the other goals accordingly. This necessary valuation results from the conflict each of these goals creates with another.

For example, more environmentally friendly energy resources tend to cost more, as they require updating older, less “green” infrastructure, with newer, more expensive technology. In addition, few environmentally friendly power sources can produce the same amount of voltage as a traditional fossil-fuel power plant. Nuclear power, long considered cleaner and as productive as traditional electricity sources, remains highly controversial due to concerns over high construction costs. These economic issues make nuclear power simply too expensive for some states in light of concerns over nuclear fuel storage and accidents.

The conflict between service reliability-quality (“SRQ”) and affordability goals seems obvious at first, but these clear-cut lines vanish after examining the real costs and benefits. Many programs that raise SRQ levels require spending money, such as tree-trimming programs and upgrading infrastructure well before storms hit. Pre-storm preparation entails hiring sub-contractors, putting more workers on duty, and paying overtime and

39 Id. at 1407-08.
40 Id. at 1410.
41 See Rudy, supra note 17, at 1408.
43 Id. at 313-14.
45 See Heinold, supra note 42, at 308-09.
46 See Rudy, supra note 17, at 1415; see Steven Ferrey, Reliability and Blackouts, 1 L. INDEP. POWER § 10-3.1, 10-30.2-3 (2011).
47 See Rudy, supra note 17, at 1415; see Ferrey, supra note 46, at 10-34.
other costs so that ample response teams are available to repair damaged or downed wires. 48

On the other hand, power companies that do not practice regular tree-trimming and upgrading have higher chances of suffering from outages. 49 Storms regularly knock overhanging limbs onto wires or inflict water damage on unprotected or worn equipment. 50 This reality highlights a logical flaw in electric companies’ favorite argument against higher SRQ goals. 51 Massive service restoration projects after storms sometimes cost consumers as much, if not more, than SRQ optimization programs. 52

Despite SRQ programs potentially lowering utility expenses in the long run, many states prioritize affordability above SRQ goals. 53 Electricity is a basic need. 54 State governments thus set goals to maximize affordability. 55 Keeping costs low validates regulatory programs and agreements, along with any protections for utilities therein. 56 Utility companies argue that making affordability the primary goal protects the most vulnerable consumers while allowing for greater economic growth overall. 57 Proponents claim lower rates attract new business owners, industry, and may even bring in new residents. 58

However, high SRQ levels also lure new businesses and homeowners. 59 For example, some businesses may choose their location based on a need to minimize power outages that damage sensitive equipment. 60 Many technological industries require constant electric service, and outages take entire servers hosting cloud technology for international clients offline. 61 Widespread power outages cost millions, even when they affect a small

48 See Ferrey, supra note 46, at 10-30.5-6.
49 See Rudy, supra note 17, at 1411.
50 See Fiscal Policy Note, supra note 13, at 5.
51 See Rudy, supra note 17, at 1415.
52 Id.
53 See generally Ferrey, supra note 46; see also Rudy, supra note 17, at 1398; see also Heinold, supra note 42, at 303; see also Liability of Elec. Power Companies for Injury or Damages Resulting from Problems in the Delivery of Electric Power, 82 Md. P.S.C. 92, 101 (1991) (hereinafter “In re Singer”).
54 See Ferrey, supra note 46, at 10-30.3.
55 See generally Ferrey, supra note 46.
56 See Rudy, supra note 17, at 1398.
57 Id.
58 Id.
60 See generally Singer, 79 Md. App. at 468, 558 A.2d at 422.
area. 62 California’s scheduled rolling blackouts cost the Silicon Valley area $75 million a day. 63 The August 2003 blackout resulted in $1 billion in losses for New York City’s businesses. 64 In today’s globalized, technologically-dependent world, power outages are serious business. 65

C. Liability Indemnity Clauses and Service Quality Issues

Electric company LICs focus on service interruptions resulting in a loss of power, especially due to “acts of God,” because the nature of electric power puts the delivery method of exposed wires at the whim of the weather. 66 Power lines hang, dangerously exposed to winds, tree branches, and snow. 67 Even underground wiring is vulnerable to flooding. 68 Power companies, unable to control the weather, rightly fear being held liable for outages outside of their control. 69

There are reasonable actions power companies can take to prepare for major storms, and most power companies prepare well in advance. 70 Many power companies routinely trim tree branches away from wires. 71 Most power companies prepare for expected weather events through extensive planning, including calling in extra help ahead of the storm. 72 But regulated companies find themselves stuck between the proverbial rock and hard place. 73 Storm-preparation programs cost money, but state-set electricity rates block utility companies from raising their rates to pay for such programs. 74 Hence, electric companies insert strict LICs into their tariffs, with the state’s approval so long as affordability is maximized. 75

62 See Ferrey, supra note 46, at 10-30.3.
63 See Ferrey, supra note 46, at 10-30.6.
64 See Ferrey, supra note 46, at 10-30.5.
65 See Ferrey, supra note 46, at 10-30.5, 10-30.6, 10-33.
66 See Rudy, supra note 17, at 1385. LICs often mirror force majeure clauses in traditional contracts. Id. For an analysis of force majeure clauses in utility contracts, see Jennifer Sniffen, In the Wake of the Storm: Nonperformance of Contract Obligations Resulting from a Natural Disaster, 31 NOVA L. REV. 551, 573 (2007).
67 See generally Fiscal Policy Note, supra note 13; see Stephens, supra note 1.
69 See Ferrey, supra note 46; see Rudy, supra note 17, at 1393-94.
70 See Rudy, supra note 17, at 1415. Regulatory commissions require utility companies make reasonable preparations when weather forecasts show incoming storms that may cause outages. For examples of local power company storm preparation, see Kate Ryan, Area Power Companies Prep for Irene, WTOP (Aug. 27, 2011, 9:03 AM), http://www.wtop.com/?nid=41&sid=2513520.
71 See Rudy, supra note 17, at 1414-16.
73 See Rudy, supra note 17, at 1410.
74 Id. at 1413.
75 Id.
D. LICs and Affordability Goals in Maryland

In Maryland, the Public Service Commission (PSC) oversees state regulation of all utilities. Many Maryland power companies, including PEPCO and BG&E, fall under the PSC's oversight. Maryland is not, however, a purely regulatory scheme. Maryland recently adopted a competitive cooperative market system ("co-op"), meaning some utilities still fall under state regulation, but other utilities offer electricity service at competitive market rates. These unregulated co-op merchants often offer environmentally-friendly power sources, for a price. While the consumer buys the power directly from the co-op company, the regulated utility company still provides the equipment actually transferring electric power (i.e., the power lines and transformers). The co-op company pays a usage fee to the regulated company, taken out of the customer's payment. This creates two kinds of markets at work in Maryland, one subject to regulation, another impacted by it.

