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1. Who is FirstEnergy and what is its connection to Maryland?

Akron, Ohio-based FirstEnergy is the owner of Potomac Edison, the electric utility serving Western Maryland. FirstEnergy owns nine other utilities that operate in Ohio, Pennsylvania, West Virginia, and New Jersey. It also owns companies that sell services to its utilities, such as FirstEnergy Services Company (FESC). Potomac Edison customers pay for services FESC provides to Potomac Edison in their electric rates.

2. What is the FirstEnergy scandal?

FirstEnergy has admitted to a \$60 million bribery scheme to pay the Ohio Speaker of the House and the chair of the Ohio Public Utilities Commission to win support for measures, including legislation (House Bill 6), that helped its nuclear plants. The scandal resulted in federal criminal charges, civil and regulatory proceedings in multiple states, shareholder actions, and the termination of FirstEnergy's chief executive officer and other executives. In July 2021, FirstEnergy agreed to pay a \$230 million criminal fine under a "deferred prosecution agreement" with federal authorities. The scandal has been widely written about in Ohio and the energy press. [Here](#) is one article discussing Potomac Edison and the Maryland investigation.

3. Do we know how much Maryland's Potomac Edison customers paid to help fund the bribery scandal?

No. A FirstEnergy employee told Potomac Edison that only \$38,000 in funds used to pay for the Ohio bribery scheme were included in the amount of annual rates that Potomac Edison's Maryland customers currently pay. At OPC's request, the PSC agreed to open an investigation into that claim. OPC tried for almost six months to understand how FirstEnergy determined the \$38,000 figure, but Potomac Edison and FirstEnergy prevented OPC's efforts at nearly every turn. Potomac Edison claimed that information related to how Potomac Edison calculated these charges was controlled by FirstEnergy—even though the costs being paid are borne by Potomac Edison customers—and therefore did not have to be disclosed. However, regardless of the actual amount of bribery funds included in Maryland rates, it is undisputed that Maryland customers continue to pay annually for the bribes that were paid, to this day. Maryland customers will not be relieved of this burden until new Potomac Edison rates go into effect, which won't be until late 2023.

Moreover, the Maryland investigation has revealed millions of dollars in charges from FESC to Potomac Edison that Potomac Edison has been unable to explain. In one example, Potomac Edison refused (or is unable) to say what it got for the \$6.83 million it paid FirstEnergy and accounted for as “Non-Third Party Vendors.”

4. Does the scandal have other effects on what Maryland customers pay in their rates?

We don’t know, and it remains unclear if Potomac Edison knows either. Potomac Edison has filed a rate case that includes refunds of amounts collected from its customers and used to fund FirstEnergy’s bribery. The rate case also includes refunds associated with “additional reviews” of amounts that were erroneously allocated to Potomac Edison customers. Potomac Edison has not provided documentation to show that amounts identified as part of any of their reviews constitute the total amount wrongfully charged to Potomac Edison customers. It also has not stated why the amounts discovered in the “additional reviews” were not included in its initial analysis. While FESC provides services to Potomac Edison and FirstEnergy’s other utilities, Potomac Edison appears to have little or no oversight over, but rather simply pays—with customer dollars—whatever costs the FESC imposes. Several ongoing cases, audits, and investigations in other jurisdictions, including a federal audit completed in February 2022, have similarly found that FirstEnergy’s utilities have few cost controls over charges imposed by other FirstEnergy companies.

5. Is Potomac Edison fixing the problems so customers are not exposed to excessive costs from its affiliates in the future?

Other than Potomac Edison’s proposals to refund customers for the bribery money that they have paid and continue to pay in its rate case, Potomac Edison has been unwilling or unable to demonstrate that it has taken steps necessary to ensure that no additional improper costs from FirstEnergy or FESC will be passed on to its customers in the future. OPC’s investigation has revealed no systems in place to ensure Potomac Edison’s and its customers’ interests are protected against FirstEnergy or FESC’s errors or misconduct. In fact, in its rate case, Potomac Edison confirmed that individuals from FirstEnergy and FESC still have full control and oversight of the cost allocation process from FESC to Potomac Edison.

6. What about investor Carl Icahn’s acquisition of hundreds of millions of dollars of FirstEnergy stocks and the special FirstEnergy board seats he now controls?

