DAVID S. LAPP
PEOPLE'S COUNSEL

WILLIAM F. FIELDS
DEPUTY PEOPLE'S COUNSEL

JULIANA BELL
DEPUTY PEOPLE'S COUNSEL

OPC
OFFICE OF PEOPLE'S COUNSEL
State of Maryland

6 ST. PAUL STREET, SUITE 2102
BALTIMORE, MARYLAND 21202
WWW.OPC.MARYLAND.GOV

BRANDI NIELAND
DIRECTOR, CONSUMER
ASSISTANCE UNIT

CARISSA RALBOVSKY
CHIEF OPERATING OFFICER

BILL NO.:	House Bill 960 – Investor-Owned Electric, Gas, and Gas and Electric Companies - Cost Recovery - Limitations and Reporting Requirements (Ratepayer Freedom Act)
COMMITTEE:	Economic Matters
HEARING DATE:	March 13, 2025
SPONSOR:	Delegates A. Johnson, Charkoudian, Embry, Guyton, S. Johnson, McCaskill, McComas, and Woorman
POSITION:	Favorable

****

The Office of People's Counsel ("OPC") supports House Bill 960, the Ratepayer Freedom Act, which would bring needed transparency and accountability to the operations of public service companies regulated by the Maryland Public Service Commission ("PSC").

Maryland's utilities, called "public service companies" in the Public Utilities Article,[1] are provided with State-granted monopolies to perform important public functions and must operate "in the interest of the public."[2] At the same time, Maryland's largest utilities 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 utilities are insulated from competition by their monopoly status, this discipline is absent. For these monopolies, "extensive government control" over prices, services, and operations "takes the place of competition and furnishes the regulation which competition cannot give."[3]

[1] *See* Public Utilities Article ("PUA") § 1-101(z).
[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."
[3] *Delmarva Power & Light Co. v. Pub. Serv. Comm'n of Md.*, 370 Md. 1, 6 (2002).

HB 960 furnishes regulation necessary to help evaluate whether Maryland's utilities are acting in the interests of their captive customers—and not just their shareholders—by (1) clarifying the costs associated with lobbying, political, and promotional activities that cannot be charged to ratepayers; and (2) expanding the information utilities are required to include in an annual report to the PSC.

I. Limitations on cost recovery from customers

Section 4-504 of the Act would prohibit an investor-owned utility from recovering, through customer rates, any costs associated with the following activities that are not fundamental to monopoly utility service:

1. membership, dues, sponsorships, or contributions to a governmental or quasi-governmental entity, business or industry trade association, group, or related tax-exempt entity, unless the PSC makes certain determinations;
2. lobbying or political activities, including support activities, such as policy research, analysis, preparation, and planning;
3. advertising, marketing, communications, or other related activities identified by the PSC that are directed toward selling services, promoting the addition of new customers, seeking additional use of the utility service, or influencing public opinion or creating goodwill, unless the company demonstrates during a rate case that an expenditure for these activities was directly beneficial to ratepayers and in the public interest;
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; and
7. investor relations, except the reasonable costs necessary and appropriate for the company to meet its performance obligations to customers.

Although current law and regulations already prohibit utilities from recovering some of these costs from customers,[4] the contours of these prohibitions are not entirely clear, and captive customers may be paying for corporate expenses that have no public or

[4] *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").

ratepayer benefit and are meant only to influence public opinion or engender good will toward the company.

For example, section 4-103(b) of the Public Utilities Article provides that a utility "may not charge off lobbying expenses against its ratepayers" but does not define what constitutes "lobbying expenses." PSC regulations provide more specificity, prohibiting utilities from including in customer rates the costs of "[c]haritable contributions, penalties, and lobbying expenses recorded in Account 426.1, 426.3, and 426.4, respectively, of the Uniform System of Accounts as prescribed by the Federal Energy Regulatory Commission ["FERC"].[5] FERC account 426.4 captures "expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances … or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials."[6] Notably, this category of expenses is far broader than the definition of "lobbying" under Maryland's Public Ethics Law, which is restricted to the direct lobbying activity of registered entities who "communicate" with an official or employee of the Legislative or Executive Branch and incur expenses or earn compensation above a certain amount.[7] Yet, Maryland's utilities appear to rely on the more limited definition of "lobbying" under the Ethics Law in categorizing which expenses are recoverable and which are not.[8]

OPC's experience in recent rate cases further illustrates the need for greater clarity about which corporate expenses utilities cannot recover from their customers:

