

ORDER NO. 89930

Petition of The Maryland Office of	*	BEFORE THE
People’s Counsel to Investigate the Future	*	PUBLIC SERVICE
of First Energy’s Relationship with	*	COMMISSION
Potomac Edison in Light of Recent Events	*	OF MARYLAND
	*	_____
	*	CASE NO. 9667
_____		_____

Issue Date: September 3, 2021

ORDER GRANTING MOTION TO INTERVENE

1. On May 11, 2021, the Office of People’s Counsel (“OPC”) petitioned the Commission to open an investigation into the future relationship between FirstEnergy Corp. (“FirstEnergy”) and The Potomac Edison Company (“Potomac Edison”).¹ This Petition arose out of a series of reported scandals involving alleged activities by FirstEnergy executives in the State of Ohio.

2. On July 26, 2021, the Commission issued Order No. 89888, which granted OPC’s motion in part. Specifically, the Commission approved discovery of Potomac Edison for no longer than four (4) months regarding:

- a. The extent that any results of the scandal have affected, or might in the future affect, Potomac Edison’s cost to access funds from First Energy’s “money pool”;
- b. Whether and to what extent FirstEnergy used, is using, or intends to use any funds from Potomac Edison to pay for the bribes, lobbying costs, legal fees or any other costs associated with the misconduct by FirstEnergy; and

¹ OPC Petition for First Energy Investigation, May 11, 2021, Maillog No. 235219.

c. The extent to which the “Icahn Agreement” may potentially cause the Icahn-appointed directors to exercise “substantial influence” over Potomac Edison as set forth in PUA § 6-105.²

3. The Commission also allowed any third-party that wished to intervene to do so within 20 days of the date of the Order.

A. Petition to Intervene by Solar United Neighbors of Maryland and Potomac Edison’s Opposition

4. On August 16, 2021, Solar United Neighbors of Maryland (“MD SUN”) petitioned to intervene in the proceedings. MD SUN is a chapter of Solar United Neighbors, and its goals are “to promote community-based solar projects in key locations across the state and use those projects to inspire, educate and mobilize citizens and elected leaders in Maryland to support policies that expand access to solar in every part of the state.”³

5. MD SUN’s petition claimed that First Energy’s actions (particularly through Ohio House Bill 6) intended to favor generation plants in the competitive markets to the detriment of renewable energy markets. This misconduct therefore “directly harmed both Ohio’s renewable energy program as well as Ohio’s energy efficiency programs.”⁴

6. MD SUN seeks to intervene in this proceeding to determine whether any of First Energy’s political and charitable spending has impacted the competitive market and the clean energy resources available to MD SUN’s members.⁵ It contends that no other party can adequately represent its members’ interest due to its unique area of expertise.⁶

² Order No. 89888 at 7.

³ Motion to Intervene at 3.

⁴ *Id.* at 1.

⁵ *Id.* at 4.

⁶ *Id.*

7. On August 20, 2021, Potomac Edison filed an Opposition to the Motion to Intervene. It argues that MD SUN's motion establishes that MD SUN intends to use these proceedings to develop issues unrelated to the three limited issues for which the Commission opened the investigation.⁷ Potomac Edison cites to the Commission's decision regarding a petition to intervene by the Local Union of the International Brotherhood of Electrical Workers ("IBEW") in Case No. 9361 for the proposition that granting MD SUN's petition would only divert the focus of this proceeding from the limited issues the Commission identified.⁸

8. Potomac Edison further contends that MD SUN failed to identify any of its members that are located within Potomac Edison's service territory, and that to the extent MD SUN members exist within Potomac Edison's territory, OPC and Staff can adequately represent their interests.⁹ Finally, Potomac Edison contends that MD SUN has failed to meet the standard to intervene because its petition contains "mere conjecture" that any funds related to First Energy's alleged misconduct impacted the renewable energy markets or its members.¹⁰

9. MD SUN responded to Potomac Edison on August 26, 2021. MD SUN repeated its intention to investigate any harm caused to renewable energy markets and its members by First Energy's alleged misconduct in Ohio. It pointed out that the Commission has permitted intervention by petitioners that were not even Maryland residents, much less customers of the utility, as long as the petitioner had a legitimate interest in the

⁷ Opposition at 3.

⁸ *Id.* at 4.

⁹ *Id.* at 4-5.

¹⁰ *Id.* at 5.

proceeding.¹¹ Notwithstanding this precedent, MD SUN identified several member entities located within Potomac Edison’s service territory, including: (1) 60 residential households; (2) 347 people who attended solar education seminars; and (3) five solar co-ops.¹²

10. MD SUN further contends that the purpose of the investigation is to determine whether factual evidence supports its concerns. Therefore, it is premature at the intervention stage for Potomac Edison to require factual proof.¹³ Finally, MD SUN argues that neither Staff nor OPC adequately represent its interests. MD SUN is the only non-governmental party to seek intervention. Additionally, if Staff and OPC adequately represent all customers, MD SUN argues that Potomac Edison fails to explain why the Commission ever would allow third-parties to intervene.¹⁴

Commission Decision

11. Under Public Utilities Article (“PUA”), *Annotated Code of Maryland*, § 3-106, the Commission “shall grant leave to intervene unless the Commission concludes that (1) the parties to the proceeding adequately represent the interest of the person seeking to intervene, or (2) the issues that the person seeks to raise are irrelevant or immaterial.”

12. The Commission grants MD SUN’s petition to intervene, largely for the reasons set forth in MD SUN’s reply pleading. The Commission finds that MD SUN has adequately described its interest in this proceeding. Whether its discovery on the three identified issues uncovers a factual basis for its concerns is currently unknown, but that is

¹¹ Response at 3, citing Case No. 9361, *In the Matter of the Merger of Exelon Corp. and Pepco Holdings, Inc.*, Order No. 86646 at 2.

¹² Response at 3-4.

¹³ Response at 4-5.

¹⁴ Response at 5.

why the Commission ordered the investigation. The Commission will address any factual findings by the parties to this proceeding at the close of discovery.

13. The Commission agrees that neither Staff nor OPC can adequately address the specific concerns about alleged PE-MD funded activities on its Maryland co-ops that MD SUN raises. Additionally, the Commission has liberally granted petitions to intervene in the past as long as a petitioner's basis for intervention is arguably related to the issues raised by the proceeding. Interpreting PUA § 3-106 as restrictively as Potomac Edison urges would be contrary to this history.

IT IS THEREFORE, this 3rd day of September, in the year of Two Thousand Twenty-One, by the Public Service Commission of Maryland;

ORDERED: That the Petition to Intervene by Solar United Neighbors of Maryland is hereby granted.

By Direction of the Commission,

/s/ Andrew S. Johnston

Andrew S. Johnston
Executive Secretary