III. THE JUDICIAL AND REGULATORY POWER STRUGGLE OVER UTILITY NEGLIGENCE LIABILITY

A. Gross Negligence and Utility Liability in Maryland

In Maryland, utility providers' tariff LICs may contract away all liability, with the exception of "gross negligence." Gross negligence is an oft-used legal term, but subject to a variety of interpretations. The standard's gravity allows it to sometimes overcome contributory negligence, which bars...
liability claims in Maryland. However, the standard also makes a successful lawsuit against an electric company highly unlikely, and previous PSC actions ensured LICs will protect utilities from all but the most egregious claims.

Gross negligence, under Maryland law, requires severe recklessness and actual knowledge of the potential risks by the acting party. Maryland courts require showing substantial risk of foreseeable and almost certain harm to another's person or property. The actor must also have a "manifest duty" to the endangered party. In the electric utility context, this duty springs from the contractual relationship between companies and their customers.

The analysis does not stop after determining reasonable foreseeability and potential harm. Maryland courts also look at underlying social policies in determining gross negligence. Here, power companies protect themselves through the PSC and their tariffs. Maryland's regulatory scheme strives to achieve affordable electricity access for as many people as possible. The PSC places far less emphasis on quality and reliability standards because efforts to achieve these goals can limit access and raise costs. Similarly, liability for outage damages will raise electricity costs, especially after major storms. Maryland electric companies commonly argue this point when faced with a suit, and win. The PSC's social policies effectively shield

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86 See Minor v. State, 326 Md. 436, 441, 605 A.2d 138, 140 (1992); see Singer, 79 Md. App. at 480, 558 A.2d at 428. The electric utility standard is indistinguishable from the "willful and wanton" standard for trespassers under Maryland law, a common area of electric utility liability claims. Sergent, supra note 85, at 2. The contributory negligence doctrine creates an affirmative defense to a negligence claim by showing the plaintiff's aggrieved or partially caused their injury. See Sergent, supra note 85, at 2.

87 See Minor, 326 Md. at 441, 605 A.2d at 140; see also Singer, 79 Md. App. at 480, 558 A.2d at 428; see also In re Singer, supra note 53, at 92.

88 See Minor, 326 Md. at 441, 605 A.2d at 140; see also Sergent, supra note 85, at 56-58.

89 See Minor, 326 Md. at 441, 605 A.2d at 140; see Sergent, supra note 85, at 58-59.

90 See Sergent, supra note 85, at 42.

91 Id. at 41-42 (citing Marriott Corp. v. Chesapeake & Potomac Tel. Co., 124 Md. App. 463, 467-68, 723 A.2d 454, 457 (1998)).

92 See Sergent, supra note 85, at 58-59.

93 Id. at 64-65.

94 Id. at 41-42.

95 Singer, 79 Md. App. at 479, 558 A.2d at 427.

96 Id.

97 See Rudy, supra note 17, at 1393-94.

utility companies from liability.\textsuperscript{99} This creates little incentive for utility companies to pursue adequate storm response programs or SRQ initiatives.

\textbf{B. Singer and the PSC: Who has the Final Say?}

Only one Maryland case shows the state courts attempting to carve out a limited area of legal sanctuary for customers hurt by a utility's negligence. In \textit{Singer v. BG&E}, the Court of Special Appeals of Maryland limited the amount of liability an LIC could block.\textsuperscript{100} The case centered on frequent power outages caused by lightning-damaged electrical equipment owned by BG&E.\textsuperscript{101} The outages affected Singer's industrial machinery that needed a constant electric supply, and so Singer informed BG&E of the outages.\textsuperscript{102} BG&E knew a damaged power station caused the outages, but failed to take any action to repair it.\textsuperscript{103} Singer sued, alleging breach of contract and negligence.\textsuperscript{104}

\textit{Singer} brought multiple issues to the court's attention, the first being whether the Maryland UCC's implied warranty for goods applied to electricity.\textsuperscript{105} The Court, following other jurisdictions, ruled electricity only becomes a good under the UCC when it reaches the meters on a house because it is not converted for household use until that point.\textsuperscript{106} While this limited any breach of contract claims, the \textit{Singer} court nevertheless held that BG&E may be liable for the outages.\textsuperscript{107} BG&E's tariff LIC limited BG&E's liability to "willful default or neglect on its part," and excluded liability for weather-caused interruptions or anything "beyond its control."\textsuperscript{108} BG&E argued for a narrow interpretation, stating that it should only be found liable when plaintiffs could prove that BG&E acted with actual malice.\textsuperscript{109}

\textsuperscript{100} See \textit{Singer}, 79 Md. App. at 480, 558 A.2d at 428.
\textsuperscript{101} \textit{Id.} at 468-69, 558 A.2d at 422-23.
\textsuperscript{102} \textit{Id.}
\textsuperscript{103} \textit{Id.} at 469, 558 A.2d at 423.
\textsuperscript{104} \textit{Id.} at 465, 558 A.2d at 421.
\textsuperscript{105} \textit{Id.} The UCC implied warranty rule applies guaranteed warranties of fitness and merchantability to all goods, which some states interpret to include electricity. See generally, Gary D. Spivey, Annotation, \textit{Electricity, Gas or Water Furnished by Public Utility as "Goods" Within Provisions of Uniform Commercial Code, Article 2 On Sales}, 48 A.L.R. 3d 1060. For the Maryland UCC's implied warranty provisions, see MD. CODE ANN., COM. LAW § 2-314, 2-315 (West 2011).
\textsuperscript{106} See \textit{Singer}, 79 Md. App. at 471-72, 558 A.2d at 424.
\textsuperscript{107} \textit{Id.} at 480, 558 A.2d at 428. Singer appealed from a summary judgment decision in the circuit court, which the Court of Special Appeals returned the case for a final decision. \textit{Id.}
\textsuperscript{108} See \textit{id.} at 477, 558 A.2d at 427.
\textsuperscript{109} See \textit{id.} at 477, 558 A.2d at 426.
However, the court interpreted the LIC clause as requiring "willful default" or "willful neglect" by consciously failing to fulfill a duty to a customer.\textsuperscript{110} Singer's holding thus broadened the legal responsibilities of Maryland power companies.\textsuperscript{111}

