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COMMITTEE: EDUCATION, ENERGY, AND THE ENVIRONMENT

TESTIMONY ON: SENATE BILL 682 LIMITATIONS ON COST RECOVERY BY PUBLIC SERVICE COMPANIES AND REPORTS ON VOTES CAST AT MEETINGS OF REGIONAL TRANSMISSION ORGANIZATIONS (UTILITY TRANSPARENCY AND ACCOUNTABILITY ACT)

POSITION: OPPOSE

HEARING DATE: FEBRUARY 22, 2024

Washington Gas respectfully submits this statement in **OPPOSITION** to **Senate Bill 682**.

Washington Gas provides safe, reliable natural gas service to more than 1.2 million customers in Maryland, Virginia, and the District of Columbia. Washington Gas has been providing energy to residential, commercial, government, and industrial customers for more than 175 years, and currently serves more than 500,000 Maryland customers in Montgomery, Prince George's, Charles, St. Mary's, Frederick, and Calvert Counties.

Currently, the Maryland Public Service Commission prohibits lobbying costs from being recovered from rate payers. Washington Gas' primary concern related to SB 682 is the provision that a public service company may not recover through rates any costs associated with membership, dues, sponsorships or contributions to a business or industry trade association or group.

A public service company's trade association dues can and do benefit customers and, therefore, should continue to be recoverable. Most trade or business association activities are not related to lobbying and political activity. Trade organizations provide a variety of diverse services to a member that benefit both the member and its customers. Any dues paid to an association that are used for political advocacy are already disallowed, and therefore are not recovered from utility ratepayers, as the Commission reaffirmed in Case No. 9704 in December 2023. Utility trade groups provide programs and services directly related to improving safety, operational reliability and efficiencies, apprenticeship programs, critical infrastructure and cyber security, environmental stewardship and operator knowledge.

Specifically, Washington Gas' membership in the American Gas Association, for example, provides:

- The ability to participate in more than 50 committees, councils and task forces to exchange information with peer companies to enhance safety, address operational issues, reduce costs and better serve customers;

- Federal regulatory updates, industry studies, surveys and technical papers that illuminate best practices;
- Program “clearinghouse” services in safety, operational excellence, customer relations and satisfaction, cybersecurity protection, workforce training and development, and environmental sustainability;
- Mutual assistance programs and emergency planning resources;
- A large number of manuals and technical papers for the day-to-day operations of gas utilities;
- Consumer safety pamphlets, fact sheets, bill stuffers and other customer communications;
- Financial, accounting and insurance activities and support;
- A database of performance metrics on customer service functions such as call centers, energy assistance programs, billing, and meter reading; and
- Litigation alerts, legal forums and workshops.

The services provided by business or industry trade groups ultimately benefit rate payers through enhanced safety and best practices that reduce costs.

One of the biggest concerns with SB 682 are the First Amendment implications. SB 682 does more than limit recovery of certain costs. Rather, the bill imposes an expansive definition of “lobbying and political activities” that will have a chilling effect on utilities’ protected speech. The definition includes “any attempts to influence the general public, or segments thereof, with respect to elections, legislative matters, executive agency decision or referendums.”

In particular, the addition of “executive agency decisions” could be broadly construed to include rulemaking before the Public Service Commission or other state agencies. It is improper for a company to be permitted to participate in agency rulemaking processes but unable to recover those costs.

Additionally, the bill prohibits recover for marketing and advertising that “seek to influence public opinion or create goodwill towards the utility.” Utilities regularly engage in community service or charitable activities in the areas they serve. Communications about these activities may have the effective of creating goodwill for the utility. Parties may seek to have these costs excluded on this basis and this is contrary to decades of established practice and an important role of Maryland’s regulated utilities.

Despite prohibiting utilities from recovering for a wide variety of speech-related activities, the bill would require the companies to provide very detailed itemizations for all of the costs associated with these activities. Collectively, the expansive provisions in SB682 will prohibit utilities from engaging in protected speech on matters of important public interest. Political advocacy is protected under the First Amendment. See, e.g., *Bd. of Trustees of Leland Stanford Jr. Univ. v.*

Sullivan, 773 F. Supp. 472 (D.D.C. 1991). To the extent the bill chills a utility's political advocacy it is potentially unconstitutional in scope.

Finally, Washington Gas is also concerned with the provision preventing investor relations costs from being recovered through rates. Long-established Maryland precedent holds that utilities are allowed to recovery costs of service that are reasonably and prudently incurred and that are in the public interest. The Commission already reviews all costs in base rate cases and must reach an evidence-based decision before accepting or rejecting costs of service as a part of rates. This bill may therefore contravene U.S. CONST., amend. V, XIV (due process and taking clauses); and MD. CONST. DECL. OF RTS. art. 24.

Washington Gas respectfully requests that the Committee issue an unfavorable report on Senate Bill 682.

Contact:

Manny Geraldo, State Government Relations and Public Policy Manager
M 202.924.4511 | manuel.geraldo@washgas.com