



COMMONWEALTH OF PENNSYLVANIA

June 24, 2014

**HAND DELIVERY**

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**

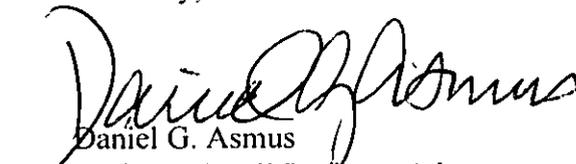
Dear Secretary Chiavetta:

I am delivering for filing today the Reply to New Matter of FirstEnergy Solutions Corporation, 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,

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

Enclosures

cc: Hon. Charles E. Rainey, Jr.

Parties of Record

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**JOHN R. EVANS,**  
**SMALL BUSINESS ADVOCATE,**  
**Petitioner**

v.

**FIRSTENERGY SOLUTIONS CORP.,**  
**Respondent**

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**Docket No. P-2014-2421556**

**REPLY TO NEW MATTER  
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”).

On June 4, 2014, FES filed a Preliminary Objection to the Petition (“PO”), and an Answer with New Matter asserting that the Commission lacks subject matter jurisdiction to grant the relief requested, that the Petition failed to demonstrate that FES violated any provision of the Public Utility Code or Commission’s regulations, and therefore, OSBA is not entitled to the relief requested.

Pursuant to Section 5.63 of the Commission’s Rules and Regulations (52 Pa. Code § 5.63), Petitioner hereby files this Reply to FES’s New Matter, stating as follows:

## REPLY TO NEW MATTER

15. FES incorporates by reference paragraphs 1 through 14 of its Answer. In Reply, the OSBA notes that in paragraph 12 of its Answer, FES admitted that it had other options besides PJM for the purchase of its reserve requirement. Whether those options were economically viable or not is not the issue, the issue is that *only* by purchasing ancillary services from PJM could FES even make the argument that these costs were *imposed* by PJM upon FES. If FES had obtained ancillary services from another source, then FES could not take advantage of its “pass-through” language because in such a case, the costs would not be *imposed* by PJM.

It was obviously the intent of the Commission that, going forward, the pass-through language contained in FES’s fixed price contract (and others) not be used to circumvent the fixed-means-fixed directive in the November 2013 Order. FES admits this, stating in paragraph 14 of its Answer that contracts entered into prior to November 2013 are not impacted by the new restrictions made clear by the Commission’s order. Nonetheless, FES attempts to sidestep the clear intent of the Commission by arguing that these costs purportedly imposed by PJM are eligible for the pass through.

16. It is denied that this is a private contractual matter between FES and its customers. The issue in this case is FES’s billing practices, ie., whether FES should be permitted, in its fixed price contract, to pass through to its customers fees that were billed to FES by PJM, but which were not imposed upon FES by PJM. The Commission clearly has jurisdiction over an EGS’s “standards and billing practices,” pursuant to Section 2809(b) of the Public Utility Code. This is a matter for the Commission to decide, not the Court of Common Pleas.

17. It is admitted that FES's small commercial contract contained (until November, 2013), the language indicated. However, the ancillary services fees at issue here are a normal cost of doing business with PJM. They are not unusual or unprecedented, or "new or additional charges," as FES asserts. These ancillary services fees are normal and usual fees used by PJM to ensure, among other things, that the amount of power supplied to the PJM grid is sufficient to handle the load being placed on the system. FES was and is well aware of these fees. The only surprise to FES would be the amount of the fees billed this Winter by PJM, a larger amount than is customary.

18. FES is accustomed to paying ancillary service fees to PJM. In this instance, as FES itself states in paragraph 18 of its New Matter, "the total PJM charges for January 2014 exceeded the total level of these PJM charges for all of 2013." Thus, it is not that the fees themselves are "new or additional charges;" they were charged to FES by PJM in 2013 and in years prior. *These ancillary services fees are usual and expected. What FES did not expect was the high level of these fees, although, to be fair, given the "Polar Vortex" weather suffered by the nation this Winter, FES should certainly have expected fees that were higher than normal.* Therefore, the question really becomes: does an increase in the amount of ancillary services fees billed by PJM trigger the pass-through language in FES's pre-November, 2013, fixed price contract. Clearly, the answer to this is "No."

19. The OSBA argues that the increase in charges does not trigger the pass-through language, because these are not "new or additional charges." The charges billed to FES by PJM were not "extraordinary and unforeseeable" in themselves, they were usual costs of doing business. It is the level of these charges that was unusual, not the charges per se. However, if the Commission decides that FES is correct, and that these charges are "new or additional," then the

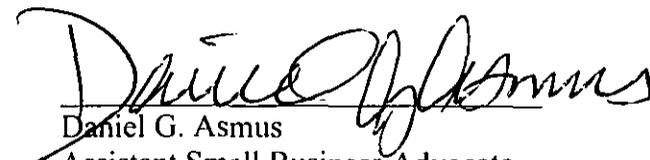
question becomes: at what point does the amount of PJM ancillary services fees rise to the level necessary to trigger the pass-through clause? If FES is left with the task of establishing this level of fees, then any fees at all billed to FES by PJM could trigger the pass-through clause. Without direction from the Commission, FES could bill its small business customers for any and all fees billed by PJM.

20. The OSBA denies that the Petition contains factual errors. However, even if the Petition does contain errors (which the OSBA denies), mistakes can be resolved through the discovery process as this matter proceeds before the Commission. At its heart, this case presents a legal question: who determines what constitutes a “pass-through event” in a fixed price contract? The OSBA understands that the Commission cannot get involved in setting prices that are charged by EGSs; however, the Commission can determine what constitutes a fixed price contract and what constitute the parameters for a pass-through event that is an exception to the fixed price contract.

21. Declaratory relief is the appropriate remedy in this matter. FES should be ordered to stop charging customers for ancillary services fees billed to it by PJM, and should be ordered to refund any such fees already collected, with interest. It is the understanding of the OSBA that FES has already declined to pass-through these charges to its residential customers. However, by unequally treating small business customers in a different manner by charging them for these fees, FES has created a controversy that can only be resolved by an Order from the Commission.

**WHEREFORE**, the Small Business Advocate, through the OSBA requests that the Commission issue an Order stating that FES is not permitted to recover the costs billed to it by PJM for ancillary services, and that FES should refund any such fees collected 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 24, 2014

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I certify that I am serving two copies of the Reply to New Matter of FirstEnergy Solutions Corporation, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons addressed below:

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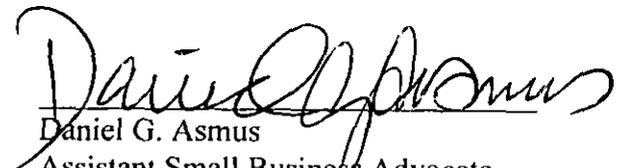
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