BG&E based its argument of allowing utility liability only for malicious conduct on the policy goals of the Maryland PSC.\textsuperscript{112} The company claimed any broader liability would result in electricity rates rising, undermining the State's goal of maximum affordability.\textsuperscript{113} Furthermore, BG&E admitted that outages and interruptions were part of the electricity business and unavoidable.\textsuperscript{114} BG&E could not stop weather from damaging electricity delivery systems, it argued, and their tariffs, approved by the PSC, accounted for storm related damages by barring this area of liability.\textsuperscript{115}

The Court of Special Appeals disagreed.\textsuperscript{116} Singer suggested that weather-related damages to power systems might fall under a company's control if the company failed to fix the problems.\textsuperscript{117} At that point, a utility engaged in willful neglect of its duty to customers and thus became liable.\textsuperscript{118}

Had Singer remained controlling law, the Maryland General Assembly may not have needed to later create the ESQR.\textsuperscript{119} Perhaps because Singer left utility companies like BG&E and PEPCO unhappy, the PSC reviewed the case and the limitations on LICs in general.\textsuperscript{120} The subsequent PSC opinion slammed the door shut on any broader interpretation of utility liability.\textsuperscript{121}

The PSC invoked its regulatory authority to address whether there should be a uniform standard of liability, and whether utilities should be able to

\textsuperscript{110} Id. at 480, 558 A.2d at 428.
\textsuperscript{111} See generally id. at 480, 558 A.2d at 427; see In re Singer, supra note 53, at 93.
\textsuperscript{112} See Singer, 79 Md. App. at 478-79, 558 A.2d at 427.
\textsuperscript{113} See id. at 479, 558 A.2d at 427.
\textsuperscript{114} See id. The Maryland Court of Special Appeals agreed that weather-related outages and interruptions could not be totally avoided and initially fell outside a power company's control. Id.
\textsuperscript{115} See id.
\textsuperscript{116} See id. at 428, 558 A.2d at 428.
\textsuperscript{117} See Singer, 79 Md. App. at 480, 558 A.2d at 428. The Maryland Court of Special Appeals remanded the case, declining to make such a decision themselves. Id.
\textsuperscript{118} See id. As previously mentioned, Singer dealt with the after-effects of weather-related damages, and not an actual case involving a weather-caused outage. Id.
\textsuperscript{119} See generally In re Singer, supra note 53; see Fiscal Policy Note, supra note 13.
\textsuperscript{120} See In re Singer, supra note 53, at 101. The PSC never stated this was their real reason, but one could imagine the PSC found themselves under considerable pressure from utility companies to assert their jurisdiction and limit Singer's applicability.
\textsuperscript{121} Id. at 101.
limit potential liability.\footnote{Id. at 93. The PSC's regulatory authority allows the Commission to review utility actions and issue regulatory orders. See id.; see generally MD. CODE REGS. 20.50.07.05 (2011).} All of the Maryland utilities submitted comments to the PSC on these issues, with BG&E and PEPCO vehemently fighting against any LIC limitations.\footnote{Id. at Singer, supra note 53, at 93-94.} PEPCO even submitted a proposed change to their LIC tariff, allowing liability only for "intentional misconduct," a higher level than the Singer court's interpretation of gross negligence.\footnote{Id. at 104. Under the ruling, PEPCO would be allowed to adopt such language in its LIC, as long as it was reasonable. Id. at 105. However, PEPCO withdrew the request before the PSC made its decision. Id.}

The utilities' efforts paid off, and the PSC ruled any LICs were valid as long as they were "reasonable," declining to create any uniform standard.\footnote{See id. at 105.} The PSC decision deferred limiting the scope of reasonableness to the utilities themselves.\footnote{See id. at 101.} Instead, the PSC found each company's unique operations required each LIC to be tailored to the company's needs.\footnote{See id. Such factors requiring this approach included the different jurisdictions and needs of each company; the range in service areas and demands; and the fact that some companies served multiple jurisdictions that fell outside the state. Id. PEPCO is a Maryland utility that also serves Washington, D.C.} The decision found that utility companies were best suited to interpret what their LICs meant, making Singer's judicial interpretations irrelevant due to the PSC's authority.\footnote{See id. at 101-02.}

While the PSC did not directly overturn Singer, its ruling demonstrates that the PSC believes Maryland's affordability goal substantially outweighs any SRQ initiatives.\footnote{See In re Singer, supra note 53, at 93-94.} Singer would give utility companies a reason, albeit small, to upgrade systems and implement procedures to maximize SRQ ratings in order to escape any liability.\footnote{See Singer, 79 Md. App. at 469, 478, 558 A.2d at 423, 428.} However, the PSC's decision indicates that even the most protective LICs would be upheld, and SRQ standards would not be a major concern as long power companies minimized their rates.\footnote{See In re Singer, supra note 53, at 101.} Even more concerning was that the PSC essentially gave power companies full power to interpret what constitutes a "reasonable" LIC, and where this boundary falls.\footnote{See id. at 105.} The PSC asserted that "gross negligence" would not be covered by an LIC, but strongly suggested that the Singer decision did not find such level of negligence.\footnote{See id. at 104; see Singer, 79 Md. App. at 480, 558 A.2d at 428.} Thus, gross negligence for...

The decision also allowed PEPCO to create an incredibly protective LIC, one that allowed damages only for “intentional misconduct.”\footnote{See In re Singer, supra note 53, at 104-05.} This PEPCO standard obscures the line between what is and is not reasonable.\footnote{See id.} Giving the utilities full interpretative power severely limited Maryland courts’ role in any utility negligence claims, offering little legal recourse for damaged Maryland consumers.

