

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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June 29, 2015

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: FES Industrial & Commercial Customer
Coalition v. FirstEnergy Solutions Corp.
Docket No. C-2014-2425989

Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

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

Respectfully Submitted,

Candis A. Tunilo

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. #89891
E-Mail: CTunilo@paoca.org

Enclosures

cc: Honorable Katrina L. Dunderdale, ALJ
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

FES Industrial & Commercial	:	
Customer Coalition	:	
	:	Docket No. C-2014-2425989
v.	:	
	:	
FirstEnergy Solutions Corp.	:	

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333(a) of the Public Utility Code, 66 Pa. C.S. § 333(a), and in response to the Prehearing Conference Order issued on May 20, 2015, the Office of Consumer Advocate (OCA) provides the following information:

I. INTRODUCTION

On June 9, 2014, the FirstEnergy Solutions Corp. Industrial & Commercial Customer Coalition (FES ICCC) filed a Formal Complaint against FirstEnergy Solutions Corporation (FES) asking the Public Utility Commission (Commission) to stay the FES ICCC members' responsibility for paying certain "pass-through event" charges, deny FES's ability to implement such charges, review the appropriateness of FES's license as an Electric Generation Supplier (EGS), and take other actions the Commission deems necessary and appropriate.

On June 17, 2014, the OCA filed a Notice of Intervention and Public Statement. On July 1, 2014, FES filed an Answer and New Matter, and also filed Preliminary Objections.

On July 11, 2014, OCA filed an Answer to the Preliminary Objections of FES, as did FES ICCC. The OCA asserted that the integrity of the retail electric market in Pennsylvania hinges on the ability of the Commission to not only license and authorize a particular EGS to enter into the retail electric market but also to ensure that the same EGS provides, *inter alia*, adequate and accurate information to customers in an understandable format that enables consumers to compare prices and services. In its Answer to the Preliminary Objections, FES ICCC asserted that FES does meet the definition of a “public utility,” and the Commission has subject matter jurisdiction over these contracts between FES and the small business customers. Additionally, FES ICCC requested that the Commission exercise its authority to oversee EGSs in order to determine if an EGS engaged in deceptive and potentially fraudulent billing practices.

On August 6, 2014, Administrative Law Judge Katrina L. Dunderdale (ALJ) denied FES’ preliminary objections and concluded that the Commission had jurisdiction to determine if FES complied with the Commission’s regulations. The ALJ determined FES ICCC should have an opportunity to prove its claim that FES failed to provide adequate and accurate customer information in an understandable format to its industrial and commercial customers.

On August 8, 2014, FES requested interlocutory review and answer to two questions in connection with the First Interim Order dated August 6, 2014 denying its Preliminary Objections. In its Petition, FES raised the following questions for the Commission’s interlocutory review and answer:

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

By Joint Motion of Chairman Robert F. Powelson and Vice Chairman John F. Coleman, Jr. (Joint Motion) dated November 13, 2014, the Commission answered Question No. 1 in the affirmative and Question No. 2 in the negative. The proceeding was returned to the Office of Administrative Law Judge for such further proceedings as may be deemed necessary. On December 12, 2014, the Commission issued its Opinion and Order detailing its reasoning in the November 13, 2014 Joint Motion.

On December 18, 2014, the ALJ issued the Second Interim Order notifying the parties that an Initial Telephonic Hearing would be scheduled in this matter, which was later scheduled for February 11, 2015, via telephone.

On December 29, 2014, FES filed a Petition for Clarification of the December 12, 2014 Order with the Commission. On January 8, 2014, ALJ Dunderdale issued a Prehearing Order. On January 28, 2015, FES ICCC submitted a written request for a general continuance in this proceeding until such time as the Commission entered an order resolving FES's Petition for Clarification. ALJ Dunderdale granted FES ICCC's general continuance on January 30, 2015 and cancelled the Initial Telephonic Hearing.

On May 7, 2015, the Commission issued an Opinion and Order denying FES's Petition for Clarification. A Prehearing Notice was issued on May 19, 2015, and ALJ Dunderdale issued a Prehearing Conference Order on May 20, 2015, setting a telephonic Prehearing Conference for June 30, 2015. On June 23, 2015, FES ICCC submitted a written request for a general continuance of at least 90 days in order to afford the parties an opportunity to engage in settlement negotiations. By Order dated June 24, 2015, ALJ Dunderdale denied FES ICCC's request.

Pursuant to ALJ Dunderdale's May 20, 2015 Prehearing Conference Order, the OCA provides this Prehearing Memorandum.

II. ISSUES AND SUB-ISSUES

Based upon an analysis of the filings to date, the OCA has compiled the following list of issues:

1. Whether FES's actions violated Section 2807(d)(2) of the Code, 66 Pa. C.S. § 2807(d)(2), which requires FES to provide adequate and accurate information to customers, including commercial and industrial customers, regarding its services;
2. Whether FES's actions violated Section 54.43(1) of the Commission's Regulations, 52 Pa. Code § 54.43(1), which requires FES to provide adequate and accurate information to customers, including commercial and industrial customers, regarding its services;
3. Whether FES has violated Section 54.43(f) of the Commission's Regulations, 52 Pa. Code § 54.43(f), under which FES is responsible for any fraudulent or deceptive billing acts.

The OCA reserves the right to include additional issues as more information becomes available through the discovery process or otherwise.

III. WITNESSES

At this time, the OCA does not intend to call any witnesses in this proceeding. However, the OCA reserves the right to call witnesses in this proceeding and cross-examine other parties' witnesses. If OCA determines that it will call a witness or witnesses, the OCA will notify the ALJ and all parties of record.

IV. SERVICE ON THE OCA

The OCA will be represented in this case by Assistant Consumer Advocates Candis A. Tunilo and Brandon J. Pierce. Two copies of all documents should be served on the OCA as follows:

Candis A. Tunilo
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Office of Consumer Advocate
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The OCA requests that any documents served electronically also be directed to the OCA's Legal Assistant, Cammie Shoen at CShoen@paoca.org.

V. DISCOVERY MODIFICATIONS

The OCA does not propose any discovery modifications at this time.

VI. PUBLIC INPUT HEARINGS

The OCA is unaware of any specific consumer requests for public input hearings in this matter to date. If the OCA becomes aware of substantial consumer interest, however, the OCA will promptly notify the ALJ and parties.

VII. PROPOSED SCHEDULE

It is the OCA's understanding that, with regard to a proposed schedule, FES ICCC seeks a second Prehearing Conference to be scheduled for September 30, 2015, with the parties reporting to the ALJ at that time with a procedural schedule based upon the results of completed discovery and settlement negotiations. The OCA does not oppose this request. Should the

request be denied, the OCA will work with the parties and the ALJ develop a mutually acceptable schedule.

VIII. SETTLEMENT DISCUSSIONS

The OCA is aware that on June 23, 2015, FES ICCC filed a letter with the Presiding Judge requesting a 90-day continuance so that the parties may pursue settlement discussions. The OCA did not oppose that request and will participate in settlement discussions.

Respectfully Submitted,



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Dated: June 29, 2015

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CERTIFICATE OF SERVICE

Re: FES Industrial & Commercial Customer Coalition v. FirstEnergy Solutions Corp.
Docket No. C-2014-2425989

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Prehearing Memorandum, 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 June 2015.

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