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**COMMITTEE: ECONOMIC MATTERS**

**TESTIMONY ON: HOUSE BILL 960: INVESTOR-OWNED ELECTRIC, GAS, AND GAS AND ELECTRIC COMPANIES - COST RECOVERY - LIMITATIONS AND REPORTING REQUIREMENTS (RATEPAYER FREEDOM ACT)**

**POSITION: OPPOSE**

**HEARING DATE: THURSDAY, MARCH 13<sup>TH</sup> AT 1:00 P.M.**

WASHINGTON GAS RESPECTFULLY SUBMITS THIS STATEMENT IN **OPPOSITION** to House Bill 960: Investor-Owned Electric, Gas, and Gas and Electric Companies - Cost Recovery - Limitations and Reporting Requirements (Ratepayer Freedom Act) (HB 960)

**Background**

HB 960 would prohibit investor-owned gas and electric companies from recovering lobbying and political activity costs, trade association dues, marketing or advertising costs, entertainment or gift costs, and travel, lodging, and food costs through customer rates and require utilities to file an annual report to the Maryland Public Service Commission (PSC) detailing these costs.

**Position**

The Maryland Public Service Commission's ("PSC") has authority to determine the prudence and recovery of utility costs in the current process for utility ratemaking, including lobbying costs. *The PSC already prohibits the recovery of lobbying costs in base rates as the Commission reaffirmed in Case No. 9704 in December 2023.* Washington Gas' primary concern related to HB 960 is the provision that a public service company may not recover through rates any costs associated with business or industry trade association groups.

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. 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.

Washington Gas is an active member and participant in national trade associations, such as the American Gas Association, which provides:

- 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 ratepayers through enhanced safety and best practices that reduce costs.

HB 960 raises First Amendment concerns. HB 960 does more than limit recovery of certain costs. In addition, the bill imposes an expansive definition of “lobbying and political activities” that will have a detrimental effect on utilities’ protected speech. The definition includes “any attempts to influence any segment of the general public” with respect to an election, a legislative matter, an executive agency decision, an ordinance, a referendum, an appointment or removal of a public official, or the approval, modification, or revocation of franchises.

In particular, the addition of “an executive agency decision” could be broadly construed to include rulemakings before the PSC 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 would prohibit recovery for marketing and advertising that are directed toward “influencing public opinion or creating goodwill toward the company.” Utilities regularly engage in community service or charitable activities in the areas they serve. Communications about these activities may have the effect of creating goodwill for the utility. Parties may seek to have these costs excluded on this basis, which is contrary to decades of established practice and would undercut an important role of Maryland’s regulated utilities in engaging in community outreach.

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 the costs associated with these activities. Collectively, the expansive provisions in HB 960 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 concerned with the provision preventing investor relations costs from being recovered through rates. Long-established Maryland precedent holds that utilities are allowed to recover 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 HB 960.

## **Conclusion**

At Washington Gas Light Company, our core values are safety, collaboration, integrity, inclusion, and learning and we are committed to working with stakeholders to help achieve Maryland's GHG emissions reduction targets. These efforts require collaboration with other utilities and industry experts, as well as broad communication with our customers. These interactions are made possible through membership in trade associations and a wide variety of speech-related activities. Disallowing cost recovery would be a detriment to both the utilities and their customers.

## **ADDENDUM: PROPOSED AMENDMENTS**

Apply Subsection D, which allows for the utility to recover the listed costs through rates if they demonstrate the costs were directly beneficial to the ratepayer, in the public interest, and necessary to meet performance obligations, to all the costs listed instead of just for marketing and advertising costs.

- Section 4-504 (C): **Except as provided in subsection (D) of this section**, a public service company may not recover through rates any costs associated with:
- Section 4-504 (C)(3): ~~Except as provided in subsection (D) of this section~~, Advertising, marketing, communications, or other related activities identified by the commission that are directed toward:
- Section 4-504 (D)(1): reasonable costs for the activities specified in Subsection (C)(3) of this section if the public service company demonstrates during a rate case that an expenditure for these activities was directly beneficial to the ratepayer and in the public interest;

Broaden the ability for utilities to recover costs by amending Section D to state “or” instead of “and”

- Section 4-504 (D)
  - (1) reasonable costs for the activities specified in Subsection (C)(3) of this section if the public service company demonstrates during a rate case that an expenditure for these activities was directly beneficial to the ratepayer and in the public interest; ~~and~~ **or**
  - (2) the reasonable costs of investor relations necessary and appropriate for the public service company to meet its performance obligations to customers.