C. Gross Liability After In re Singer

Two recent cases highlight how the PSC’s order limits the judiciary’s role in current utility damage claims.\footnote{See Jockey Club, 2002 WL 32123994 at *3-5; see Premier Parks, 37 F. Supp. 2d at 735. The fact that these two cases and Singer make up the Maryland case law handling power company liability for outages shows how few cases even make it to court.} The first case, Maryland Jockey Club of Baltimore City v. BG&E (“Jockey Club”), found that the PSC essentially declared Singer no longer good law.\footnote{See Jockey Club, 2002 WL 32123994 at *5. Jockey Club is an unreported 2002 case from the Maryland Court of Special Appeals. While the case is merely persuasive authority, it best shows the high standard set for utility negligence cases after the PSC invalidated Singer.}

Jockey Club ruled that the PSC required finding the electric company acted with “intentional” negligence, and that the PSC’s ruling bound the court.\footnote{See id.} Jockey Club applied this interpretation to the same BG&E tariff interpreted in Singer, highlighting the judiciary’s deference to the PSC.\footnote{See id. at *3.} Even though Jockey Club is unreported, it highlights how hesitant courts are to find gross negligence after the PSC’s ruling, all but closing the door to any realistic legal relief for injured Maryland consumers.\footnote{See id. at *10; see In re Singer, supra note 53, at 92.}

A 1999 decision, Premier Parks, Inc. v. BG&E (“Premier Parks”), comes from Maryland’s federal district court, and deals with the same BG&E tariff
LIC addressed in Singer.\textsuperscript{143} The plaintiff alleged the LIC's language should be treated as ambiguous and given to a fact-finder.\textsuperscript{144} However, Premier Parks relies on both Singer and the PSC's ruling to find that Singer settled the meaning of the LIC.\textsuperscript{145} The Court did not find the PSC overruled or invalidated Singer, showing that conflicting judicial interpretations over Singer's applicability remained.\textsuperscript{146} Nevertheless, Premier Parks failed to clearly define when a utility acts with "gross negligence."\textsuperscript{147}

IV. THE ESTABLISHMENT OF ESQR: STRICT NEW POLICY OR FATALLY FLAWED LEGISLATION?

A. Pre-ESQR Maryland Statutes Regarding Utility Service Interruption

The previously addressed Maryland court cases did not involve weather-related outages, and therefore did not explain what actions a utility would be required to take under those circumstances.\textsuperscript{148} There is a simple explanation for this: some utilities' LICs explicitly bar any actions for weather-related outages.\textsuperscript{149} Coupled with this is the fact that weather events are unlikely to involve "gross negligence," because power companies cannot control the weather.\textsuperscript{150} However, Maryland statutes and regulations do require certain procedures and standards for responding to weather-related outages.\textsuperscript{151} The question is whether these regulations are enough to combat unnecessarily long outages, or if they could possibly provide a baseline for gross negligence cases?

The Code of Maryland Regulations ("COMAR") requires electric utilities suffering from storm-caused outages to restore power as quickly as the

\textsuperscript{143} See Premier Parks, 37 F. Supp. 2d at 734-35; see Jockey Club, 2002 WL 32123994 at *3; cf. Singer, 79 Md. App. at 477, 558 A.2d at 427.
\textsuperscript{144} See Premier Parks, 37 F. Supp. 2d at 735.
\textsuperscript{145} See id. at 735-36 (citing Singer, 79 Md. App. at 477, 480, 558 A.2d at 427).
\textsuperscript{146} See Premier Parks, 37 F. Supp. 2d at 736. It should also be noted that neither of these two cases dealt with weather-related outages.
\textsuperscript{147} See id. at 737. The court spent little time addressing what gross negligence would actually be, or what facts would be required, and instead states that only ordinary negligence took place.
\textsuperscript{148} See Jockey Club, 2002 WL 32123994, at *9; see Premier Parks, 37 F. Supp. 2d at 737; see Singer, 79 Md. App. at 480, 558 A.2d at 428.
\textsuperscript{149} See Singer, 79 Md. App. at 477, 558 A.2d at 427 (quoting § 2.5 of BG&E's Electrical Service Tariff).
\textsuperscript{150} See Rudy, supra note 17, at 1395; see In re Singer, supra note 53, at 102; see Jockey Club, 2002 WL 32123994, at *5.
\textsuperscript{151} See MD. CODE ANN., PUB. UTIL. COS. § 5-303 (West 2011); see MD. CODE REGS. 20.50.12.13 (2012); see MD. CODE REGS. 20.50.07.07 (2011); see MD. CODE REGS. 20.50.01.03B (2011).
circumstances reasonably allow.\textsuperscript{152} Companies also must file a report with the PSC at the start of a “major outage event,” detailing the number of affected customers and an estimated restoration time.\textsuperscript{153} All utilities must file a post-major storm report within three weeks of a storm’s end, documenting how many outages occurred and what preparations were taken.\textsuperscript{154} After such an event, the PSC may review the utilities’ responses and make recommendations, either on their own accord or in response to consumer complaints.\textsuperscript{155}

The problem with these regulations springs from their lack of clear definitions and varying levels of utility compliance.\textsuperscript{156} For example, COMAR defines what constitutes a “major storm” as a weather-related event resulting in service interruptions to either ten percent or one hundred thousand of a utility’s customers for more than twenty-four hours.\textsuperscript{157} Power companies should be able to determine when this threshold has been met on their own; but PEPCO and BG&E failed to file such reports before or after the 2010 blizzards that left 236,000 BG&E customers and over 300,000 PEPCO customers without power for multiple days.\textsuperscript{158}

Additionally, the reporting requirement for companies to submit response plans “at the onset of a storm,” lacks clarity and efficiency.\textsuperscript{159} COMAR does
not require these “onset” reports to detail what preparations the utility made, or if the filing mandate arises only when pre-existing outages are present. The regulations do not require specific preparations for storms. Companies may be fined and ordered to make changes by the PSC, but these rare sanctions come long after the outages take place. It doesn’t appear that COMAR offers any potential legal or regulatory relief for beleaguered customers. The regulations also fail to provide strong deterrents for slow restoration and ill-prepared companies, even though the state protects these utilities from traditional disincentives. The question remains: how is the current regulatory system benefitting Maryland residents from utility abuses?

B. Setting the Stage for Consumer Outrage

One key reason for a lack of Maryland legislative action regarding electric service reliability could be that there was insignificant consumer demand for such changes before 2009. The PSC noted utilities responded well to the outages caused by 2003’s Hurricane Isabel, improving upon past
performances. The 2003-2009 brought a relatively calm period of weather. However, the 2009-2010 winter forced Maryland consumers to re-evaluate their viewpoints on whether the current system really worked.

The first blizzard, nicknamed the "Snowpocalypse," dumped a record fifteen inches of snow on the Washington, D.C. metropolitan area days before the Christmas holiday. The fast-falling, thick, wet snow came with plenty of warning: local meteorologists warned of a major winter weather event seventy-two hours prior to the storm’s onset. The wet snow caused power outages across the region, mostly from trees falling onto electric wires, and paralyzed the region days before the Christmas holiday. While the outages did not reach significant levels, many transportation offices and Virginia’s Dominion Power Company took the storm as an opportunity to review their internal blizzard response plans.

