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People's Counsel Calls on Public Service Commission to Investigate FirstEnergy Scandal, Consider Requiring Corporate Divestiture

(May 11, 2021) — The Maryland Office of People's Counsel today petitioned the Public Service Commission to open an investigation into the circumstances of FirstEnergy Corp.'s ownership of Potomac Edison, a public utility serving more than a quarter million customers in Western Maryland. Ohio-based FirstEnergy has been embroiled in a far-reaching racketeering and bribery scandal related to Ohio legislation supporting its troubled nuclear plants. The scandal has resulted in federal criminal charges, civil and regulatory proceedings in multiple states, and the termination of FirstEnergy's chief executive officer and other executives.

“A full investigation of the FirstEnergy scandal is needed to ensure Potomac Edison can fully perform for Maryland ratepayers and to protect them from the financial woes of its owner,” said People's Counsel David S. Lapp. “The Commission should immediately open up a proceeding to assess the harm that the bribery scandal has caused to Potomac Edison's financial standing and all additional risks caused by its affiliation with FirstEnergy. The Commission is uniquely positioned to ensure that Maryland customers are protected from the consequences of the scandal.”

FirstEnergy may have financed some of its bribery payments to Ohio officials with ratepayer funds, according to trade press reports. FirstEnergy also has acknowledged in recent SEC filings that it is discussing a deferred prosecution agreement with the U.S. Department of Justice in connection with the scandal. The scandal's financial ramifications have caused rating agencies to downgrade FirstEnergy's—and Potomac

Edison’s—credit ratings, including a below-investment grade rating, and FirstEnergy to borrow nearly \$2 billion. These ramifications potentially affect the ability of Potomac Edison to serve Maryland customers and its cost to do so, OPC’s filing states.

FirstEnergy’s scandal arose as the company was facing increasing financial problems related to the costs of decommissioning its nuclear plants. The Ohio legislation FirstEnergy sought to influence through the alleged racketeering scheme placed financial responsibility for the nuclear costs on Ohio customers.

Adding to the uncertainty and risk for Maryland ratepayers is an agreement FirstEnergy recently entered into with notorious “corporate raider” Carl Icahn, giving Icahn designees two seats on FirstEnergy’s corporate board. The utility has not requested Commission approval—instead seeking to downplay the influence Icahn and his designees will have over the utility. The agreement requires Commission approval, according to OPC’s filing.

“The Commission should consider as part of its investigation the full range of its remedies to make sure Potomac Edison fully performs for Maryland ratepayers and to protect customers from FirstEnergy’s financial problems,” Lapp said. “Those remedies could include requiring the corporate divestiture of Potomac Edison from FirstEnergy, providing refunds owed to any customers for costs associated with the scandal, and adopting other measures to reduce FirstEnergy’s influence over the utility and protect ratepayers.”

The Maryland Office of People’s Counsel is an independent state agency that represents Maryland’s residential consumers of electric, natural gas, telecommunications, private water and certain transportation matters before the Public Service Commission, federal regulatory agencies, and the courts.

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