

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

FES Industrial & Customer Coalition

Public Meeting November 13, 2014
2425989-OSA

v.

Docket No. C-2014-2425989

FirstEnergy Solutions Corporation

**JOINT MOTION OF
CHAIRMAN ROBERT F. POWELSON AND
VICE CHAIRMAN JOHN F. COLEMAN, JR.**

Before the Commission for consideration and disposition is the Petition for Interlocutory Review and Answer to Material Question filed on August 8, 2014, by FirstEnergy Solutions Corporation (FES). FES asks the Commission to answer two questions:

1. Does the Commission lack subject matter jurisdiction to interpret a provision of an [Electric Generation Supplier's (EGS)] retail customer supply contract as requested?
2. Does the Commission's lack of primary jurisdiction require, at a minimum, a stay of the current proceedings pending action by a civil court of competent jurisdiction?

The legal standards for interlocutory review are set forth at 52 Pa. Code § 5.302(a) and by Commission precedent. Section 5.302(a) of our Regulations requires that the petitioning party "state . . . the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding."¹ Moreover, the Commission has determined that granting interlocutory review is appropriate when it would prevent substantial prejudice or expedite the proceeding.²

Due to the uncertainty regarding the Commission's jurisdiction, we believe granting interlocutory review and answering the material questions will provide valuable guidance to both the parties and the Administrative Law Judge, thereby expediting the conduct of the proceeding.

Upon review and consideration, Material Question No. 1 should be answered in the positive. It is a basic tenet of Public Utility Law that the Commission only has those powers that

¹ 52 Pa. Code § 5.302(a).

² *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket Nos. P-2009-2097639, *et al.* (Order entered April 15, 2010).

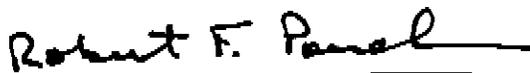
are enumerated to it.³ A review of the Public Utility Code and related case law makes it clear that Commission jurisdiction does not extend to interpreting the terms and conditions of a contract between an EGS and a customer to determine whether a breach has occurred, or setting the rates an EGS can charge.

Material Question No. 2 should, however, be answered in the negative as it is based on a faulty premise: that the Commission lacks jurisdiction over the Complaint. The FES Industrial & Customer Coalition's (FES ICCC) Complaint raises issues beyond contract interpretation; allegations that FES's actions violated Section 2807(d)(2) of the Public Utility Code⁴ and Section 54.43(1) of the Commission's Regulations⁵ are included. Under these sections, FES is required to provide adequate and accurate information to customers, including commercial and industrial customers, regarding its services. The FES ICCC also raises the issue of whether FES has violated Section 54.43(f) of the Commission's Regulations under which FES is responsible for any fraudulent or deceptive billing acts.⁶ Therefore, we believe the FES ICCC Complaint has raised issues that are within the Commission's subject matter jurisdiction.

As the FES ICCC has sufficiently raised issues that implicate the Commission's jurisdiction, this matter should be remanded to the Office of Administrative Law Judge for further proceedings as may be necessary.

THEREFORE, WE MOVE THAT:

The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.


ROBERT F. POWELSON
CHAIRMAN


JOHN F. COLEMAN, JR.
VICE CHAIRMAN

DATE: November 13, 2014

³ *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

⁴ 66 Pa. C.S. § 2807(d)(2).

⁵ 52 Pa. Code § 54.43(1).

⁶ Section 54.122(3) of the Commission's Regulations also precludes EGSs from engaging in false or deceptive advertising to customers. *See* 52 Pa. Code § 54.122(3).