Unfortunately, the December 2009 storm was winter’s warm-up act for a Mid-Atlantic assault. In early February, meteorologists began forecasting

166 See In re Isabel, supra note 156, at 3 (noting improved responses in comparison to utility restoration stemming 1997’s Hurricane Floyd).
172 See Jason Samenow, Forecast: Major Snowstorm poised to strike, WASH. POST (Feb. 4, 2010 10:40 AM),
for another major blizzard ("the 2010 Snowmaggedon Blizzard").\textsuperscript{174} Two days before this second blizzard hit, weather reports alarmingly predicted that a third blizzard would come just days after the second one, resulting in approximately three feet of snow falling on the D.C. area.\textsuperscript{175} Residents flocked to the stores to stock up, the Federal government shut down, and the region readied itself for this historic snow event.\textsuperscript{176}

Most area utilities also prepared for the storm, knowing widespread outages would occur.\textsuperscript{177} Virginia’s Dominion Power moved internal crews up to Northern Virginia the day before the storm, and called in an additional 200 outside subcontractors.\textsuperscript{178} BG&E requested 400 extra crewmembers the day of the storm.\textsuperscript{179} PEPCO did not make any requests until a second BG&E call went out after the storm began.\textsuperscript{180} As a result, PEPCO mounted a severely crippled response, especially in comparison to Dominion and BG&E.\textsuperscript{181} Dominion and BG&E’s service areas are not only larger than PEPCO’s, but also include more rural and isolated areas.\textsuperscript{182} Some angry PEPCO customers found themselves waiting in the cold for over a week.\textsuperscript{183}

\begin{footnotes}
\item[175] See Jason Samenow, \textit{Remembering 2010’s Snoverkill}, WASH. POST CAPITAL WEATHER GANG BLOG, (Feb. 9, 2011, 11:45 AM), http://voices.washingtonpost.com/capitalweathergang/2011/02/remembering_snoverkill.html. The third and final blizzard, nicknamed "Snoverkill", resulted in whiteout conditions and an additional twenty inches of snow falling in twelve hours. \textit{Id.}
\item[178] See Flaherty, supra note 178.
\item[179] See Flaherty, supra note 178.
\item[180] See Flaherty, supra note 178.
\item[181] See Flaherty, supra note 178.
Families found themselves forced to evacuate their homes due to freezing temperatures.\(^\text{184}\) A *Washington Post* investigation reported PEPCO's failure to prepare for the storms, resulting in an outpouring of criticism from furious PEPCO customers.\(^\text{185}\) PEPCO not being held responsible for its lackluster preparation was a common theme of consumer outrage.\(^\text{186}\) The Post's investigation also revealed that the PSC previously failed to act on PEPCO's already poor ranking for service reliability.\(^\text{187}\) Maryland residents found themselves unable to trust the PSC, and demanded legislative action.\(^\text{188}\)

These snowstorms did more than highlight PEPCO's ill-preparedness and the PSC's lack of preventative action.\(^\text{189}\) For decades, Maryland's primary utility goal focused on affordability.\(^\text{190}\) The General Assembly sought to protect lower-income and vulnerable populations from heightened financial hardship by keeping electricity rates as low as possible.\(^\text{191}\) However, the week-plus power outages harmed these populations the most.\(^\text{192}\) Lower-income families may lack the financial resources to restock a refrigerator after its contents spoil.\(^\text{193}\) They also may be less likely to have medical insurance to cover illnesses caused by spoiled food.\(^\text{194}\) Low-income and federally-assisted persons are less likely to have the resources to relocate,
especially when local public transportation is suspended. Elderly and disabled persons, that relied on electricity for medical needs, found themselves stranded. Furthermore, the additional costs from the storm outages, including lost wages due to closed businesses, quickly added up. PEPCO announced it would need to raise rates to pay for repairs. Thus, the storms revealed the current policy’s biggest flaw: more service interruptions result in higher overall costs for consumers, and hurt the very populations the policy works to protect.

C. An In-Depth Look at the ESQR

The Maryland General Assembly passed the Maryland Electricity Service Quality and Reliability Act on May 10, 2011, a little over a year after PEPCO’s disastrous performance created a consumer and voter backlash. While ESQR’s formal introduction came before the January blizzards, the storms certainly helped provide momentum for the bill’s passage. Legislators directly cited complaints against PEPCO as a motivating factor that influenced their vote. Both lawmakers and Governor O’Malley touted ESQR as a solution that would raise reliability rates and allow the PSC to punish utilities falling below the acceptable threshold.

ESQR’s language targets both utilities and the PSC. The statute requires the PSC to establish an individual standard of SRQ for each utility company. Interestingly, the law continues the established policy against implementing blanket rules and standards on electric companies. Despite ESQR’s lack of uniform standards, the statute requires the creation of

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195 See Morello & Halsey, supra note 177.
196 See Flaherty, supra note 178.
197 See Morello & Halsey, supra note 177. The Federal Government and many area businesses remained closed, partially due to lack of electricity. Id.
198 See Flaherty, supra note 178.
199 See generally Flaherty, supra note 178.
200 See MD. ELEC. SERV. QUALITY AND RELIABILITY ACT, supra note 14; see Bill to Penalize Utilities if They Fall Below Standards, WBAL-TV, Feb. 4, 2011, supra note 14.
201 See MD. ELEC. SERV. QUALITY AND RELIABILITY ACT, supra note 14; see Bill to Penalize Utilities if They Fall Below Standards, WBAL-TV, Feb. 4, 2011, supra note 14.
202 See MD. ELEC. SERV. QUALITY AND RELIABILITY ACT, supra note 14; see WBAL-TV, supra note 14.
203 See Bill to Penalize Utilities if They Fall Below Standards, WBAL-TV, Feb. 4, 2011, supra note 14.
204 See Fiscal Policy Note, supra note 13, at 1.
205 See Fiscal Policy Note, supra note 13, at 2; see MD. CODE ANN., PUB. UTIL. COS. § 7-213(b),(d) (West 2011).
206 See Fiscal Policy Note, supra note 13, at 2; see, e.g., In re Singer, supra note 53, at 101 (ruling against blanket standards for all electric companies).
specific qualifications for each utility’s SQR. The PSC must base their systems on one of three nationally recognized SQR indexes. The PSC also must set specific standards regarding a company’s vegetation management, downed wire repair, and service interruption response. Individual systems should be tailored to fit the utility’s current infrastructure, customer bank, and the utility’s service area. All of these systems must be in place by July 1, 2012.

