

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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May 29, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

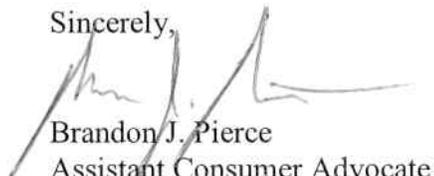
Re: John R. Evans, Small Business Advocate, Petitioner v. FirstEnergy
Solutions Corporation, Respondent
Docket No. P-2014-2421556

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Answer in the above referenced proceeding.

Copies have served as indicated on the enclosed Certificate of Service.

Sincerely,



Brandon J. Pierce
Assistant Consumer Advocate
PA Attorney I.D. # 307665

Enclosures

cc: Office of Administrative Law Judge
Office of Special Assistants
Certificate of Service

184077

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John R. Evans,	:	
Small Business Advocate,	:	
Petitioner	:	
	:	Docket No. P-2014-2421556
v.	:	
	:	
FirstEnergy Solutions Corp.,	:	
Respondent	:	

ANSWER OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 5.61(e) of the Pennsylvania Public Utility Commission’s (Commission) regulations regarding Answers, 52 Pa. Code § 5.61(e), the Office of Consumer Advocate (OCA) provides the following Answer to the Petition for Declaratory Order (Petition) of John R. Evans, Small Business Advocate, in the above-captioned proceeding.

I. INTRODUCTION

On May 15, 2014, the Office of Small Business Advocate (OSBA) filed the verified Petition with the Commission seeking a determination that, as a matter of law, the language in FirstEnergy Solutions Corp.’s (FES or the Company) Terms and Conditions of Service for small business “fixed price” plans does not permit FES to bill small business customers for increases in the cost of meeting FES’s existing obligations to provide regulation service and synchronized reserve service.

In March 2014, FES began sending small business and residential customers on “fixed price” plans postcards stating that these customers would be billed a surcharge of approximately

1 to 3 percent of their annual generation charges for small business customers and approximately \$5 to \$15 for residential customers for an “RTO Expense Surcharge.” See Petition at 2-3. On the postcards, FES states that it has the right to increase customers’ bills to recover “extremely high ancillary services costs” incurred in January 2014 and billed to FES by the PJM Interconnection (PJM). Petition at 3; Exh. B.¹

OSBA avers that FES’s Terms and Conditions of Service for “fixed price” small business plans includes language that permits FES to increase customers’ bills if PJM “imposes on FES new or additional charges or requirements.” Petition at 2. OSBA avers that the charges FES seeks to collect via the surcharge are not “new” and PJM did not impose any additional “requirements” on FES, but rather, that FES made a business decision to purchase ancillary services from PJM that it could have purchased elsewhere. See Petition at 4-5.

OSBA avers that the increased costs were specifically related to synchronized reserve service. See Petition at 4; Exh. C. OSBA avers that FES, as a load-serving entity, is not required to purchase such services from PJM, and therefore, PJM did not impose new or additional charges or requirements on FES. See Petition at 4. Rather, OSBA avers that FES made a business decision not to own or purchase enough generation to meet its reserve obligation and consequently, purchased spinning reserves from PJM’s Synchronized Reserve Market. See Petition at 4-5. OSBA further argues that had FES met its synchronized reserve obligation by generating its own power or by purchasing power from a third party, “FES would not have been able to make the claim that PJM ‘billed for these additional costs to FirstEnergy Solutions.’”

¹ The OSBA’s Petition notes, with regard to residential customers:

It is the understanding of Petitioner that FES has rescinded the RTO Expense Surcharge for its fixed price residential customers. However, it is also the understanding of Petitioner that FES has not rescinded and does not intend to rescind its intent to charge the RTO Expense Surcharge to small business customers on fixed price contracts.

Petition at 3. This comports with the OCA’s understanding.

Petition at 4. As such, OSBA avers that FES's Terms and Conditions of Service in its "fixed price" small business plans does not permit FES to pass-through these charges to customers, as these costs "were not new or additional costs that were *imposed* upon FES by PJM." Petition at 5. OSBA seeks an order declaring that FES is not permitted to recover the costs billed to it by PJM for ancillary services costs as a pass-through event under FES's Terms and Conditions of Service. See Petition at 7.

