



April 30, 2014

VIA E-FILE

David P. Zambito

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Tracey E. Meyers v. FirstEnergy Solutions Corp.; PRELIMINARY OBJECTIONS OF FIRSTENERGY SOLUTIONS CORP.; Docket No. C-2014-2415345

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is FirstEnergy Solutions Corp.'s Preliminary Objections in the above-referenced proceeding. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for *FirstEnergy Solutions Corp.*

DPZ/kmg
Enclosure

cc: Tracey E. Meyers

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TRACEY E. MEYERS,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2014-2415345
	:	
FIRSTENERGY SOLUTIONS CORP.,	:	
	:	
Respondent	:	

**PRELIMINARY OBJECTIONS OF FIRSTENERGY SOLUTIONS CORP.
TO THE COMPLAINT OF TRACEY E. MEYERS**

FirstEnergy Solutions Corp. (“FES”), by and through its attorneys, files these preliminary objections to the Complaint filed by Tracey E. Meyers (“Complainant”) pursuant to 52 Pa. Code § 5.101, and moves to dismiss the Complaint for lack of jurisdiction and legal insufficiency. In support of its Preliminary Objections, FES states the following:

1. The Complaint identifies the Respondent as FES. Complaint ¶ 2.
2. The Complaint alleges that Complainant has a fixed rate contract with FES for her electricity supply and she received a notice that FES would pass through charges (“RTO Expense Surcharge”) “due to the hardship their transmission organization (PJM Interconnection) had supplying electricity through January.” She admits that she has “no doubt that somewhere in the fine print” her contract allows FES to pass through these charges. Complaint ¶ 4.
3. The relief requested is for FES to not charge Complainant “any amount of money in addition” to the per kWh rate in her contract. Complaint ¶ 5.

**FIRST PRELIMINARY OBJECTION —
MOTION TO DISMISS COMPLAINT FOR
LACK OF COMMISSION JURISDICTION
(52 Pa. Code § 5.101(a)(1))**

4. FES incorporates by reference the averments contained in Paragraphs 1-3 as if fully set forth herein.

5. Complainant has not alleged conduct of FES that is subject to the Commission's limited authority over licensed electric generation suppliers. The Commission has consistently ruled that Section 2809(e) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 2809(e) provides the Commission with the limited authority to impose requirements necessary to maintain quality of service, including assuring that Chapter 56 billing regulations are followed. *See Bracken v. Champion Energy Services, LLC*, Docket No. C-2011-2256514 (Opinion and Order entered Jun. 12, 2012); *see also Bosche v. Direct Energy Services, LLC*, Docket No. C-2013-2361740 (ALJ E. Barnes Initial Decision dated Nov. 21, 2013; Secretarial Letter issued Feb. 12, 2014).

6. The Commission does not have subject matter jurisdiction to adjudicate a private contractual dispute between Complainant and FES. *Cf.* 66 Pa. C.S. § 2809 ("Requirements for electric generation suppliers"); *see also Feingold v. Bell*, 383 A.2d. 791, 794 (Pa. 1977) (explaining that the Commission "has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication"). Therefore, the Complaint should be dismissed with prejudice.

**SECOND PRELIMINARY OBJECTION —
MOTION TO DISMISS COMPLAINT FOR
LEGAL INSUFFICIENCY OF PLEADING
(52 Pa. Code § 5.101(a)(4))**

7. FES incorporates by reference the averments contained in Paragraphs 1-6 as if fully set forth herein.

8. The Complaint does not allege that Complainant has actually been billed by FES for the RTO Expense Surcharge. Instead, the Complaint alleges only that FES provided notice of its intent to charge the RTO Expense Surcharge. Complaint ¶ 4. Accordingly, the Complaint is legally insufficient because the alleged dispute is not ripe for disposition. The Complaint should be dismissed without prejudice to refile should FES actually bill Complainant for the RTO Expense Surcharge.

WHEREFORE, Respondent, FirstEnergy Solutions Corp., respectfully requests that this Honorable Commission grant its preliminary objections to the above-referenced Complaint, and dismiss the Complaint with prejudice for lack of Commission jurisdiction to adjudicate a contractual dispute or, alternatively, dismiss the Complaint without prejudice to refile should FES actually bill Complainant for the RTO Expense Surcharge.

Respectfully submitted,

By: 

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Counsel for *FirstEnergy Solutions Corp.*

Dated: April 30, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TRACEY E. MEYERS,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2014-2415345
	:	
FIRSTENERGY SOLUTIONS CORP.,	:	
	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Preliminary Objections of FirstEnergy Solutions Corp. to the Complaint of Tracey E. Meyers** upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

Via First-Class U.S. Mail

Tracey E. Meyers
432 Harris Street
Harrisburg, PA 17102

Dated this 30th day of April, 2014.



David P. Zambito, Esquire
Counsel for *FirstEnergy Solutions Corp.*