Simplify reporting requirements by focusing on significant expenditures rather than itemizing all costs, and removing redundant language around reporting marketing advertising, and political costs.

- Section 6-211 (C) A Public Service Company Shall List in The Annual Report Required Under § 6–205 Of This Subtitle All ~~Itemized~~ Costs Associated with the Activities Described In § 4–504 Of This Article, Including:

- (1) The Costs Spent by The Parent Company or Affiliates of The Public Service Company That Are Directly Billed or Allocated to The Public Service Company;  
and
- ~~(2) The Title, Job Description, And Salary of Any Public Service Company Employee Who Performed Work Associated with the Activities Described In § 4-504 Of This Article, Including the Hours Attributed to the Work;~~
- ~~(3) The Title, Job Description, And Salary of Any Employee of The Parent Company Or Affiliate Of The Public Service Company Who Performed Work Associated With The Activities Described In § 4-504 Of This Article, Including The Hours Attributed To The Work That Were Directly Billed Or Allocated To The Public Service Company;~~
- (4) (2) The Payments that the Public Service Company Made to All Third-Party Vendors for any Expenses Associated with The Activities Described In § 4-504 Of This Article, ~~Including Unredacted Billing Amounts, Billing Dates, Payees, And An Explanation Of Each Expenditure In Detail Suffieient To Describe The Purpose Of The Cost;~~
- ~~(5) All Costs Associated with Advertising, Marketing, Communications, And Other Related Activities Identified by The Commission That:~~
  - ~~(I) Are Directed Toward Informing Customers of Charges and Conditions of Service, Safety Precautions, Energy Conservation, Temporary or Emergency Conditions, Employment Opportunities, Rate Cases, Annual Reports, or Legal and Financial Matters; or~~
  - ~~(II) Seek to Gather Information from Customers;~~
- ~~(6) All Legislation or Political Campaigns, At the State or Local Level, On Which The Public Service Company Engaged In Lobbying or Political Activities; And~~
- ~~(7) Any Other Information the Commission Considers Relevant.~~
- ~~(D) (1) Each Entry Included Under Subsection (C)(5) of This Section Shall Include Supporting Documentation that Identifies the Specific Advertising Message or Messages.~~
  - ~~(2) Each Entry Included Under Subsection (C) of This Section Shall Include All Federal Energy Regulatory Commission Uniform System of Accounts Codes For Which:~~
    - ~~(I) Compensation Was Recorded for The Employee; or~~
    - ~~(II) Expenses Were Recorded for A Third Party Vendor Or Relevant Advertising Activity~~

New Language (all strikethrough language removed):

- Section 6-211 (C) A Public Service Company Shall List in The Annual Report Required Under § 6-205 Of This Subtitle All Costs Associated with the Activities Described In § 4-504 Of This Article, Including:
  - (1) The Costs Spent by The Parent Company or Affiliates of The Public Service Company That Are Directly Billed or Allocated to The Public Service Company;  
and

- (2) The Payments that the Public Service Company Made to All Third-Party Vendors for any Expenses Associated with The Activities Described In § 4–504 Of This Article

### **About Washington Gas Light**

Washington Gas Light Company 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 176 years, and currently serves more than 500,000 Maryland customers in Montgomery, Prince George's, Charles, St. Mary's, Frederick, and Calvert Counties. The Company employs over 400 people within Maryland, including contractors, plumbers, union workers, and other skilled tradespeople. We strive to improve the quality of life in our communities by maintaining a diverse workforce, working with suppliers that represent and reflect the communities we serve, and giving back through our charitable contributions and employee volunteer activities. The Company, together with other natural gas distribution utilities, are responsible for delivering the primary source of heat to Maryland residential energy consumers, serving approximately one half of all Maryland households while providing critical energy services to residential, commercial, and industrial customers at one-third the cost of electricity on a per unit basis.<sup>1</sup>

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<sup>1</sup> DOE. [Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy](#) (Aug. 28, 2023).