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BILL NO.: House Bill 0505 – Limitations on Cost Recovery by Public Service Companies and Reports on Votes Cast at Meetings of Regional Transmission Organizations (Utility Transparency and Accountability Act)

COMMITTEE: Economic Matters Committee

HEARING DATE: February 22, 2024

SPONSOR: Delegate Charkoudian

POSITION: Favorable

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The Office of People's Counsel ("OPC") respectfully requests a favorable report on House Bill 505, the Utility Transparency and Accountability Act. As the title of the bill suggests, HB 505 would bring needed transparency and accountability to the operations of public service companies regulated by the Maryland Public Service Commission ("PSC").

Public service companies[1] are provided with State-granted monopolies in order to perform important public functions and are required to operate "in the interest of the public."[2] At the same time, Maryland's largest public service companies are private companies with fiduciary obligations to earn profits for their investors. In competitive markets, the risk of losing customers incentivizes such private companies to balance the interests of their investors with those of their customers. Because they are insulated from competition by their monopoly status, this discipline is absent for public service companies. For these monopolies, "extensive government control" over prices, services,

[1] The term "public service company," as defined in Public Utilities Article ("PUA") § 1-101(z) is functionally synonymous with the term "utility" in this context.
[2] PUA § 2-113(a) requires the Commission to "supervise and regulate the public service companies subject to the jurisdiction of the Commission to … ensure their operation in the interest of the public."

and operations "takes the place of competition and furnishes the regulation which competition cannot give."[3]

HB 505 furnishes the regulation necessary to protect the captive customers of public service companies in four primary ways: by (1) adding important clarity on the prohibition against public service companies recovering from customers certain costs that are not directly beneficial to ratepayers or in the public interest; (2) requiring public service companies to report annually on any such costs; (3) requiring each electric company to be a member of a regional transmission organization ("RTO"); and (4) requiring each electric company to submit an annual report to the PSC of any recorded vote cast at a meeting of an RTO.

I. Limitations on cost recovery from customers

Section 4-504 of the Act prohibits a public service company from recovering, through customer rates, any costs associated with (1) membership in an industry trade association, group, or related entity; (2) lobbying or political activities; (3) advertising, marketing, or communications that seek to influence public opinion or create goodwill toward the public service company; (4) travel, lodging, or food and beverage expenses for the board of directors of the public service company or its parent company; (5) entertainment or gifts; (6) any owned, leased, or chartered aircraft for the board of directors of the public service company or its parent company; or (7) investor relations.[4]

Although current law and regulations already prohibit public service companies from recovering certain of these costs from customers,[5] OPC is concerned that captive customers may be paying for corporate expenses that have no public or ratepayer benefit and are meant only to influence public opinion or engender good will toward the company. For example, in Washington Gas's recent rate case, the company sought to recover from customers roughly $419,000 in promotional advertising expenses by arguing that the promotional advertising was "in the public interest and directly beneficial to ratepayers"[6] The reason: the promotional advertising, Washington Gas argued,

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[3] *Delmarva Power & Light Co. v. Pub. Serv. Comm'n of Md.*, 370 Md. 1, 6 (2002).
[4] We understand the sponsors are considering amendments that would allow recovery of certain of these costs that can be shown to benefit customers.
[5] *See* PUA § 4-103 (providing that "a public service company may not charge off lobbying expenses against its ratepayers"); COMAR 20.07.04.08B (providing that "[c]haritable contributions, penalties, and lobbying expenses … will not be allowed for rate making purposes"); COMAR 20.07.04.08C (providing that "[e]xpenditures for advertising and promotion other than that classified as informational will not be allowed for rate making purposes unless it is demonstrated to the satisfaction of the Commission in a subsequent rate proceeding that the expense is of direct benefit to the rate payer and in the public interest").
[6] *Washington Gas Light Company's Application for Authority to Increase Rates and Charges for Natural Gas Services* (PSC Case No. 9704), Direct Testimony of Robert E. Tuoriniemi at 60, lines 4-5 (describing the views of Washington Gas's marketing department).

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"produces new business" for the company, driving "cost-effective" gas line extensions to new, previously unserved locations.[7] While OPC and PSC Staff successfully challenged customers paying for those expenses, it required that we litigate the outcome. We had to first identify those costs in discovery and then argue that the promotional activities did not benefit customers. They included ads replete with vague statements, such as "Enjoy the benefits of natural gas"[8] while failing, according to OPC's expert witness, to demonstrate the advertising results in cost-effective gas line extensions.[9] Importantly, the utility sought recovery of those costs, despite the presumption against recovery.

Another category of promotional efforts OPC opposed in this rate case was the company's dues to the American Gas Association. The PSC accepted OPC's proposed disallowance, stating, "There is a thin line between activities of trade associations in regard to providing education to its members (and the public) and advocacy in support of programs that mostly benefit the utility industry as a whole and utility shareholders."[10]

Practically, this spending is a challenge to identify in rate case litigation, where such expenses are small relative to the hundreds of millions of dollars often at issue relating to large capital projects, which our office must prioritize. Further, we are aware of examples in other states where utilities have categorized what amount to lobbying expenses as something else—such as "education"—and charged them to ratepayers.[11] We suspect, but do not know, that there could be similar situations in Maryland, but they are hard to identify. OPC strongly supports the necessary clarity HB 505 provides about what costs are not recoverable to ensure that a public service company's captive customers are not, in fact, forced to pay for corporate activities that have no ratepayer or public benefit.

