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Maryland Senate Finance Committee
HB95: Public Utilities - Investor-Owned Utilities - Prevailing Wage

Position - Favorable
January 28, 2021

Good afternoon Chair Kelley and members of the Committee. My name is Dan Lipschultz, founder of Lipschultz Energy & Communications Consulting.

Just before starting my consulting practice last year, I served for 6 years as a member and Vice-Chair on the Minnesota Public Utilities Commission where I also served as lead commissioner on alternative ratemaking and as Minnesota's representative on the National Comprehensive Electricity Planning Task force.

Before serving on the MN Commission, I had 25 years of utility regulatory and energy industry experience as (a) a lawyer in private practice representing utilities and telecommunications carriers, (b) an attorney for the Minnesota Commission; and (c) an assistant attorney general in the Minnesota Attorney General's Office where I served as lead counsel in the ratepayer advocate's division representing residential and small business ratepayers. All told, I've been involved as legal counsel or regulator in hundreds of utility regulatory proceedings, including dozens of utility rate cases and infrastructure proceedings. Moreover, I've viewed the utility landscape from just about every angle - as a utility lawyer, ratepayer advocate and regulator.

Based on my background, LiUNA's Baltimore-Washington Laborers' District Council retained me to examine the public interest implications and rate impact of extending Maryland's Prevailing Wage law to underground public utility construction. My findings and conclusions are detailed in a Report previously submitted to the Committee. In my testimony today, I want to briefly emphasize the following three key points with respect to this legislation:

First, this bill ***applies to underground public utility facilities used to deliver essential utility services to the public***, primarily natural gas service that nearly all Maryland citizens depend on to heat their homes and businesses. Therefore, this bill is a ***natural and logical extension of Maryland's current prevailing wage law***, which Maryland's Department of Legislative Services (DLS) describes as applicable to "***structures or works … constructed for public use or benefit…."*** Public utility infrastructure clearly exists for public use and benefit and is, in fact, essential to the public interest. Although the utilities impacted by this bill are investor-owned businesses, they are defined in State law as "public utilities." That's because they are responsible for providing services that are essential to the public interest – services delivered over critical infrastructure located primarily in public rights of way.

Second, this bill ***furthers the public interest in safe, highly reliable utility services by helping ensure a highly skilled and experienced workforce to construct and maintain the critical infrastructure used to deliver these essential services.*** There is no margin for error when it comes to (a) the reliability of utility services, which we all depend on and (b) the safety of the infrastructure used to deliver those services in public rights-of-way. Studies have shown that higher wages tend to produce higher quality and more cost-effective outcomes by attracting more skilled labor and by encouraging the development of a more skilled labor pool over time.

Finally, it is ***highly unlikely that this bill will increase residential utility bills,*** and if it has any impact, that impact will be minimal for at least the following two reasons:

1. ***The overwhelming majority of peer reviewed studies (82%) indicate that prevailing wage laws have little if any impact on project costs*** because of the efficiencies you get from an experienced, highly trained workforce facilitated by a prevailing wage floor. As the Maryland DLS noted, "empirical findings over the past 10-15 years by multiple large-scale studies . . . have found no statistically significant effect of prevailing wages on contract costs."

2. ***Even if a prevailing wage floor were to increase project costs, any such cost increases would likely have little or no impact on residential utility rates given how rates are set***. Utility rates are set through rigorous court-like proceedings in which any proposed rate increase receives intense scrutiny by the PSC, including staff experts and sophisticated intervening parties. The rate case process involves multiple factors and layers of analysis. An increase in project costs from a prevailing wage floor would be only one small portion of a utility's undepreciated rate base and only one of many factors used to determine a utility's rates.

I tested the possible rate impact of the prevailing wage law by applying the Maryland DLS's estimate of a possible 2-5 percent increase in project costs to a recent 2019 BGE gas rate case, Case No. 9610. I simply added 2 to 5 percent to the approximately $600M rate-base increase that BGE Gas proposed in that case. I then took the higher rate base hypothetically resulting from the prevailing wage and ran it through BGE's own methodology for calculating its proposed rates. As a final step, I reduced the overall rate consistent with the PSC's decision and used the PSC's rate-allocation method to determine the residential customer share of the increase.

My analysis showed at most a ***very small potential rate impact ranging from $0.09 to $0.22*** per month. This was a small incremental fraction of the overall average monthly rate increase of $3.53 approved by the Commission. But importantly, the peer-reviewed research on prevailing wage impacts and the nature of the utility rate-setting process both suggest that the prevailing wage requirement in SB95 would **likely have *no impact*** on rates***.*** Yet, the legislation can have a significantly positive impact on the quality and safety of this essential public utility infrastructure that Maryland citizens depend on.

Accordingly, I urge a favorable report from the Committee on SB95.