

Karen O. Moury

717 237 4820
karen.moury@bjpc.com

409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
T 717 237 4800
F 717 233 0852
www.buchananingersoll.com

August 5, 2016

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Application of Fair View Energy, Inc. for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Broker/Marketer to the Public in the Commonwealth of Pennsylvania; Docket No. A-2016-2558553

Dear Secretary Chiavetta:

On behalf of Fair View Energy, Inc., enclosed for electronic filing is the Answer to Protest, in the above-captioned matter. Under Section 54.36(c) of the Commission's regulations it is our understanding that this answer will be assigned to the Bureau of Technical Utility Services for review.

Copies have been served on all parties as indicated in the attached Certificate of Service.

Very truly yours,



Karen O. Moury

KOM/bb
Enclosure

cc: Paul Diskin, Bureau of Technical Utility Services
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Fair View Energy, Inc. For :
Approval to Offer, Render, Furnish or Supply :
Electricity or Electric Generation Services as a : Docket No. A-2016-2558553
Broker/Marketer to the Public in the :
Commonwealth of Pennsylvania :

ANSWER TO PROTEST

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Fair View Energy, Inc. (“Fair View”), by and through its counsel, Karen O. Moury, and Buchanan Ingersoll & Rooney PC, files this Answer to the Protest of Frontline Power Solutions (“Frontline”), pursuant to Sections 5.52 and 54.36 of the Commission’s regulations, 52 Pa. Code §§ 5.52 and 54.36, respectfully requesting that the Commission find that the Protest is not sufficiently documented, dismiss the Protest and grant the Application of Fair View for an electric generation supplier (“EGS”) license to operate as a broker/marketer in Pennsylvania. In support hereof, Fair View further avers as follows:

I. INTRODUCTION AND BACKGROUND

1. On July 25, 2016, Fair View filed an Application for an EGS license authorizing it to operate as a broker/marketer in Pennsylvania. The Application was processed by the Commission’s Secretary and published on the Commission’s website on July 27, 2016.

2. Also on July 27, 2016, the Commission published Frontline’s Protest on its website. Although Frontline’s Protest had been filed with the Commission on June 6, 2016, following publication of notice of the Application in the Scranton Times, Frontline did not serve Fair View with a copy of the Protest. Therefore, Fair View was not aware of the Protest until it

was published on the Commission's website on July 27, 2016. As such, Fair View submits that this Answer is timely filed pursuant to Section 54.36(a) of the Commission's regulations, 52 Pa. Code § 54.36(a), which permit the filing of answers to protests within 10 days.¹

3. Frontline's Protest should be dismissed outright because: (i) it is replete with hearsay and is not sufficiently documented as required by the Commission's regulations discussed below; (ii) it provides no legitimate challenges to Fair View's financial or technical fitness to operate as a broker/marketer in Pennsylvania; (iii) it is nothing more than an attempt to prevent or delay Fair View's entry into the Pennsylvania broker/marketer market for Frontline's own self-serving business reasons; (iv) it is a by-product of private litigation between Frontline and Fair View that has been resolved through settlement;² and (v) it is a smear campaign driven by a personal vendetta, which should not be sanctioned by the Commission or given any forum to be further pursued within the context of reviewing Fair View's Application.

4. Notably, no protest has been filed by the Commission's Bureau of Investigation and Enforcement ("I&E"), the Office of Consumer Advocate ("OCA"), any customers who have received energy consulting services from Fair View or any EGSs with whom Fair View has interacted in enrolling customers. *See PA PUC, Bureau of Investigation and Enforcement v. Fair View Energy, Inc.*, Docket No. C-2016-2547502 (Complaint served May 26, 2016). Any legitimate challenges to Fair View's technical or financial fitness to operate as a broker/marketer in Pennsylvania would have been raised by these entities or organizations.

¹ Alternatively, Fair View respectfully requests that the Commission consider this Answer pursuant to Section 1.15 of its regulations, 52 Pa. Code § 1.15(a).

² In its application, Fair View disclosed this litigation that was dismissed with prejudice by the District Court of Rhode Island by an order entered on March 28, 2016, following the filing of a Stipulation to Voluntarily Dismiss With Prejudice. *United States District Court of the District of Rhode Island: Frontline Power Solutions, LLC and John T. Holmes v. Jay Snyder and Fair View Energy, Inc.*, Case No.: 1:15-cv-00411-M-PAS.

II. APPLICABLE LEGAL STANDARDS

5. Under Section 54.36(b) of the Commission's regulations, protests to EGS applications may challenge only the applicant's financial and technical fitness to provide the service for which a license is requested. 52 Pa. Code § 54.36(b). That provision specifically rejects the notion of "competitive protests." *Id.*

6. Section 54.36(c) of the Commission's regulations provides that a protest to an applicant's technical or financial fitness to provide service will be assigned to Commission staff for review. Staff will determine if the protest fully complies with Section 5.52(a) of the regulations, 52 Pa. Code 5.52(a), and "sets out clearly and concisely the facts upon which the challenge to the fitness of the applicant is based." 52 Pa. Code § 54.36(c).

7. Section 54.36(c) of the Commission's regulations further provides that "[i]f a protest is not sufficiently documented, Commission staff will prepare a recommendation for Commission consideration dismissing the protest and granting the application. 52 Pa. Code § 54.36(c).

8. Section 5.52(a) of the Commission's regulations require protests to set forth the alleged interest or right of the protestants, the grounds of the protest and the facts establishing a protestant's standing to protest. 52 Pa. Code § 5.52(a).

