



COMMONWEALTH OF PENNSYLVANIA

June 16, 2014

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P. O. Box 3265
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:

I am delivering for filing today the originals of the Answer and Verification, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding.

Two copies have been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Daniel G. Asmus".

Daniel G. Asmus
Assistant Small Business Advocate
Attorney ID No. 83789

cc: Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOHN R. EVANS,
SMALL BUSINESS ADVOCATE,
Petitioner

v.

FIRSTENERGY SOLUTIONS CORP.,
Respondent

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Docket No. P-2014-2421556

**ANSWER TO THE PRELIMINARY OBJECTION
OF FIRSTENERGY SOLUTIONS CORP.**

On May 15, 2014, John M. Evans, Small Business Advocate, through the Office of Small Business Advocate (“OSBA”), filed a Petition for a Declaratory Order (“Petition”) requesting that the Pennsylvania Public Utility Commission (“Commission”) order that FirstEnergy Solutions, Corp. (“FES”), Respondent in this proceeding, be denied permission to recover from small business ratepayers certain ancillary services costs billed to FES by the regional transmission organization, PJM Interconnection (“PJM”). FES had notified customers of its intent to bill customers for these ancillary services costs on the basis of a “pass through” clause contained in customers’ fixed price contracts.

On June 4, 2014, FES filed a Preliminary Objection to the Petition (“PO”), asserting that the Commission “lacks subject matter jurisdiction to decide private contractual disputes between EGSs [electric generation suppliers] and their customers, or interpret the terms and conditions of private contracts.”¹

Pursuant to Section 5.101 of the Commission’s Rules and Regulations (52 Pa. Code § 5.101), Petitioner hereby files this Answer to FES’s PO, stating as follows:

¹ POs at paragraph 14.

1. Admitted.
2. Admitted..
3. Admitted, with the clarification that the small commercial customer supply contract referenced in this paragraph is the fixed price contract at issue in this proceeding.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Denied.

FES Preliminary Objection

9. The averments of this paragraph state a conclusion of law to which no response is required.
10. The averments of this paragraph cite a portion of the statutory provision contained in 66 Pa. C.S. § 2802(4), which, being a writing, speaks for itself, and therefore, no response is required.
11. Admitted.
12. Admitted in part and denied in part. It is admitted that the contracts at issue here are between FES and FES's small business customers. To the extent that FES implies that the Commission has no jurisdiction over these so-called "private" contracts, these allegations are denied.
13. Admitted in part and denied in part. It is admitted that the OSBA is asking the Commission to interpret the meaning of the pass-through clause in FES's fixed price contracts. By way of further answer, The Commission has devoted an entire proceeding to the meaning of

the terms and conditions contained in EGS' fixed price contracts, *Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961 (Order entered November 14, 2013). It is denied that the "private contracts" referenced by FES are somehow outside the Commission's jurisdiction.

14. Denied. It is specifically denied that this matter is a "private contractual dispute" between FES and its customers. This is a controversy regarding the billing practices of FES; about whether FES should be permitted to pass through to fixed-price customers additional fees billed to FES by PJM for ancillary services. It is worthy of note that FES reversed its previous decision to pass-through to Residential fixed-price customers these same costs, but continues with its plan to bill these ancillary services costs to Small Commercial and Industrial customers. Further, it is denied that the Commission lacks jurisdiction to deal with this issue. The Commission clearly has jurisdiction over an EGS's "standards and billing practices," pursuant to Section 2809(b) of the Public Utility Code.² Moreover, the Commission recently has exercised that jurisdiction over EGS billing practices in the *Fixed Price Labels* proceeding at Docket No. M-2013-2362961 mentioned in the previous paragraph. FES was a party to that proceeding and in that proceeding did not dispute the Commission's jurisdiction over the controversy surrounding pass through clauses in fixed price contracts, the precise issue in dispute in this case.³

15. Denied.

² 66 Pa.C.S. § 2809(b).

³ In fact, in its Comments filed in that proceeding, FES acknowledged that "the Commission's Bureau of Consumer Services for years has reviewed Residential disclosure statements for fixed price products with pass-through language in connection with EGS applications for licenses to serve Residential or Small C&I customers. EGSs have relied on the Commission's approval of these licensing applications in developing disclosure statements and other marketing materials and in planning their businesses." Comments of FES at 6, at Docket No. M-2013-2362961.

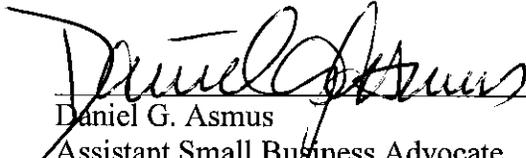
16. Denied. It is denied that the Commission has previously declined to exercise its jurisdiction over the billing practices of an EGS such as FES. By way of further answer, the cases cited by FES in support of the averments of this paragraph are not on point with the facts or issues in dispute in this proceeding.

17. Denied.

18. Denied.

WHEREFORE, Petitioner, John M. Evans, Small Business Advocate, respectfully requests that the Commission deny the Preliminary Objection of FirstEnergy Solutions Corp., issue 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 the terms of its fixed price contract with its customers, and direct FES to completely refund any ancillary services costs that it has recovered from customers to date, with interest.

Respectfully submitted,


Daniel G. Asmus
Assistant Small Business Advocate
Attorney ID No. 83789

For: John R. Evans
Small Business Advocate

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Dated: June 16, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

VERIFICATION

I, Daniel G. Asmus, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Date: June 16, 2014



(Signature)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Answer and Verification, on behalf of the Office of Small Business Advocate, by e-filing, e-mail, and/or first-class mail (unless otherwise noted) upon the persons addressed below:

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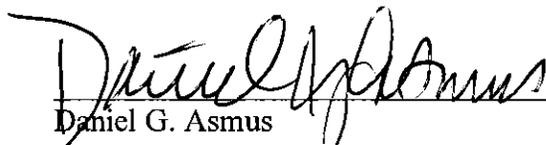
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Dated: June 16, 2014