II. Annual reporting on corporate costs

Section 4-505 of the Act requires a public service company to make transparent its spending on the costs associated with the activities described in § 4–504, requiring that

[7] *Id.* at 60, lines 12-21 through 61, lines 1-2.
[8] Md. Pub. Serv. Comm'n Order No. 90943 at 54, citing Direct Testimony of Staff witness Bion C. Ostrander at 49 (PSC Case No. 9704).
[9] Direct Testimony of OPC witness Jerome D. Mierzwa at 17-20 (PSC Case No. 9704).
[10] Md. Pub. Serv. Comm'n Order No. 90943 at 68.
[11] *Newman v. FERC*, 27 F.4th 690, 697 (D.C. Cir. 2022) (vacating FERC's decision to allow two PJM member utilities to recover from ratepayers more than $6 million spent on public relations and advocacy activities to secure certificates of public convenience and necessity to build a new transmission line because "expenditures for the purpose of *indirectly* as well as directly influencing the decisions of public officials" are unrecoverable); *Application of Northern States Power Co.*, Minn. Pub. Util. Comm'n, Docket No. E-002/GR-21-630 at 76 (July 17, 2023) (denying utility's cost recovery of more than $1 million for activities of "Carbon-Free Future MN Coalition" after finding they were improperly allocated to utility customers as education costs and the activities "appear similar to lobbying activities directed at the [Utility] Commission and the Legislature" and the utility failed to demonstrate the activities were "necessary to provide service to customers").

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any public service company with more than 75,000 customers in the State submit an annual report to the PSC itemizing the relevant costs, including costs spent by the public service company's parent company or affiliate and directly billed or allocated to the public service company. The required report must include a list of employees—of the public service company itself, the parent company, or affiliate— who performed work associated with the relevant activities; and a list of payments to third-party vendors for associated expenses.

These costs are not often big-ticket items in the context of complex rate cases, which can make them difficult to identify, particularly when they are included within large buckets of costs, as is often the case. An affirmative requirement to report and itemize lobbying, advertising, and other relevant expenses will help to protect the captive customers of a public service company from paying for activities that are not to their benefit or contrary to State policy.

III. Required membership in a regional transmission organization

In 2006, the Federal Energy Regulatory Commission ("FERC") adopted a series of incentives to encourage investment in the interstate transmission grid, including a financial incentive for electric companies joining a regional transmission organization ("RTO"), known as the "RTO adder."[12] Under FERC precedent, however, public service companies whose membership in an RTO is required by state law—and, therefore, not voluntary—are ineligible to receive extra unwarranted profits in the form of the RTO adder.[13]

Although most all Maryland's electric companies are currently voting members of PJM, they are not currently required by law to join an RTO and are, therefore, entitled to the RTO adder. Section 7-108(b) of the Act would require that each electric company be a member of an RTO, which should render them ineligible to receive these extra unwarranted profits. We estimate that a state-law requirement for RTO membership could save customers about $20 million per year.

[12] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057 (2006).

[13] *See e.g. id.* at ¶ 331 (explaining that the basis for the RTO adder incentive is, in part, "a recognition of … the fact continuing membership is generally voluntary"); *Office of the Ohio Consumers' Counsel v. American Electric Power Service Corp.*, 181 FERC ¶ 61,214 (2022) (finding two Ohio utilities ineligible for the RTO adder because Ohio law mandates participation in PJM); *Pacific Gas and Electric Company*, 185 FERC ¶ 61,243 (2023) (finding that by virtue of a recently enacted California statute requiring Pacific Gas & Electric to participate in its RTO, participation was no longer voluntary, and the company was no longer eligible to receive its RTO adder).

IV. Annual reporting on votes cast at RTO meetings

Section 7-108(c) of the Act requires that each electric company submit an annual report to the PSC of any recorded vote cast by the electric company or an affiliate of the electric company at a meeting of any committee, user group, task force, or other part of an RTO, including a vote tabulated individually or as part of a sector, for any purpose, regardless of whether the vote represented a final position or the decision-making authority of those voting. The required report must include all recorded votes cast by the electric company—or its affiliate if the electric company itself does not vote—regardless of whether the vote is otherwise disclosed; and a brief description explaining how each vote cast is in the interest of the public.

Currently, certain high-level votes are disclosed by PJM Interconnection, LLC ("PJM"), the regional transmission organization for Maryland. But there are numerous lower-level committees and task forces where transmission planning protocols and market rule changes are developed and where the votes are not disclosed. These lower-level votes determine the policies that advance at PJM and are eventually adopted. Stated otherwise, a policy that fails to gain enough votes at the lower levels—where votes are not disclosed—does not advance to a high-level vote where it may be publicly disclosed.

Requiring public service companies to report on "*any* recorded vote" would provide additional needed transparency for votes on proposals that ultimately result in hundreds of millions of dollars in costs for utility customers. For example, there are currently task forces at PJM—the Deactivation Enhancements Senior Task Force and the Long-term Regional Transmission Planning Workshop—that are working on the compensation for deactivating generating stations and the planning protocols to determine whether new transmission is needed as a result of power plant closures. A report on the utilities' advocacy in these task forces would provide important transparency on whether the utilities' positions support the least-cost solutions to potential reliability issues with the regional grid or more expensive transmission solutions.

OPC also supports the requirement for public service companies to explain "how each vote cast by the electric company or its affiliate is in the interest of the public." Unless effectively regulated, public service company votes at PJM have the potential to result in serious misalignments with the public interest. Requiring companies to explain "how each vote … is in the interest of the public" is minimally burdensome and will help regulators—and other parties such as OPC—understand the companies' positions on the issues and assess whether the companies' votes do, in fact, serve the public interest, and not just the companies' private interests.

Recommendation: OPC requests a favorable Committee report on HB 505.

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