ESQR mandates annual SQR reporting for all utilities. COMAR only required utilities to submit reports to the PSC during or after a “major storm” event. These regulations gave utilities substantial discretion under COMAR, which resulted in companies failing to report outages after catastrophic storms. This lack of reporting delayed any PSC opinion regarding a utility’s response, as the PSC would have to order companies to submit the required reports with all the necessary information. Under ESQR, the annual reporting requirement ensures that utilities will not be able to conceal outage information indefinitely. All in all, the review mandates provide a much-needed level of transparency to utility operations and SQR levels.

Perhaps most significantly, ESQR calls for the PSC to automatically review each utility’s SQR performance, and a utility’s failure to comply with the ESQR may be punished via monetary penalties and sanctions. Furthermore, utilities may not attempt to recoup the costs of any such corrective action from any of their customers, a protective measure installed

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207 See Fiscal Policy Note, supra note 13, at 2; see MD. CODE ANN., PUB. UTIL. COS. § 7-213(e) (West 2011).
208 See Fiscal Policy Note, supra note 13, at 2; see MD. CODE ANN., PUB. UTIL. COS. § 7-213(d) (West 2011).
209 See Fiscal Policy Note, supra note 13, at 2; see MD. CODE ANN., PUB. UTIL. COS. § 7-213(e)(1)(i) (West 2011).
210 See Fiscal Policy Note, supra note 13, at 2; see MD. CODE ANN., PUB. UTIL. COS. § 7-213(e)(2) (West 2011).
211 See MD. CODE ANN., PUB. UTIL. COS. § 7-213(d) (West 2011).
212 See Fiscal Policy Note, supra note 13, at 2; see MD. CODE ANN., PUB. UTIL. COS. § 7-213(g) (West 2011).
213 See infra at Part I(d) for discussion on the COMAR definition of a “major storm”; see MD. CODE REGS. 20.50.07.05B (2012); see MD. CODE REGS. 20.50.01.03B (2011).
214 See MD. CODE REGS. 20.50.01.03B (2011). For examples of non-compliance, see PEPCO Snow Response Order, supra note 156; Snowstorm Report Order, supra note 158.
215 See generally Stephens, supra note 163 (detailing the PSC rulings regarding PEPCO’s storm response, almost two years after the storms).
216 See Fiscal Policy Note, supra note 13, at 2; see MD. CODE ANN., PUB. UTIL. COS. § 7-213(g) (West 2011).
to keep affordability maximized and avoid any incentives for non-compliance.\textsuperscript{218} Previously, the regulations pushed the PSC into an advisory role.\textsuperscript{219} After major storm events, the PSC made only suggestions and recommendations, appearing to lack the power to force change.\textsuperscript{220} By giving the PSC stronger punitive tools, the General Assembly sent a message to Maryland citizens that the PSC would look out for consumers, not just utilities.

In fact, the ESQR explicitly states in section (b): "It is the goal of this state that each electric company provide its customers with high levels of service quality and reliability..."\textsuperscript{221} The importance of this dramatic policy change cannot be missed.\textsuperscript{222} Previously, the state’s primary goal centered on affordability over SQR, and the utilities successfully avoided by threatening rate-hikes when unfavorable SQR measures arose.\textsuperscript{223} While ESQR specifically notes that cost-effective SQR programs are best, it makes it clear that the one-sided argument that SQR would harm consumers is no longer acceptable.\textsuperscript{224} Some balancing is required, and an electric company with sub-standard SQR ratings can be held accountable.\textsuperscript{225}

\section*{V. Analysis of the ESQR's Real-World Impact on Utility Storm Responses}

The ESQR’s design focuses on preventing Maryland consumers from undergoing long and unnecessary power outages due to poor maintenance and storm planning.\textsuperscript{226} It is thus important to ask whether the ESQR would prevent another post-Snowmaggeden scenario. Many consumers focused on the response times between Virginia and Maryland electric companies.\textsuperscript{227}


\textsuperscript{219} See MD. CODE REGS. 20.50.07.05B (2012); see Snow Storm Report Order, \textit{supra} note 158.

\textsuperscript{220} See PEPCO Snow Response Order, \textit{supra} note 157; see \textit{In re Isabel}, 95 Md. P.S.C. at 3.

\textsuperscript{221} See MD. CODE ANN., PUB. UTIL. COS. § 7-213(b) (West 2011).

\textsuperscript{222} See \textit{id}.

\textsuperscript{223} See \textit{supra} Part II (c) for discussion on Maryland's policy.

\textsuperscript{224} See Fiscal Policy Note, \textit{supra} note 13, at 2.

\textsuperscript{225} See Fiscal Policy Note, \textit{supra} note 13, at 2. The language also indirectly instructs the PSC to evaluate its mission, in order to comply with the new policy. Fiscal Policy Note, \textit{supra} note 13, at 2.

\textsuperscript{226} See MD. CODE ANN., PUB. UTIL. COS. § 7-213(b) (West 2011).

This comparison calls for a brief analysis of Virginia’s regulations, and looking at how key differences required Virginia utilities’ fast response time.

A. Virginia’s Pro-Reliability Policy and Regulations

The 2009-10 snowstorms highlighted how Virginia’s power companies responded far better to major storm events and outages. Both Dominion Power and PEPCo suffered widespread outages, but Dominion Power had all lights restored within two days of the second storm’s end. PEPCo took over a week to restore services. Local media and consumers asked why such a difference existed. A comparison of each state’s legal standards reveals different policy goals play a role in answering this question.

Virginia’s State Corporation Commission (“SCC”) oversees the Commonwealth’s regulated energy utilities. Unlike Maryland’s PSC, Virginia grants the SCC a large amount of regulatory and judiciary power, including a large amount of oversight over outage response plans. The SCC’s power includes requiring utilities to submit their emergency response procedures so that the SCC may ensure proper plans exist before such an emergency arises. During an emergency, the SCC may require a utility take certain actions. The Virginia Governor also can force utilities to provide electricity to other areas during certain emergencies. All of these provisions keep a large amount of control reserved for the state, and allow the government to step in and force action if power companies fail to respond adequately.

