CHESAPEAKE UTILITIES CORPORATION

March 24, 2022

HOUSE ENVIRONMENT & TRANSPORTATION COMMITTEE
SB 528 –Climate Solutions Now Act of 2022

Statement in Opposition

Chesapeake Utilities Corporation ("Chesapeake Utilities") respectfully **OPPOSES** certain provisions contained in SB 528. Among other things, SB 528 seeks to impose strict limitations on direct greenhouse gas (GHG) emissions from existing commercial and multi-family residential "covered buildings" over 25,000 square feet[1] that decrease significantly over the next several years until reaching net zero on or before 2035. The bill authorizes the Maryland Department of the Environment (MDE) to impose severe fees on the owners of these buildings if they cannot convert off of natural gas (or other fossil fuel) service.

Of particular concern are the provisions in SB 528 that authorize a County to adopt covered building emission standards that are more stringent than those imposed by MDE (subject to MDE approval). *See* p. 64, lines 22-25; p. 67, lines 1-4. These provisions would authorize any county to impose a local natural gas ban on "covered buildings" pursuant to their own timeline.

Chesapeake Utilities operates natural gas local distribution companies that serve approximately 31,000 customers on Maryland's Eastern Shore in Caroline, Cecil, Dorchester, Somerset, Wicomico and Worcester Counties. These public utilities are regulated by the Maryland Public Service Commission (PSC) and have provided safe, reliable and affordable service in the State for decades. As a company, Chesapeake Utilities has pledged to operate as a positive and informed resource in the ongoing energy and climate change discussions. Moreover, Chesapeake Utilities is committed to being part of the solution as Maryland considers legislation addressing GHGs.

We believe that any purported benefits the bill allegedly might provide are outweighed by its costs. In addition, SB 528 is unnecessary because alternatives exist that can achieve greenhouse gas reductions in a practical and affordable manner; and under a realistic timeline that would not place the reliability of our electric grid at risk. Indeed, as amended, SB 528 directs the PSC to conduct a study to determine whether the State's electric grid is capable of accommodating the additional electric load created by mandating electrification of both existing and new buildings.

Local natural gas bans undermine the ability of the PSC to regulate gas utilities. Allowing counties to impose local natural gas bans on "covered buildings" will severely impact gas utility rates set by the PSC. Under Maryland law, the PSC has exclusive authority over the designing and setting of rates for all public utilities, including gas companies (PUA §§ 2-113 and 4-102). Public utility rates are set and designed based "cost of service studies" that consider the number of

[1] We are aware of only two other states (Colorado and Washington) that have enacted similar legislation – but those laws apply only to buildings 50,000 square feet or larger

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customers served and allocate costs across customer classes based on the number of customers in each class. Moreover, utilities generally serve customers in more than one county.

If a local government enacted a natural gas ban it would artificially restrict the gas company's ability to add new customers and artificially increase the costs to serve the gas companies existing customers both inside and outside of the particular county. In essence, a local government could thwart the gas company's ability to collect the rates the PSC authorized the company to charge.

It is true that local governments may enact local building codes that go beyond the State building code. However, a local government may not amend its local building code to such an extent that it would significantly impact the rates of a gas company lawfully set by the PSC. Such local action would violate the Constitutional requirement that State law preempts local laws (unless *expressly* allowed by State law). The Court of Appeals has pointed out on numerous occasions that a local government may not adopt any legislation that prohibits something permitted by the General Assembly. *See, City of Annapolis v. Annapolis Waterfront Co.,* 284 Md. 383, 391 (1979) and *Forest Heights v. Tillie Frank,* 291 Md. 331, 338 (1981).

The language allowing local governments to enact local building codes that impose energy performance standards that *exceed* the standards imposed by MDE would grant local governments *new* express authority they currently do not possess (*i.e.*, the authority to prohibit something permitted by the General Assembly). Notably, a September 27, 2021 Attorney General letter concluded that it is "not entirely clear" whether a local building code that banned natural gas would be impliedly preempted by the State law that provides the PSC with the exclusive authority to supervise and regulate the rates of public utilities.[2]

A local gas ban would frustrate the purpose of the statewide regulation of utilities by the PSC. The PSC is entitled to recognize the broader public interest of providing safe and reliable service to larger areas than just a single county. For the same reason, Maryland law does not allow local governments "local veto" authority over the location of electric distribution lines and generation stations. Finally, SB 528 directs the PSC to study the impact that forced electrification of existing buildings will have on the State's electric grid. Allowing local governments to mandate electrification of existing buildings puts the cart before the horse and would defeat the purpose of this PSC study.

SB 528 will significantly increase costs for owners of "covered buildings" and may not be technically feasible. According to the Maryland Commission on Climate Change ("MCCC"), direct use emissions from all buildings account for 13% of economy-wide GHG emissions in Maryland and commercial buildings account for only 7%.[3] To attempt to achieve this purported 7% reduction, SB 528 would impose significant costs on the owners of "covered buildings" – the MCCC estimated the cost of the HVAC equipment, building and grid upgrades required to reach the net-zero goal in the multiple billions of dollars. Notably, the MCCC grossly *under-estimated*

[2] Implied preemption occurs when a State law has occupied the entire field sought to be impacted by a local law.
[3] *See* E3's *Maryland Building Decarbonization Study*, September 16, 2021 at 5

the costs to retrofit existing buildings because it assumed (without justification) that retrofit heat pump costs would *decrease* by 37% by 2050 (and that heat pump performance would improve).[4] In this same analysis, the MCCC further *assumed* that natural gas rates in Maryland would increase over 20 times their current level.[5]

SB 528 unnecessarily eliminates energy choice, compromises Maryland's electric grid and fails to recognize alternatives. Today, Maryland building owners who live areas served by natural gas can choose to use gas or not. However, SB 528 assumes that forcing electrification on "covered buildings" is the best way to lower GHG emissions. On the contrary, the fact that natural gas has been replacing the use of dirtier fuels is a primary driver of lower emissions from the electric generation and commercial building sector.

Also, banning and reducing the use of natural gas will significantly increase the amount of electricity required to be delivered to Maryland customers. Delivering this increased amount for electricity into Maryland will require billions of dollars of annual investments in the State's electric transmission and distribution system. Electric transmission and distribution system planning is a complicated and time-consuming process – as it should be. It can take years to obtain the regulatory and federal/state/local permit approvals necessary to construct electric transmission lines, substations and related facilities. SB 528 would significantly increase the demand for electricity in Maryland - especially if multiple, large counties implement natural gas bans on "covered buildings." The PSC study required by the bill will analyze the impact of forced building electrification on the State's electric grid and customer rates. We submit that the Committee should delete the language imposing emission limits on "covered buildings" and await the outcome of this important study.

Finally, we note that natural gas companies want be part of the solution to lower GHG emissions. Chesapeake Utilities currently partners with developers of renewable natural gas projects in Delaware and Maryland that turn chicken litter and other organic material into pipeline quality natural gas. In addition, we recently completed a successful test that blended hydrogen into our gas supply system to power a combined heat and power unit. Chesapeake strongly supports these (and other) innovative advancements in technology and the continue utilization of the natural gas industry's vast delivery system to increase the likelihood of achieving net-zero targes while minimizing customer impacts.[6]

For these reasons, we respectfully request that the Committee delete the provisions in SB 528 that impose emission limits on "covered buildings."

[4] MCCC *Building Energy Transition Plan*, November 2021 at 15.

[5] *Id.* at 13.

[6] https://www.aga.org/netzero.