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SB 511 – Corporate Income Tax – Corporate Tax Fairness Act of 2021
Budget & Taxation Committee
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Unfavorable

Potomac Edison, a subsidiary of FirstEnergy Corp., serves about 270,000 customers in all or parts of seven Maryland counties (Allegany, Carroll, Frederick, Garrett, Howard, Montgomery and Washington Counties). FirstEnergy is dedicated to safety, reliability and operational excellence. Its ten electric distribution companies form one of the nation's largest investor-owned electric systems, serving customers in Ohio, Pennsylvania, New Jersey, West Virginia and Maryland and is highly regulated in each of these states in which we serve customers. This regulation over companies that distribute electricity imposes strict arm's length accounting. This not only results in close monitoring but is one key reason states like New Jersey have exempted regulated utilities from their unitary taxation statutes. The type of taxation contemplated in SB 511 would overburden utility electric customers along and the Public Service Commissions in each state.

FirstEnergy requests an Unfavorable report on SB 511 for the following reasons.

Senate Bill ("SB") 511 proposes a dramatic change to Maryland's system of taxing businesses. Specifically, SB 511 would replace the current individual or separate entity filing method with a unitary combined reporting method ("combined reporting method").

Combined reported would competitively disadvantage Maryland. Within the region, neighboring states—including Virginia, Pennsylvania and Delaware—do not utilize the mandatory combined reporting method. Maryland's economic development would be thwarted by the adoption of a new taxation system that would harm the attraction and retention of businesses and the jobs and economic opportunities these businesses provide.

Combined reporting has been exhaustively researched and debated among policymakers in Maryland. They concluded that combined reporting is not an appropriate or accurate method of computing state taxable income or attributing multistate business income to economic activity in Maryland.

The bi-partisan Maryland Economic Development and Business Climate Commission ("Augustine Commission") has previously opposed the adoption of combined reporting in the state. In its January 2016 report, the Augustine Commission strongly opposed combined reporting (e.g., "Recommendation 5: Do not adopt combined reporting and indicate clearly the intent not to do so" (Augustine Commission Report at xii)). As the Augustine Commission Report states, "[f]or many years, the General Assembly has considered whether to impose combined reporting in Maryland. This debate causes uncertainty and sends a negative message to business considering expansion in or relocation to the State. In its effort to reform the corporate income tax and generate additional revenues, combined reporting can create revenue volatility and winners and losers among corporate taxpayers. Combined reporting can also lead to additional litigation from taxpayers and create additional administrative costs for both taxpayers and the State." (Augustine Commission Report at 38-39)

The Maryland Business Tax Reform Commission in its exhaustive 2010 study reached conclusions similar to the Augustine Commission on combined reporting, stating that "combined reporting is a complex change for taxpayers, tax preparers, and the Comptroller's office, introducing uncertainty at a time when the economy is struggling to recover from the recent recession. It would result in a shift of the tax burden, substantial in some cases, among industries and among taxpayers, resulting in winners and losers. Many of the tax avoidance measures which combined reporting is intended to prevent have already been addressed by the State through the Delaware holding company addback, the captive real estate investment trust (REIT) legislation, and other measures." (Commission at 4)

In order to avoid the negative consequences of utilizing the mandatory combined reporting method, FirstEnergy respectfully requests an **unfavorable report** on SB 511.