The OCA supports the relief sought by OSBA in its Petition.

II. ANSWER

The OCA agrees with OSBA's position that FES's Terms and Conditions of Service for its "fixed price" small business plans does not, on its face, permit FES to bill customers for increases in the cost of meeting FES's existing obligations to provide regulation service and synchronized reserve service. Specifically, FES's Terms and Conditions of Service for its "fixed price" small business plans states:

Basic Service Prices. During the initial term of this Agreement, you agree to pay FES for a total combined Transmission, Generation and Generation Related Charges ("Retail Electric Supply").

...

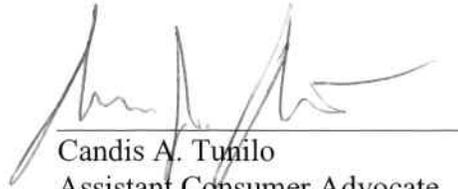
In addition to the charges described above, if any regional transmission organization or similar entity, EDC, governmental entity or agency, North American Electric Reliability Corporation or other industry reliability organization, or court requires a change to the terms of the Agreement, or imposes upon FES new or additional charges or requirements, or a change in the method or procedure for determining charges or requirements, relating to your Retail Electric Supply under this Agreement (any of the foregoing, a "Pass-Through Event"), which are not otherwise reimbursed to FES, Customer agrees that FES may pass through any additional cost of such Pass-Through Event, which may be variable, to Customer. Changes may include, without limitation, transmission or capacity requirements, new or modified charges or shopping credits, and other changes to retail electric customer access programs.

Petition at 2; Exh. A. In FES's communication with its customers, FES states that the "extremely high ancillary services costs" that PJM incurred and billed to FES meet the definition of a "Pass-Through Event" outlined in its Terms and Conditions of Service. Petition at Exh. B. The OCA supports OSBA's position that these charges are not new or additional charges or requirements that PJM imposed on FES. See Petition at 5-6. The added costs to FES were a result of its business decisions regarding the procurement of ancillary services. The OCA supports OSBA's position that FES is not required to purchase ancillary services, specifically synchronized reserve, from PJM. See Petition at 4. The only thing that occurred was that FES had to pay more than it expected for ancillary services it purchased from PJM. FES took the business risk to purchase synchronized reserve from PJM rather than using its own generation or purchasing it from another party. As such, the one-time surcharge proposed by FES does not meet FES's own requirements as stated in its Terms and Conditions of Service. Therefore, the surcharge is not permitted to be charged to customers.

Moreover, FES's Terms and Conditions of Service clearly state that it relates to a "fixed price" product. See Petition at Exh. A at ¶ 2. The Commission defines "fixed price" as "[a]n all-inclusive per kWh price that will remain the same for at least three billing cycles or the term of the contract, whichever is longer." See Use of Fixed Price Labels for Products with a Pass-Through Clause, Docket No. M-2013-2362961, Final Order at 35 (Nov. 14, 2013) (Final Order). The OCA supports OSBA's position that permitting FES to pass through a charge on a "fixed price" plan in this manner would permit a "tortured reading" of the Terms and Conditions of Service. See Petition at 6. Therefore, the Commission should declare that FES's surcharge is not permitted under FES's Terms and Conditions of Service.

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Commission grant the Small Business Advocate's Petition and declare that FirstEnergy Solutions Corp.'s surcharge is not permitted and grant such other relief the Commission deems appropriate.

Respectfully Submitted,



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Dated: June 2, 2014
00183181

CERTIFICATE OF SERVICE

John R. Evans, :
Small Business Advocate, :
Petitioner :
 : Docket No. P-2014-2421556
v. :
 :
FirstEnergy Solutions Corp., :
Respondent :

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Answer, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 29th day of May 2014.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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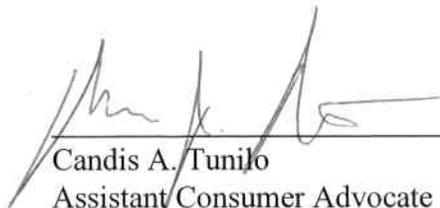
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