9. It is well-settled that a party must have direct, immediate and substantial interest in order to establish standing to protest an application, and that a party's standing may not be based on mere conjecture and speculation. *See Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co.*, Docket Nos. A-212285F0046/47 and A-210870F01 (Order entered July 9, 1998), citing *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa.

168, 346 A.2d 269 (1975). A general interest in compliance with the law is insufficient to confer standing to protest an application. *In re PECO Energy Co.*, Docket No. A-110550F0160 (Order entered July 18, 2005).

III. ARGUMENT

10. The Commission should dismiss Frontline's Protest outright because it is not sufficiently documented, as required by the regulations, and is replete with hearsay.³ As such, it offers no legitimate challenges to Fair View's financial or technical fitness to operate as a broker/marketer in Pennsylvania, which is required of protests by the Commission's regulations. 52 Pa. Code § 54.36. Notably, no protest has been filed by I&E, OCA, customers or other EGSs.

11. Rather than providing documentation to suggest a lack of financial or technical fitness, Frontline's Protest makes rambling, cryptic and vague references to alleged unauthorized operations,⁴ emails that were purportedly intended for individuals at Fair View, hearsay statements allegedly made by sales persons about Fair View, and the accuracy of commission payments made by Fair View. These disjointed and unsubstantiated comments fail to clearly and concisely set out the facts upon which the challenge to Fair View's fitness is based. If Frontline has the "proof" it claims to have, it was required by the Commission's regulations to include such documentation with the Protest. 52 Pa. Code § 54.36.

³ Hearsay is a statement that the declarant makes outside a current trial or hearing and that a party offers in evidence to prove the truth of the matter asserted. P.R.E. 801. At a hearing, Frontline would not be permitted to refer to the statements made by third parties; nor would the Commission be permitted to rely on uncorroborated hearsay testimony to support findings of fact. *See Loudon v. Viridian Energy*, Docket No. C-2011-2244309 (Initial Decision served February 2, 2012; Final Order entered March 29, 2012).

⁴ Fair View's prior brokering operations are the subject of the I&E complaint referenced above in Paragraph 4 and are immaterial to the outcome of this Application. I&E has raised no issues in this proceeding about Fair View's technical or financial fitness. Moreover, since Fair View's prior operations will be addressed by the Commission in ultimately ruling on the I&E complaint, it is inappropriate to also consider them in the context of the Application or allow them to interfere with Fair View promptly obtaining an EGS license.

12. Frontline's Protest should also be dismissed outright because it fails to set forth the alleged interest or right of Frontline, the grounds of the protest and the facts establishing a protestant's standing to protest. 52 Pa. Code § 5.52(a). As general compliance with the law is not sufficient upon which to base standing (*PECO Energy*), Frontline lacks standing to protest the Application. Similarly, Frontline does not have standing to assert any alleged concerns of the sales persons, as it lacks any direct, immediate and substantial interest in those issues. Notably, none of the sales persons mentioned in the Frontline Protest have filed any protests to the Application or any complaints with the Commission or elsewhere about Fair View. Indeed, Frontline's Protest does not even purport to allege any legitimate interest of right to participate in this proceeding.

13. A review of Frontline's Protest demonstrates that it is nothing more than a "competitive protest," which is designed -- for its own business reasons -- to unfairly prevent or delay Fair View from operating as a broker/marketer in Pennsylvania as a result of private legal disputes that have been dismissed in the courts. Such protests are not permitted under the Commission's regulations, and the Commission should not permit its application licensing process to be abused, resulting in an unreasonable delay in the processing of Fair View's Application, which is critical to its continued operations and viability. Simply stated, a hearing is not necessary and would not serve the public interest in this matter. *See* 66 Pa. C.S. § 703(b).

14. In the alternative, if the Commission determines that the Frontline Protest is sufficiently documented to warrant the scheduling of a hearing, pursuant to 52 Pa. Code § 54.36(c), Fair View respectfully requests that the Commission adopt an expedited schedule for the Application. Fair View is confident that any concerns about its technical and financial fitness can be quickly resolved through an expedited process. Therefore, Fair View proposes that: (i) a

hearing be scheduled no later than September 16, 2016; (ii) an Initial Decision be served no later than October 7, 2016; (iii) abbreviated Exception and Reply Exception periods (of 5 days each) be imposed; and (iv) a Commission Order be entered by November 9, 2016. Absent an expedited schedule, the Commission would permit a single business, for its own self-serving reasons, to unfairly use the Commission's licensing process to unreasonably delay a review of Fair View's Application.

IV. CONCLUSION

For the foregoing reasons, Fair View Energy, Inc. hereby requests that the Commission dismiss the Protest of Frontline Power Solutions and grant Fair View's Application for an electric generation supplier license authorizing it to operate as a broker/marketer in Pennsylvania.

Dated: August 5, 2016

Respectfully submitted,



Karen O. Moury
PA Attorney I.D. # 36879
BUCHANAN INGERSOLL & ROONEY PC
409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
(717) 237-4820

Counsel for Fair View Energy, Inc.

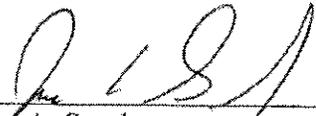
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VERIFICATION

I, Jay A. Snyder, President of Fair View Energy, Inc., hereby state that the information set forth in the foregoing Answer to Protest is true and correct to the best of my knowledge, information and belief. I understand that the statements here are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to the unsworn falsification to authorities).

August 5, 2016



Jay A. Snyder
President, Fair View Energy, Inc.

