



February 22, 2024

112 West Street
Annapolis, MD 21401

OPPOSE – 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)

Exelon and its utility delivery companies, Baltimore Gas and Electric (BGE), Potomac Electric Power Company (Pepco), and Delmarva Power & Light Company (Delmarva Power) oppose 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). Senate Bill 682 requires each electric company in Maryland to be a member of a regional transmission organization (RTO) and provide the Maryland Public Service Commission (PSC) with an annual report on votes cast by the electric company and its affiliates at a meeting of the RTO, including a brief description explaining how each vote cast by the electric company and its affiliates is in the best interest of the public. Additionally, Senate Bill 682 prohibits public service companies from recovering through rates various costs such as lobbying costs, membership dues/contributions or sponsorships associated with certain activities in Maryland and directs public service companies to report those costs to the PSC. Senate Bill 682 unfairly places additional burdens on Maryland utilities that are not applicable to other industries and conflicts with the Maryland Public Ethics Law’s definition and reporting of lobbying.

Regional Transmission Organization Membership

Senate Bill 682 is unconstitutional because it is pre-empted by the federal law that governs the transmission of electricity across the United States, including the operations of RTOs such as Pennsylvania-New Jersey-Maryland Interconnection (PJM). Senate Bill 682 requires each electric company in Maryland to be a member of PJM which is preempted on both a field and conflict preemption basis. Congress has preempted the field by granting FERC exclusive jurisdiction over all facilities for the transmission of electricity in interstate commerce under Section 201(b) of the Federal Power Act, 16 U.S.C. § 824(b). For questions of field preemption, the Supreme Court has emphasized “the importance of considering the target at which the state law aims in determining whether that law is pre-empted.” By requiring Maryland utilities to join an RTO, Senate Bill 682 requires the utilities to surrender operational control of their transmission assets to that RTO. Operating the transmission system operates is a defining characteristic of an RTO. The “target” of the legislation, then, is the operation of the transmission grid in Maryland, an activity exclusively regulated by FERC.

Second, Senate Bill 682 is also subject to a constitutionality challenge via conflict preemption. Congress and FERC created a carefully crafted balance relating to RTO membership. For example, Section 202(a) of the Federal Power Act authorized FERC “to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy.” The D.C. Circuit has concluded that this statutory language bars even FERC from mandating RTO membership under the Federal Power Act. Congress has made clear that joining an RTO is desirable and that it should be encouraged. Under Section 291(c), FERC is required “to the extent within its jurisdiction,

provide for incentives to each transmitting utility or electric utility that joins” an RTO. Senate Bill 682 contradicts this federally created careful balance of voluntary but encouraged RTO membership.

Additionally, Exelon believes this legislation violates the commerce clause. Pepco and Delmarva Power’s operations and systems cross state lines and their transmission assets cannot be easily disentangled. This extra-jurisdictional impact likely leads to a separate preemption argument under the Commerce Clause. The Commerce Clause limits the ability of states to enact legislation with impacts outside their boundaries. “[A] statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the legislature.

Finally, a requirement that Pepco and Delmarva Power join an RTO forces transmission assets in both Delaware and the District of Columbia into an RTO. Moreover, because these two utilities are the only FERC-jurisdictional transmission providers in Delaware and the District of Columbia, the Maryland law functionally forces an entire state and D.C. into an RTO. Because the transmission service is provided entirely outside the state of Maryland, there is a strong argument that this extra-jurisdictional effect means the statute violates the Commerce Clause and is preempted.

As discussed further below, it is worth noting that Ohio enacted a similar provision into law requiring a utility to be a member of PJM and that law is currently being challenged in the United States Court of Appeals for the Sixth Circuit. At a minimum, Maryland should consider postponing action on this legislation so that it can leverage the opportunity to be better informed by imminent actions of the federal appellate courts as opposed to inviting potentially unnecessary and duplicative litigation for no benefit to the citizens of Maryland.

Transparency in Utility Rate Setting

Senate Bill 682 is based on a predicate that is untrue—that utility expenditures and recovery of utility expenditures are not transparent. The very nature of being in a highly regulated industry, such as the utility industry, means utility expenditures and whether they are recoverable are highly scrutinized every time the utility goes in for a rate case. The PSC has the jurisdictional responsibility for setting distribution rates for utilities in Maryland. As the regulator, they have the authority to ask for all financial information when deliberating potential rate increases and make the determination of whether costs are considered above the line and recovered from customers or below the line and recovered from shareholders. In fact, the first bullet on the Public Service Commission’s website description of its mission statement is the following:

- Ensure that rates, terms, and conditions established for public service companies are just, reasonable, and transparent.

