



May 22, 2015

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

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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: Feasterville Mobil Oil Corp. v. PECO Energy Company, and FirstEnergy Solutions Corp.; Docket No. C-2014-2456918

MOTION FOR JUDGMENT ON THE PLEADINGS OF FIRSTENERGY SOLUTIONS CORP.

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is FirstEnergy Solutions Corp.'s Motion for Judgment on the Pleadings 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: D. Troy Sellars
Counsel for *FirstEnergy Solutions Corp.*

DTS:kmg
Enclosure

cc: Per Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FEASTERVILLE MOBIL OIL CORP.,

Complainant

v.

**PECO ENERGY COMPANY,
and
FIRSTENERGY SOLUTIONS CORP.,**

Respondents

Docket No. C-2014-2456918

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.102(a), you are hereby notified that, if you wish to contest the motion, an answer or other responsive pleading to the enclosed Motion for Judgment on the Pleadings must be filed within **twenty (20) days** from service of the above-referenced motion. Any such reply must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served on counsel for FirstEnergy Solutions Corp., and where applicable the Administrative Law Judge presiding over the case.

File with:

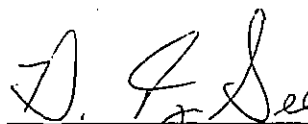
Rosemary Chiavetta, Secretary
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With a copy to:

David P. Zambito, Esquire (PA ID #80017)
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Harrisburg, PA 17101

Brian J. Knipe, Esquire (PA ID #82854)
FirstEnergy Solutions Corp.
76 S. Main Street
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Dated: May 22, 2015


D. Troy Sellars, Esquire

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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FEASTERVILLE MOBIL OIL CORP., :
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 Complainant :
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 v. :
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 PECO ENERGY COMPANY, :
 and :
 FIRSTENERGY SOLUTIONS CORP., :
 :
 :
 Respondents :

Docket No. C-2014-2456918

MOTION FOR JUDGMENT ON THE PLEADINGS

FirstEnergy Solutions Corp. (“FES”) moves, pursuant to 52 Pa. Code § 5.102(a), for judgment on the pleadings on the grounds that Feasterville Mobil Oil Corp.’s (“Complainant” or “Feasterville”) Complaint fails to state a claim upon which relief may be granted. Consequently, FES is entitled to judgment in its favor as a matter of law. In support of this motion, FES states the following:

I. FACTUAL BACKGROUND

1. FES is an electric generation supplier (“EGS”) licensed by the Pennsylvania Public Utility Commission (“Commission”) to provide electric generation service in Pennsylvania.

2. Complainant, a corporation, is a customer of PECO Energy Company (“PECO”), with a service address of 496 Easton Road, Horsham, PA 19044. (Compl. ¶¶ 1, 4; FES New Matter ¶ 18).

3. On or about October 1, 2012, Complainant enrolled with FES for the provision of electric generation supply at the rate of 7.7 cents per kilowatt hour. (FES Answer ¶ 4, New Matter ¶ 12 and Attachment A).

4. On April 15, 2013, Mr. Anil Aggarwal called FES and explained he had misplaced his copy of Feasterville's Terms and Conditions. During the course of the conversation with the FES Customer Service Representative, Mr. Aggarwal acknowledged that his price with FES was 7.7 cents per kilowatt hour, and requested that another copy of the contract be sent to him. (FES Answer ¶ 4, New Matter ¶ 13).

5. In response to his request, FES mistakenly sent Mr. Aggarwal a copy of the Small Commercial Terms and Conditions for an offer available to customers of the Duke Energy Ohio Electric Distribution Utility (the "Duke Energy OH Ts&Cs") at a price of 5.12 cents per kilowatt hour. A copy of the Duke Energy OH Ts&Cs sent to Mr. Aggarwal is attached to the Complaint. (FES Answer ¶ 4, New Matter ¶ 14).

6. The first paragraph of the Duke Energy OH Ts&Cs clearly provides that the terms and conditions are applicable to customers of the Duke Energy Ohio Electric Distribution Utility. The inadvertent transmittal of the Duke Energy OH Ts&Cs did not change the price of FES's electric generation service to Feasterville. (FES Answer ¶ 4, New Matter ¶¶ 14, 15).

7. On or about February 24, 2014, Mr. Aggarwal called FES to discuss the price of electric generation supply designated in the Duke Energy OH Ts&Cs. The inadvertent transmittal of the Duke Energy OH Ts&Cs was explained to Mr. Aggarwal, who was then provided with a copy of the Small Commercial Disclosure Statement applicable to his service as a customer of PECO Energy Company. (FES Answer ¶ 4, New Matter ¶ 16 and Attachment A).

II. GROUNDS FOR JUDGMENT ON THE PLEADINGS

8. A judgment on the pleadings is to be granted “if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving participant is entitled to judgment as a matter of law.” 52 Pa. Code § 5.102(d)(1).

9. The pleadings show that there are no genuine issues of material fact. The above facts were set forth in FES’s Answer and New Matter, submitted to the Commission pursuant to 52 Pa. Code § 5.62(b). On January 16, 2015, Feasterville, which is represented by counsel, submitted a “Response to Answer and New Matter.” Feasterville’s response did not generally or specifically deny any averments made by FES in the New Matter.

10. Relevant facts stated in the new matter may be deemed to be admitted where the opposing party does not respond to the New Matter. 52 Pa. Code § 5.63(b). Here, Feasterville did not respond to FES’s New Matter. Its response does not address any facts FES set forth in the New Matter. Because Feasterville failed to respond to the New Matter, the facts set forth by FES in the New Matter should be deemed admitted under 52 Pa. Code § 5.63(b).


11. Specifically, Feasterville does not deny that it entered into a contract with FES for electric generation supply at the agreed-upon price of 7.7 cents per kilowatt hour. Nor does Feasterville deny that PECO is its utility company. Further, Feasterville does not deny that the Duke Energy OH Ts&Cs clearly provide that they are applicable to customers of the Duke Energy Ohio Electric Distribution Utility. Finally, Feasterville does not deny that the Small Commercial Disclosure Statement attached to FES’s Answer and New Matter, which contained the price of 7.7 cents per kilowatt hour, was in fact applicable to Feasterville’s electric

generation service as a customer of PECO Energy Company. Because Feasterville did not dispute any of the facts set forth in the New Matter, there is no genuine issue of material fact.

12. FES is entitled to judgment as a matter of law, and requests that the Commission dismiss Complainant's Formal Complaint on the grounds that Feasterville failed to state a claim upon which relief may be granted.

WHEREFORE, for the foregoing reasons, FirstEnergy Solutions Corp. respectfully requests that the Pennsylvania Public Utility Commission grant this Motion for Judgment on the Pleadings, affirm the dismissal of the informal complaint, and dismiss the Formal Complaint filed by Feasterville Mobil Oil Corp.

Respectfully submitted,

By: 

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DATED: May 22, 2015

Counsel for *FirstEnergy Solutions Corp.*

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Docket No. C-2014-2456918

CERTIFICATE OF SERVICE


I hereby certify that I have this day served a true copy of the Motion for Judgment on the Pleadings of FirstEnergy Solutions Corp., upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Via U.S. First Class Mail

Richard W. Hogan, Esquire
P.O. Box 577
Ocean Grove, NJ 07756

Shawne L. Lee, Esquire
PECO Energy Company
2301 Market Street S23-3
Philadelphia, PA 19101

May 22, 2015



D. Troy Sellers, Esquire
Counsel for *FirstEnergy Solutions Corp.*

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