Furthermore, Virginia’s policies differ from that of Maryland in that Virginia electric companies have a statutory duty to provide reasonably reliable service at affordable rates. Until the ESQR’s passage, Maryland lacked a similar policy. The SCC also has the power to determine that a utility failed to fulfill this duty through consumer complaints alone, and the

228 See Echols, supra note 228.
229 See Flaherty, supra note 178; see Stephens, supra note 1.
230 See Flaherty, supra note 178; see Stephens, supra note 1.
231 See Flaherty, supra note 178; see Stephens, supra note 1.
233 See id.; see VA. CODE ANN. § 56-250 (West 2012); see VA. CODE ANN. § 56-249 (West 2012).
234 See VA. CODE ANN. § 56-86.1 (West 2012).
235 E-mail from Kenneth J. Schrad, Dir. of Information Resources, Va. SCC, Response to Author’s Questionnaire (Jan. 18, 2012) (on file with author); VA. CODE ANN. § 56-250 (West 2012).
236 See VA. CODE ANN. § 56-86.1 (West 2012).
237 See id.; VA. CODE ANN. § 56-250 (West 2012).
238 See generally supra at Part II, (c), for Maryland’s policies favoring affordability; see VA. CODE ANN. § 56-234.4 (West 2011); see VA. CODE ANN. § 56-234 (West 2011).
239 See MD. CODE ANN., PUB. UTIL. COS. § 7-213(b)-(d) (West 2011).
SCC can use this finding to compel operational or other changes. Not only does this statute give the SCC the teeth to enforce the duty, but also allows consumer complaints to show a utility has not met their duty. Virginia utilities thus have a strong incentive for high customer satisfaction rates.

In fact, Virginia’s SCC has authority to review a power company’s SRQ ratings even before a customer complaint is filed. The Virginia legislature grants the SCC general oversight powers over utilities’ service performance. The SCC may, at any time, request a utility to submit an SRQ report to them, and investigates every consumer complaint made to the Commission. Additionally, the SCC reviews all utility responses to major storms that cause outages for longer than twenty four hours. The Virginia legislature thus ensured the SCC’s oversight and control over utility SRQ levels would not be compromised by lack of authority or administrative power.

Virginia and Maryland also differ in their remedies for utility liability. Like Maryland, Virginia gives the SCC jurisdiction over power companies, and grants them extensive remedial powers. Virginia and Maryland both allow their respective regulatory committees to act on consumer complaints. But Virginia specifically states that the SCC’s judicial powers do not end an aggrieved consumer’s common law rights. Nor may a utility’s tariff purport to do so, although they can limit liability. This means a Virginia power customer is specifically not foreclosed from seeking judicial relief, and can pursue damage claims through this avenue.

Virginia’s regulatory system certainly provides strong incentives for utilities to minimize outages, through its remedy statutes and arming the SCC with expansive powers. These incentives, though rarely used, may

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240 See Schrad, supra note 236; VA. CODE ANN. §§ 56-6, 234.
241 See Schrad, supra note 236; VA. CODE ANN. §§ 56-6, 234.
242 VA. CODE ANN. § 56-249 (West 2011).
244 See Schrad, supra note 236; VA. CODE ANN. § 56-234.4 (West 2012).
245 See Schrad, supra note 236.
246 See VA. CODE ANN. § 56-234.4 (West 2012).
247 See In re Singer, supra note 53, at 105; see VA. CODE ANN. §§ 56-6, 253 (West 2011).
248 See MD. CODE ANN., PUB. UTIL. COS., §§ 2-112, 113 (West 2011); see VA. CODE ANN. § 56-6 (West 2012).
249 See MD. CODE ANN., PUB. UTIL. COS., § 3-102 (West 2011); see VA. CODE ANN. § 56-6 (West 2012).
250 VA. CODE ANN. § 56-7 (West 2011).
251 Schrad, supra note 236; VA. CODE ANN. § 56-253 (West 2012).
252 Schrad, supra note 236. While no Virginia case law showed such an action, perhaps these statutory provisions are Virginia’s electric companies seem far more concerned with maintaining high SRQ rates.
253 See Schrad, supra note 236; VA. CODE ANN., § 56-234.4 (West 2012); VA. CODE ANN., § 56-6, 234 (West 2012).
explain why Virginia's power companies quickly restored power after the 2011 blizzards. Virginia's approach highlights how strong SRQ policy initiatives ensure utilities undertake the necessary programs to prevent outages in the first place.

B. Comparing ESQR to Virginia's Regulations

ESQR revolutionizes Maryland energy policy by promoting high SRQ satisfaction rates, much like Virginia's long-standing policies. Virginia's strong policy initiatives likely play a major role in incentivizing utility action. Maryland adopted similarly forceful policy language in ESQR, focusing the entire statute on creating SRQ goals for Maryland electric utilities. This historical change uses mechanisms comparable to Virginia in determining SRQ standards, including the delineation of explicit enforcement powers to the PSC.

However, ESQR does not state whether the PSC can request major storm outage reports before initiating a hearing, as the SCC does. Historically, most utilities would not submit such reports until the PSC requested one during a Commission investigation. ESQR should have strengthened the reporting requirements allowing the PSC to adopt the SCC's method of automatic review.

ESQR also lacks statutory guarantees of legal action for Maryland consumers. Virginia customers have multiple routes for taking legal

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254 See Schrad, supra note 236. Mr. Schrad noted the SCC never used the emergency powers granted by VA. CODE ANN., § 56-250 (West 2012).
255 See generally Rudy, supra note 17, at 1415.
256 See Fiscal Policy Note, supra note 13, at 1; see VA. CODE ANN., § 56-6, 234 (West 2012).
257 See text accompanying note 250, supra.
258 See Fiscal Policy Note, supra note 13, at 3-4; compare MD. CODE ANN., PUB. UTIL. COS. § 7-213 (West 2011), and VA. CODE ANN., § 56-234.4 (West 2011).
259 See Fiscal Policy Note, supra note 13, at 2 (requiring use of national ranking systems and models, including SAIDI and SAIFI, for setting ESQR's standards); see also Schrad, supra note 236 (stating the SCC uses SAIDI and SAIFI scores for determining SRQ goals).
261 See Fiscal Policy Note, supra note 13, at 4-5; see PEPCO Snow Response Order, supra note 156 (where the PSC orders such a report after opening an investigation). PEPCO's outages certainly reached the level needed to trigger the major storm reporting requirement in MD. CODE REGS. 20.50.0 1.03B (2011), but PSC records show this regulation is not followed by utilities.
action, although it is unclear whether Virginians utilize the judicial course. While Virginia's remedy laws may not be practicable, they have some deterrent effect by creating another incentive for utilities to keep customers happy.