- **Case No. 9692:** In Baltimore Gas and Electric Co.'s ("BGE") most recent multi-year rate case, BGE initially proposed to include in rates roughly $1 million annually in "external affairs" expenses.[9] When asked in discovery whether BGE considers any of these expense to be "lobbying costs," BGE responded that the company "has incurred some lobbying costs at the county and local government levels which were inadvertently left above the

[5] COMAR 20.07.04.08(B).
[6] 18 C.F.R. Part 101, account 426.4.
[7] General Provisions Article § 5-101(x) (referencing § 5-702).
[8] *See, e.g.* Exelon Testimony in Opposition to HB505 (Feb. 22, 2024), at 3 (arguing that lobbying costs are defined by Maryland's Ethics Law, and that HB 505 "improperly re-defines what constitutes lobbying for the utility industry"); BGE Response to OPC Data Request 51-07(a) (PSC Case No. 9692) (representing that the $338,369 in total compensation and expenses reported by BGE's registered lobbyists to the Maryland State Ethics Commission "cover[ed] all of BGE's lobbying expenses" for the 6-month lobbying period); Washington Gas Response to OPC Data Request 9-1(c), (PSC Case No. 9704) (representing that the $369,330.61 in total compensation and expenses reported by nine registered lobbyists "cover[ed] all expenses incurred by Washington Gas Light Company for legislative advocacy or legislative education during the November 2021 – October 2022 lobbying year").
[9] *Application of Baltimore Gas and Electric Company for a second electric and gas multi-year plan and other tariff revisions* (PSC Case No. 9692), Direct Testimony of BGE Witness David M. Vahos at 44, 59.

line" [i.e. in rates].[10] As a result, BGE moved roughly $60,000 annually "below the line" (i.e. out of rates).[11]

- **PSC Case 9704:** In Washington Gas's most 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"[12] The reason: the promotional advertising, Washington Gas argued, "produces new business" for the company, driving "cost-effective" gas line extensions to new, previously unserved locations.[13] 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"[14] while failing, according to OPC's expert witness, to demonstrate the advertising results in cost-effective gas line extensions.[15] 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 a portion of the company's dues to the American Gas Association ("AGA"). While Washington Gas proposed to disallow just 5.1% of the company's dues as attributable to AGA's lobbying expenses, the PSC instead accepted OPC's proposed disallowance of 25%, 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."[16]

- **PSC Case 9719:** In the Easton Utilities Commission's ("EUC") most recent rate case, discovery conducted by PSC Staff revealed that EUC

[10] BGE Response to OPC Data Request 51-05(c) (Case No. 9692).
[11] *Id.*
[12] *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).
[13] *Id.* at 60, lines 12-21 through 61, lines 1-2.
[14] 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).
[15] Direct Testimony of OPC witness Jerome D. Mierzwa at 17-20 (PSC Case No. 9704).
[16] Md. Pub. Serv. Comm'n Order No. 90943 at 68.

proposed to recover $32,880 of lobbying costs from ratepayers.[17] After both PSC Staff and OPC's expert witnesses opposed the inclusion of these costs in rates,[18] EUC agreed to remove the costs.[19]

- **PSC Case 9722:** In the Chesapeake Utilities' recent rate case, the companies sought to recover a total of $346,808 booked as "advertising" and "general advertising" expenses.[20] Through discovery, OPC learned that the total included a combined $40,728 in institutional advertising expenses and $21,444 in promotional advertising expenses—both types of advertising that are presumptively unrecoverable.[21] In response to OPC's discovery request, the company provided examples of the advertising, including the company's "Natural Gas Does More" campaign which promotes natural gas appliances such as stoves and water heaters, and institutional advertising highlighting the company's support for the American Heart Association and Black history month.[22] OPC's expert witness recommended that these expenses be excluded from rates because the companies failed to make the required demonstration that the advertising was directly beneficial to the ratepayer and in the public interest.[23] The company continued to press for recovery of these expenses, arguing in rebuttal testimony that the goal of the institutional advertising was "to provide positive benefits to the [companies'] customers and the communities [they] serve by supporting various diversity, health, and safety initiatives."[24] The case ultimately settled without any explicit resolution of these issues.

