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Former PUCO Commissioners

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Honorable Michael DeWine

Governor, State of Ohio

Riffe Center, 30th Floor

77 South High Street

Columbus, OH 43215-6117

Dear Governor DeWine:

As former Commissioners on the Public Utilities Commission of Ohio (PUCO or Commission), we often performed our responsibilities with approaches informed by a wide range of divergent experiences and differing outlooks. We shared, however, a deep commitment to uphold the integrity of the Commission and to ensure it served and protected the interests of the people of Ohio. We have watched, with great concern the recent public disclosure of criminal indictments (including two guilty pleas), regulatory filings, and public reporting that, at a minimum, have created an appearance of impropriety, and, according to indictments and pronouncements of law enforcement authorities, possible criminal activity by actors and figures of influence in the regulated sector. These include both public officials and persons affiliated in some fashion with Company A, widely understood to be First Energy, and its affiliates, including the now former affiliate known as Energy Harbor. As former PUCO Commissioners we strongly urge the Commission to undertake a major effort to reassure the public that the Commission takes these allegations of wrongdoing very seriously, and will use those powers granted to it, by law to fully engage on the matter.

The recent allegations, if left unaddressed by the Commission, could undermine public confidence in the integrity of the Commission, even though there has been no suggestion of wrongdoing by any of the current sitting Commissioners or staff. Confidence in the State's energy sector and its oversight is critical to the economic well-being of the State. Ohio has benefited from having a Commission that has generally enjoyed the respect of the public, legislature, the Courts, and the broader regulatory community. Any deficiency in transparency would risk doing harm to the reputations of institutions and persons who bear no responsibility for the scandal. The best way to avoid such an undesirable outcome, and,

more importantly, to restore much needed public confidence is for the PUCO to act swiftly, definitively, and affirmatively to exert the full extent of its regulatory authority to protect the public interest and assure the public, investors, governments, and consumers alike, that unlawful, unethical, improper activities or any activities given the appearance of the same, are simply not tolerable and will not be acceptable within those companies or persons either associated with the Commission or doing business within the jurisdictional authority of the Commission.

We appreciate that the PUCO has already initiated inquiries into the source of funds for the payments allegedly made to the former Speaker of the Ohio House of Representatives and into possible violations of corporate separations requirements under Ohio law. Those are positive steps. Given the removal for cause of top officers and legal counsel of FirstEnergy Corp. by the FirstEnergy Board, as well as the Company's disclosure of a payment of a significant sum of money to an individual who was later appointed as an Ohio state regulator by the regulated utility, a broader investigation is warranted.

FirstEnergy and/or its utility affiliates hold a monopoly franchise(s) to provide electric distribution services across a wide footprint of the State. That privilege brings with it a fiduciary obligation to transact its business on a transparent basis and that all interactions with public officials be conducted in an entirely lawful and ethical manner and do nothing to create the appearance on unethical or unlawful behavior. Except for those individuals who have entered guilty pleas, we have not reached a conclusion regarding unlawful activity. However, it appears from both public reports as well as in multiple legal filings that there are reasonable grounds to believe that FirstEnergy's aforementioned financial arrangements with legislative and regulatory officials either appear to have been, or may actually have been, unlawful and to find that there are sufficient grounds to open an inquiry as to FirstEnergy's monopoly franchise(s) and regulatory supervision of its conduct.

Toward that end and to restore public trust and accountability to the utilities regulated by the Commission, we propose that the PUCO open a Commission Ordered Investigation (COI) to determine answers to the following questions and take the following actions:

1. We recommend that the Commission retain an independent law firm and/or consultant with relevant experience in forensic accounting, corporate responsibility, and governance to conduct an investigation, pursuant to the (COI), and upon completion of the investigation, to make formal and public findings and recommendations to the Commission, addressing:
 - a. Whether it is in the public interest for FirstEnergy and/or its affiliates to continue doing business with monopoly franchise(s) from the State of Ohio and/or subdivisions thereof;
 - b. Whether FirstEnergy and/or its affiliates franchise(s) should be conditioned, or the Commission take other actions to place FirstEnergy and/or its affiliates, officers, and/or representatives under more rigorous oversight, including but not

- necessarily limited to oversight related to corporate governance, accountability, and compliance; and
- c. Interactions of First Energy and its affiliates (current and past), including Energy Harbor and First Energy Solutions, their lobbyists, or other representatives with the immediate past Chair of the PUCO, including but not limited to any *ex parte* communications, any actions in which the former Chair participated or that were taken under his supervision that evidenced or appeared to evidence favoritism toward or provided undue benefits to FirstEnergy and/or any of its affiliates, past or present, and whether steps should be taken to address any related concerns.
2. Since FirstEnergy has not initiated distribution rate case proceeding since 2007, the PUCO should initiate a rate case proceeding that will review the current state of affairs both for FirstEnergy, its investors, and consumers in the State of Ohio.

The allegations and facts and circumstances of the actions that have occurred in the recent past require that specific, credible actions be taken to restore the public trust. Toward that end, we urge that these investigations be conducted in as transparent a fashion as possible, with full opportunities for public comments and involvement, possible appointment of an advisory panel, as has been done in the past by the Commission composed of experts on corporate governance, ethics, and other relevant matters, full disclosure of all relevant documents, to the extent possible at appropriate times, the publication of the report(s) of all consultants, and of course, the issuance of Findings and Conclusions by the Commission along with appropriate orders flowing therefrom.

It must be noted that the event that evolved was brought about through the collaboration of the leadership of three entities: the utility, the legislature, and the PUCO. Here we have addressed one party to this event, and it is our hope that it will establish, along with the others, a pathway toward trust and confidence in the regulation of the state's energy delivery system.

Sincerely,

Ashley C. Brown

Former Commissioner, PUCO

J. Michael Biddison

Former Commissioner, PUCO

Todd Snitchler

Former Chair, PUCO

cc. Hon. Jon Husted

Hon. Beth Trumbold

Hon. Daniel R. Conway

Hon. Lawrence K. Friedeman

Hon. Dennis P. Deters