Finally, Virginia grants the SCC extensive emergency powers, while ESQR did not extend such authority to the PSC. Much like Virginia's remedy laws, these emergency powers may be more pretense than practice. But, giving such expansive authority could encourage the PSC to adopt a more aggressive approach in utility regulation. ESQR's policy provisions underline the General Assembly's intended shift in focus to protecting consumers, and hold the PSC to this view. Given the PSC's history, a clear delegation of emergency powers may encourage such changes in regulatory behavior.

C. Storm Response and Utility Preparation Requirements Under ESQR

ESQR will likely help raise SRQ ratings for Maryland utilities, and represents a clear shift in longstanding energy policy. This change, while long overdue, should help create greater customer satisfaction and relations with utilities.

However, ESQR fails to resolve known problems. COMAR's vague storm outage reporting requirements still stand, seemingly unchanged by ESQR. Moreover, ESQR does not establish automatic punishments for utilities that fail to adequately respond to storm-related outages. While automatic punishments do not allow for case-by-case determinations, they

264 See VA. CODE ANN., § 56-6 (West 2012); see also Schrad, supra note 236.
265 See Schrad, supra note 236. Mr. Schrad noted that many of Virginia's pro-SRQ enforcement provisions had not been utilized. Id.
266 See VA. CODE ANN., §§ 56-250, 586.1 (West 2012); see MD. CODE ANN., PUB. UTIL. COS. § 7-213 (West 2011).
267 Schrad, supra note 236. The SCC noted these emergency powers, established in response to the 1970's energy crisis, have never been used. Id.
268 See, e.g., Rudy, supra note 17, at 1413-15.
269 See MD. CODE ANN., PUB. UTIL. COS. § 7-213 (West 2011); see also Fiscal Policy Note, supra note 13, at 1-2.
270 See, e.g., infra Part V(c) (reflecting the previous PSC policy favoring utility interests).
271 See Fiscal Policy Note, supra note 13.
272 See Fiscal Policy Note, supra note 13.
273 See MD. CODE REGS. 20.50.01.03B (2011). See supra Part III (c) for a discussion on the COMAR reporting requirement.
274 See MD. CODE ANN., PUB. UTIL. COS. § 7-213 (West 2011); see also Fiscal Policy Note, supra note 13.
create strong incentives for proper pre-storm preparations.\textsuperscript{275} ESQR also fails to address the problem of slow and prolonged PSC reviews after major storms caused outages.\textsuperscript{276} These tools would greatly hasten utility response, raise SRQ levels, and restore consumer faith in the PSC.

The biggest variable in ESQR’s future effectiveness does not stem from the Maryland General Assembly, but from the PSC. ESQR leaves a large amount of discretion to the PSC, which may undermine ESQR’s effect on changing utility practices if the PSC continues its highly protective stance towards utilities.\textsuperscript{277} Historically, the PSC failed to stringently enforce storm preparation regulations, choosing instead to protect utilities from outside scrutiny.\textsuperscript{278} If ESQR is meant to prevent a repeat of the February 2010 blackouts, the PSC must change their approach and become proactive in their enforcement of ESQR.\textsuperscript{279} This includes a possible reconsideration by the PSC of their 1991 Singer ruling.\textsuperscript{280}

This concern may be unwarranted, as the PSC has already begun an administrative review of its rules and procedures relating to utility outages.\textsuperscript{281} In December of 2011, the Commission issued an unprecedented $1,000,000 fine against PEPCO for its failures in 2010, and continued to publicly criticize PEPCO’s reliability ratings in 2012.\textsuperscript{282} These actions hint that the PSC itself is evolving.\textsuperscript{283} Regardless, the PSC must ensure that untimely delays in reviewing storm reports and responding to consumer complaints are minimized.\textsuperscript{284} This includes clarifying regulations by adding strict enforcement mechanisms, and building certain mandatory reliability programs into the forthcoming individualized utility standards.\textsuperscript{285} While the $1,000,000 fine against PEPCO reflects the PSC’s recognition of consumer outrage, the fine still came approximately two years after the blizzards.\textsuperscript{286} If utility companies know complaints will be swiftly reviewed by the PSC, they

\textsuperscript{275} For an example of the rate-hike argument, see In re Singer, supra note 53.
\textsuperscript{276} See PEPCO Snow Response Order, supra note 156; Snow Storm Report Order, supra note 158.
\textsuperscript{277} See MD. CODE ANN., PUB. UTIL. COS. \textsection 7-213 (West 2011); see supra Part III(b) discussing previous PSC opinions and policies.
\textsuperscript{278} See In re Singer, supra note 53, at 101.
\textsuperscript{279} See generally id. at 101-05.
\textsuperscript{280} Compare Fiscal Policy Note, supra note 13, with In re Singer, supra note 53.
\textsuperscript{281} See Fiscal Policy Note, supra note 13, at 6.
\textsuperscript{282} Stephens, supra note 159; see Victor Zapana and Aaron C. Davis, Pepco Receives Small Rate Hike in Maryland, WASH. POST, July 20, 2012, http://articles.washingtonpost.com/2012-07-20/local/35486123_1_pepco-derecho-storm-small-rate-hike.
\textsuperscript{283} See Stephens, supra note 159; but cf. In re Singer, supra note 53, at 105.
\textsuperscript{284} See MD. CODE REGS. 20.50.01.03B (2011); see supra Part III (c) for a discussion on the COMAR reporting requirement.
\textsuperscript{285} For example, requiring tree-trimming programs and targeted upgrades as part of a utility’s ESQR goals would help ensure the legislative and policy goals behind ESQR are quickly met.
\textsuperscript{286} See Zapana and Davis, supra note 284.
are more likely to be adequately prepared for storms and outages. Therefore, the PSC should adopt a rigid review process, including fines for failing to appropriately respond to a PSC investigation.

VI. CONCLUSION

Two blizzards and days of freezing homes, tired families and consumer outrage lay the ground for ESQR’s passage. The Act will help prevent another prolonged outage like the one PEPCO customers experienced in 2010. Maryland utilities are now required to institute programs that will help prevent many future outages. More importantly, ESQR shows the General Assembly will act to hold utilities liable for massive post-storm outages.

There are many differences between ESQR and Virginia's utility regulations. Maryland may not need to match Virginia's level of consumer protection, but ESQR allows Maryland to adopt similar provisions if necessary. ESQR makes one point clear: both Maryland and Virginia recognize that states and utilities must work together in order to keep the lights on.