Carl Icahn recently acquired a large share of FirstEnergy stock, and to avoid a potential proxy fight, FirstEnergy entered into a shareholder agreement giving Icahn’s designees two seats on its corporate board along with unique rights not enjoyed by any other FirstEnergy board member. Maryland law requires the PSC to review an acquisition that allows a person to exercise “substantial influence” over a Maryland public utility to determine whether the acquisition is “consistent with the public interest” and includes consumer benefits and no harm.

7. What has been learned from the investigation the PSC authorized in the summer of 2021?

The investigation has raised alarm bells about Potomac Edison’s relationship with its parent company. The documents and responses to OPC’s questions show that Potomac Edison has little independence from its corporate parent—a disturbing fact given the parent company’s admissions of egregious lawbreaking. Potomac Edison has largely stymied efforts to investigate the extent and source of the improper cost allocations, refusing to share documents and information on the grounds that they belong to FirstEnergy. Potomac Edison has frequently cited an internal FirstEnergy investigation, claiming that it makes this proceeding, or any reforms, unnecessary. However, Potomac Edison claims that it does not have the report and has refused to provide it to the parties to the PSC investigation. The PSC denied OPC’s request for an order compelling Potomac Edison to provide it.

8. What is the status of other investigations of FirstEnergy?

Several other investigations continue, including by the Securities and Exchange Commission, IRS, the Department of Justice, the Ohio Public Utilities Commission, the Ohio Attorney General, the West Virginia Public Service Commission, and the Pennsylvania Public Utility Commission. In February 2022, the Federal Energy Regulatory Commission issued an extensive audit report describing significant problems with FirstEnergy service company’s charges to its public utilities. FERC proposed dozens of remedial recommendations, many of which FirstEnergy accepted, although the results remain to be seen. In connection with this audit, FERC fined FirstEnergy over \$3 million in December 2022 for violating its duty of candor by withholding critical information from FERC’s auditors. The New Jersey Board of Public Utilities also retained an independent auditor to review FirstEnergy’s relations with FirstEnergy’s New Jersey utility subsidiary and opened a docket based on the auditor’s findings in February 2023. Among many significant findings, the auditor found that New Jersey’s subsidiary was not sufficiently protected from FirstEnergy, and that FirstEnergy exhibited an “extraordinary lack of transparency” in connection with the audit.

9. What has the Public Service Commission done about the scandal?

On July 24, 2021, the PSC granted, in part, OPC’s May 11, 2021, petition to open an investigation. The PSC limited the scope of the investigation to just three issues, allowing four months of discovery. The order also ruled out certain remedies OPC said should be considered depending on how the investigation played out. The PSC is now reviewing written comments and considering if the investigation should continue.

10. What is OPC asking the Public Service Commission to do?

The investigation shows that PSC action is required to ensure Potomac Edison is engaged in—and capable of—properly performing its public service company mission as the beneficiary of an exclusive franchise under Maryland law. Potomac Edison’s primary obligation is to furnish electric utility services to its Maryland customers that are safe and adequate at costs that are just, reasonable, economical, and efficient. A key question remaining—among others—is the extent to which Potomac Edison customers have wrongfully funded FirstEnergy’s political activities.

To resolve that question, among other actions, OPC is asking the PSC to expand the investigation to include FirstEnergy and its service company. OPC has asked the Commission to require Potomac Edison to undergo an independent and shareholder-funded audit of all charges imposed on Potomac Edison by FESC. OPC is also asking the PSC to open the required statutory proceeding to review whether Icahn’s acquisition of substantial influence over Potomac Edison is in the public interest and will benefit Potomac Edison’s customers.

11. Are there other parties in the PSC case supporting further investigation?

Yes. Montgomery County filed comments stating that it “shares OPC concern that Potomac Edison lacks a process to prevent this from happening again” and asked the PSC to keep its investigation open. Solar United Neighbors of Maryland (MD SUN) and energy companies IGS Energy and Vistra Corp. also submitted briefs calling on the PSC to broaden the investigation and require an independent audit.

12. How can I learn more about the Maryland investigation and the case before the PSC?

OPC’s initial post-discovery brief, which summarizes the record developed over the course of the investigation, can be found [here](#). OPC’s request for rehearing of the Commission’s May 2023 order ending the investigation is available [here](#). Other documents can be obtained through the [PSC’s website](#) under Case No. 9667.

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