The PSC holds public hearings to allow utility customers and other interested persons the opportunity to provide comments or concerns on a pending case and the Maryland electric companies routinely get data requests from intervening parties, including PSC Staff and OPC, on our expenditures, including many of the items included within Senate Bill 682. The PSC thoroughly reviews these expenditures and in carrying out its mission, determines whether those expenditures are just and reasonable and should be recovered from customers.

Additionally, the prescriptive categories of expenditures that cannot be recovered compromises the regulated rate-making process and presents unintended risks that should be carefully scrutinized by the Commission. For example, investor relations play a significant role in securing and maintaining capital, which strengthens our ability to secure competitive financing to benefit customers. This funding is essential as we expand and strengthen the electric systems to achieve the aggressive goals of the Maryland Climate Solutions Act. Limiting the recovery of expenditures relating to the part of our organization that is directly responsible for assuring we can obtain the lowest cost of financing available is harmful to customers and harmful for the health of our utilities. In addition, to the extent we are unable to finance the amounts needed cost-effectively, our infrastructure investments may be reduced, adversely impacting third-party vendors throughout the supply chain as well as union and non-union labor.

These proposed provisions seem to usurp the Commission's authority over utility ratemaking, as set forth above, and purportedly prejudice prudence. Not allowing utilities the opportunity to recover all expenses associated with justly and reasonably provided distribution service to customers is inconsistent with the regulatory compact. For example, Senate Bill 682 improperly re-defines what constitutes lobbying for the utility industry. Lobbying costs, as defined by Maryland Ethics Law (Section 5-702 of the General Provisions Article), are currently not recoverable from customers. Re-defining what constitutes lobbying for a limited group of companies is inequitable and unnecessary. Many companies doing business in Maryland are the recipients of state funding, which is essentially paid for by all Maryland residents through taxes. Yet these companies are not subject to the much broader definition of lobbying included within Senate Bill 682.

Finally, SB682 requires public service companies to provide confidential information on employee salaries and contractor information, including for costs that are already excluded from recovery under existing precedent. Exelon has significant privacy concerns on behalf of its employees regarding this provision.

PJM Processes

PJM is a regional transmission organization, formed at the approval of the federal Energy Regulatory Commission (FERC), that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. As a member of PJM, there are regular meetings that are integral to developing and refining PJM's rules, policies, and processes. PJM is therefore federally regulated. The purpose of an RTO is to promote economic efficiency, regional energy grid reliability, and non-discriminatory wholesale energy markets. PJM holds over 400 stakeholder meetings annually. These meetings are open to the general public and are accessible both in person (for those meetings with an in-person option) and virtually. At the lower-level PJM committees and groups which are available for the public to watch and participate in, individual company votes are not recorded, but the votes are indicative only and non-decisional. Votes are taken purely to inform and encourage consensus building and brainstorming. This component of the stakeholder process is explicitly codified in PJM's governance manual referred to as Manual 34. All PJM processes and procedures are set forth in the PJM governing documents over which FERC has ultimate oversight. Final votes are taken at the Members Committee, which is the senior most standing committee, and their votes are recorded by company and are publicly available and published by PJM.

Requiring a utility to submit information to the PSC on every vote taken at PJM's lower-level committee meetings, subcommittees and task forces would subvert the collaborative process, stifle innovation and participation, and be a significant administrative burden and cost for little to no incremental benefit to the PSC for it to exercise its state regulatory jurisdiction and authority. Such a requirement would harm Maryland's voice in the PJM stakeholder process because it would undoubtedly have a chilling effect on

how Maryland utilities engage in looking for opportunities for consensus amongst the diverse entities that comprise the PJM stakeholder process. Exelon believes that companies would be unwilling to offer innovative or nascent proposals for discussion for fear of retribution on a vote taken and recorded at that level. Consequently, utilities and other entities from other PJM states that do not have such burdens would have an advantage over the utilities from Maryland in promoting the interests of their states, investors, municipalities, and cooperatives. Senate Bill 682 also directly conflicts with the FERC-jurisdictional PJM rules and code of conduct regarding the stakeholder process.

Furthermore, because Senate Bill 682 requires disclosure of BGE, Pepco, and Delmarva's affiliate activities, Senate Bill 682 overreaches by attempting to seek information from non-Maryland regulated companies in states in which they operate outside of Maryland. Finally, because PJM votes concern Exelon's transmission activities in the PJM region, which are subject to federal regulation, Senate Bill 682 seeks to control federally regulated activities that the state of Maryland cannot regulate.

Senate Bill 682 is unnecessary, overbroad, interferes with our ability to deliver reliable power safely and affordably, is administratively overburdensome and intrudes upon activity that is exclusively federally regulated. Exelon respectfully requests that the Committee issue an unfavorable report on Senate Bill 682.