- **Case No. 9754:** In Columbia Gas's current rate case, the company seeks to recover all but 4.3% of its annual dues to the AGA.[25] The company proposed the 4.3% disallowance based on AGA's invoice, which labelled this percentage as supporting non-recoverable lobbying expenses.[26]

---

[17] EUC Response to Staff Data Request 15-5 (PSC Case No. 9719).
[18] *See, e.g.*, Direct Testimony of OPC Witness Jennifer L. Rogers at 11 (PSC Case No. 9719).
[19] Rebuttal Testimony of EUC Witness Steve J. Ochse at 2, lines 8-11 (PSC Case No. 9719)
[20] *Joint Application of Chesapeake Utilities Corporation – Maryland Division, Sandpiper Energy, Inc., and Elkton Gas Company* (PSC Case No. 9722), Exhibit 3: Schedule No. 3B-1.
[21] Chesapeake response to OPC Data Request 6-10 (PSC Case No. 9722).
[22] Chesapeake responses to OPC Data Requests 6-11, 6-12, 7-1, and 7-2 (PSC Case No. 9722).
[23] Direct Testimony of OPC witness Greg R. Meyer at 32-33 (PSC Case No. 9722).
[24] Rebuttal Testimony of Chesapeake witness Jonah Baugh at 12-13 (PSC Case No. 9722).
[25] *Application of Columbia Gas of Maryland, Inc. for Authority to Increase Rates and Charges* (PSC Case No. 9754), Direct Testimony of Columbia witness Elizabeth Davis at 30-31; Columbia Ex. 3 Supplemental, Sheet 10 of 22.
[26] Direct Testimony of Columbia witness Elizabeth Davis at 31 (PSC Case No. 9754).

Notably, however, the company proposed this minimal disallowance *after* the PSC's decision in the Washington Gas case discussed above. OPC's expert witness opposed the recovery of all but 4.3% of dues, recommending instead that—consistent with the PSC's decision in the Washington Gas case—the amount of AGA dues Columbia is able to recover be reduced by 25%.[27] The case is still pending before the Public Utility Law Judge.

As these examples demonstrate, utilities may seek to include in rates expenses associated with lobbying, political, and promotional activity—*even* those prohibited under current law— unless and until they are challenged in litigation. Practically, this spending is difficult 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, OPC is 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.[28] OPC suspects, but does not know, that there could be similar situations in Maryland, but they are hard to identify. OPC supports the necessary clarity HB 960 provides about appropriate cost recovery 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 lobbying, political, and promotional expenses

Section 6-211 of the Act would require a public service company to make transparent its spending on the activities described in § 4–504, requiring that any investor-owned public service company in the State include as part of its annual report to the PSC an itemized list of the relevant expenditures. Importantly, the itemized list would include both costs incurred by the company directly as well as those incurred by a parent company or affiliate and billed to the company; and both the cost of allocated employee time and all payments to third-party vendors.

But knowing which costs a company has voluntarily labeled as unrecoverable does not in itself prove that the costs the company *does* seek to recover from customers are

[27] Direct Testimony of OPC Witness Greg R. Meyer at 14-15 (PSC Case No. 9754).
[28] *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").

appropriate. To enable the PSC, OPC, and other parties to evaluate whether the utilities are appropriately categorizing their expenses as recoverable, section 6-211 would also require an investor owned utility to report on (1) expenses associated with advertising, marketing, or other communications that are either informational in nature or seek to gather information from customers, and include the advertising message itself; and (2) all legislation or political campaigns, at either the State or local level, on which the company engaged in lobbying or political activities.

The utilities currently provide some of this information through existing reporting pathways—in a rate case, annual reports required by PUA § 6-205, or biannual reports to the Maryland Ethics Commission—but existing reporting requirements are insufficient to allow for meaningful review. For example, the annual reports utilities provide to the PSC pursuant to PUA § 6-205 contain only top line expenses, not the line-item detail HB 960 would require. Biannual lobbyist activity reports to the Maryland Ethics Commission are filed on an individual basis, with no one report detailing the totality of a utility's lobbying efforts. Moreover, these reports are not reliably completed[29] and reflect only the activity and expenses of *registered* lobbyists, a far narrower class of activity and expenses than those PSC regulations preclude from cost recovery.

As the examples above demonstrate, OPC and PSC Staff can and do obtain additional information on certain expenses through litigation, but questioning individual expenses is neither an efficient use of resources nor likely to catch all potentially problematic expenses. In the context of complex rate cases, these costs are not often big-ticket items, 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 the PSC, OPC, and other parties more effectively review utility spending and ultimately better protect the captive customers of a public service company from paying for activities that are not to their benefit or contrary to State policy.

Recommendation: OPC requests a favorable Committee report on HB 960.

[29] *State Transparency Report Card: Maryland*, F Minus, https://fminus.org/state/maryland/; *Politics of Power II: Gas and Electric Utilities' Political Spending in Maryland*, Maryland PIRG Foundation (Mar. 4, 2025) at 5, https://publicinterestnetwork.org/wp-content/uploads/2025/03/Politics-of-Power-II-Maryland-PIRG-Foundation.pdf.