Md. Consumer Advocate Spotlights Utilities' Links to Fossil Fuel Companies and Insurrectionists

By **Josh Kurtz** - September 8, 2021

A Stop The Steal sign is inside the U.S. Capitol Building after a pro-Trump mob broke into the U.S. Capitol on Jan. 6. Photo by Jon Cherry/Getty Images.

At first, it sounds like the typical arcana associated with the regulation of gas and electric utilities: The Maryland Office of People's Counsel (OPC) last week intervened in a case before the Federal Energy Regulatory Commission (FERC) dealing with industry trade associations.

But the filing by the OPC, the state agency that represents consumers in legal cases and regulatory proceedings involving utilities, touches on several high-profile and very current issues, including climate change, the Jan. 6 insurrection at the U.S. Capitol, and political corruption.

At its most basic level, the OPC is seeking to prevent electric and gas utilities from passing the cost of their political activities, including hefty membership fees to trade associations, to their ratepayers.

"Under current accounting rules, customers may unknowingly and unjustifiably pay for utility trade association political efforts," said Maryland People's Counsel David S. Lapp.

Lapp said the utilities' current reliance on fossil fuels and the support by powerful trade groups, including the Edison Electric Institute and the American Gas Association, of policy arguments advanced by the fossil fuel industries, are especially troubling.

"In the past, trade associations have funded efforts to deny climate change and thwart policies to reduce greenhouse gas emissions, and customers have paid for those efforts," he said. "That has to stop."

OPC's filing last week was in support of a petition the Center for Biological Diversity filed with FERC in March, asking the agency for changes to rules that now result in customers automatically paying for trade association dues and that prevent consumer advocates — such as OPC — from scrutinizing trade group expenditures. The proposed changes to FERC's accounting rules would make trade association dues unrecoverable unless the utility shows they benefit customers.

The environmental group also cited the trade groups' ties to the fossil fuel industry.

"It's time to stop forcing people to support anti-environment trade groups that stand in the way of the urgently needed transition to clean energy," said Howard Crystal, legal director of the Center for Biological Diversity's Energy Justice program. "Often those groups are working directly against the customers' own interests."

But the Center for Biological Diversity is also linking the Edison Electric Institute with the Jan. 6 riot at the U.S. Capitol, noting the trade group's financial support for the Republican Attorneys General Association, which, according to the Associated Press, put out robocalls urging supporters to attend the "Stop the Steal" rally that preceded the storming of the Capitol.

Less than a week after the insurrection, the Energy and Policy Institute, a group supporting renewable energy, reported that utilities' trade associations and political action committees gave more than $6.8 million in the last three election cycles to the 147 congressional Republicans who voted in favor of President Trump's efforts to overturn the 2020 election results.

Among utilities and their trade associations, the National Rural Electric Cooperative Association, the trade organization for Southern Maryland Electric Cooperative and Choptank Electric Cooperative on the Eastern Shore, was the top giver to members of Congress who voted against certifying President Biden's election.

Lapp said that in 2020, the utilities owned by Exelon (in Maryland, they are Pepco, BG&E and Delmarva Power) reported paying $1.233 million for "industry dues," according to FERC filings. That amount is recovered from all of Exelon's Maryland customers through FERC-approved transmission rates.

Lapp said the OPC had yet to compile statistics on dues that other Maryland utilities and their parent companies have paid to trade groups.

"We don't know what political efforts customers may be funding now through utility trade association dues," he said. "Customers should not pay dues for political advocacy or other activities that don't support their utility service."

State consumer protection agencies in California, Illinois, Michigan, Nevada, Ohio, Oregon and Wisconsin have also intervened in the Center for Biological Diversity's case with FERC against the utility companies. But the utilities, unsurprisingly, oppose efforts to change the accounting rules and they argue that ratepayers benefit from their membership in industry trade associations.

In a filing in response to the Center for Biological Diversity's case, Exelon warned that without trade associations serving as a conduit, energy companies might not be able to cooperate on critical functions like sending line workers to areas where the power has gone out, or on strategic issues like how to deal with cyber attacks.

"As the electric power industry confronts difficult technical and economic challenges ahead, including cybersecurity, and integration of off-shore wind and distributed energy resources, trade associations and trade association staff will play an important role on working with members on education and policy coordination," the company's six-page filing reads.

In an email to *Maryland Matters* on Tuesday, Mark H. Durbin, a senior consultant to FirstEnergy Corp., the parent company of another Maryland utility, Potomac Edison, said, "Memberships in trade associations provide benefits to customers as well as utilities." He added that while FERC's existing accounting rules do allow passing trade association costs along to consumers, ratepayers are generally not paying for political activities and lobbying.

The brief that OPC filed last week also makes mention of a recent political scandal in Ohio that brought down the then-speaker of the House, Larry Householder (R). Householder was expelled from the legislature in June after being arrested with four political operatives in July 2020. They were charged in a federal criminal complaint for accepting $61 million in bribes from a subsidiary of FirstEnergy to get a $1.5 billion nuclear bailout from taxpayers.

The OPC brief argues that the bribery case highlights why ratepayers should not be on the hook for utilities' political activities. In the wake of the scandal, FirstEnergy last month agreed to pay a $230 million criminal fine under a "deferred prosecution agreement" with federal authorities.

Earlier this summer, the Maryland Public Service Commission, which regulates utilities, said it would, at the OPC's request, open an investigation into the impact of FirstEnergy Corp.'s corruption scandal on Potomac Edison, the electric utility for Western Maryland,

"Potomac Edison customers deserve to be assured they have not been and will not in the future be affected by the wrongful conduct of their utility's out-of-state owners," Lapp said.

jkurtz@marylandmatters.org

Josh Kurtz

Founding Editor Josh Kurtz is a veteran chronicler of Maryland politics and government. He began covering the State House in 1995 for *The Gazette* newspapers, and has been writing about state and local politics ever since. He was an editor at *Roll Call*, the Capitol Hill newspaper, for eight years, and for eight years was the editor of *E&E Daily*, which covers energy and environmental policy on Capitol Hill. For 6 1/2 years Kurtz wrote a weekly column on state politics for *Center Maryland* and has written for several other Maryland publications as well. Kurtz regularly gives speeches and appears on TV and radio shows to discuss Maryland politics.