

COMMONWEALTH OF PENNSYLVANIA



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April 10, 2024

Via Electronic Mail Service Only

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

Re: Pennsylvania Public Utility Commission
v.
FirstEnergy Pennsylvania Electric Company
Docket No. R-2024-3047068

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Formal Complaint and Public Statement in the above-referenced proceeding.

Copies have been served as shown on the attached Certificate of Service.

Respectfully submitted,

/s/Harrison W. Breitman
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Assistant Consumer Advocate
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Enclosures:

cc: Office of Administrative Law Judge (**email only:** crainey@pa.gov)
Paul Diskin, TUS (**email only:** pdiskin@pa.gov)
Office of Special Assistants (**email only:** ra-OSA@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :
 :
 v. : Docket No. R-2024-3047068
 :
 FirstEnergy Pennsylvania Electric Company :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Formal Complaint and Public Statement, 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. This document was filed electronically on the Commission’s electronic filing system.

Dated this 10th day of April 2024.

SERVICE BY E-MAIL ONLY

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Dated: April 10, 2024

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

1. CUSTOMER NAME (COMPLAINANT)

Patrick Cicero, Consumer Advocate

555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923

Phone: (717) 783-5048

Fax: (717) 783-7152

2. UTILITY NAME (RESPONDENT)

FirstEnergy Pennsylvania Electric Company
Docket No. R-2024-3047068

3. TYPE OF UTILITY

Electric

4. COMPLAINT

A. On April 2, 2024, FirstEnergy Pennsylvania Electric Company (FE PA or the Company) filed Supplement No. 3 to its Tariff Electric – Pa. P.U.C. No. 1 at Docket No. R-2024-3047068, with the Public Utility Commission (Commission), seeking to increase total distribution revenues by an additional \$503,849,000 per year, or by 34%. The Company proposes that the rate increase become effective on June 1, 2024.¹ On a Rate District basis, the Company proposes to increase annual distribution revenues as follows:

- Met-Ed Rate District - \$146,332,000, or by 28.4%
- Penelec Rate District: \$132,963,000, or by 26%
- Penn Power Rate District - \$54,764,000, or by 42.3%
- West Penn Rate District - \$169,789,000, or by 39.5%

B. FE PA is engaged in the business of furnishing electric service to approximately 2.1 million residential, commercial, and industrial customers across 55 counties in western, northwestern, southern, and central Pennsylvania.

¹ For general rate increases filed pursuant to 66 Pa.C.S. § 1308(d), the full suspension period is nine months (seven months plus sixty days). See 66 Pa.C.S. §§ 1308(a), (d); 52 Pa. Code § 53.31. If the Commission does not enter a final rate determination at the expiration of the full suspension period, the proposed general rate increase shall go into effect at the end of such period, subject to potential refund. See 66 Pa.C.S. §§ 1308(d), 1312.

- C. Under the Company’s proposal, the total bill for a residential customer using 1,000 kWh per month are as follows:
- Met-Ed – \$205, or by 9.2%
 - Penelec – \$221, or by 9.8%
 - Penn Power - \$202, or by 11.8%
 - West Penn – \$173, or by 10.6%
- D. FE PA has also proposed an increase in the monthly residential customer charge by Rate District as follows:
- Met-Ed - \$14.50, or by 28.89%
 - Penelec - \$14.50, or by 28.89%
 - Penn Power - \$14.50, or by 31.82%
 - West Penn - \$11.50, or by 54.57%.
- E. For ratemaking purposes, the Company utilizes a fully projected future test year (FPFTY) ending December 31, 2025.
- F. FE PA proposes a return on equity of 11.3% resulting in an overall rate of return of 8.19%, in conjunction with an equity-rich capital structure of 53.81% equity and 46.19% debt. The proposed rate of return and capital structure are both likely excessive and, if accepted, would result in rates that are unjust and unreasonable in violation of Chapter 13 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1301, *et seq.*, sound ratemaking principles, and public policy.
- G. FE PA proposes to roll into distribution rates its Distribution System Improvement Charge (DSIC) Rider, Smart Meter Technologies Charge Rider, Tax Cuts and Jobs Act Rider, and Voluntary Surcharge Rider.
- H. The Company is also proposing recovery of its storm related deferral; COVID-19 related deferral; and, the recovery of funds related to a Verizon Complaint in Docket No. C-2020-3019347 (Verizon Complaint). Specifically, FE PA included (1) an addition to rate base for the balance of its storm reserve accounts, which have been maintained in accordance with the terms and conditions of the Rate Districts’ 2016 Settlement as of December 31 of the historical test year; (2) an addition to rate base for certain extraordinary storm damage costs; (3) an addition to rate base to include the budgeted future test year storm reserve activity; (4) an addition to rate base for the balance of the COVID-19 regulatory asset; (5) an addition to rate base for the Verizon complaint balance, and; (6) a reduction to rate base for one year of proposed amortization expense during the FPFTY.
- I. In the Verizon Complaint proceeding involving FE PA, Verizon challenged the rates it paid to attach to poles per contract in the Met-Ed, Penelec, and Penn Power Rate division. Ultimately, the Commission ordered that the rates that Verizon pay to FE PA be reduced. FE PA is proposing to record as a regulatory asset the difference in revenues produced from the negotiated contract rates and the newly

reduced rates ordered by the Commission and to recover the difference as part of this rate case. This difference was calculated to cover the period in which the new rates were effective through the effective date of new rates in this case, November 20, 2019, to December 31, 2024. FE PA claims that, in order to ensure that the rates adopted in this proceeding accurately reflect the impacts of the Commission's decision in the Verizon Complaint. FE PA has reflected the full impact of the Commission's order in FE PA's initial filing. The Company's FPFTY reflects the estimated level of pole attachment revenues from Verizon, reflective of the Commission's directive in its Order in Docket No. C-2020-3019347. In total, FE PA is seeking to roll into distribution rates the total unamortized deferral and Verizon complaint balances. The OCA will investigate FE PA's proposal in this case and has concerns that these proposals may be unjust and unreasonable in violation of Chapter 13 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1301, *et seq.*, sound ratemaking principles, and public policy.

- J. The Commission should use the scheduled December 19, 2024, Public Meeting date to develop a procedural schedule in this matter. FE PA's filing contains 5 volumes and over 4,092 pages. The Company was in complete control of its preparation of these materials and the timing of its initial filing. In contrast, the intervenors and complainants in this matter, including the OCA, are on the receiving end of this massive amount of data and information and need sufficient time to review and understand such information to develop positions and recommendations in order to be meaningfully heard before the Commission. The last scheduled Public Meeting date prior to the end of the suspension period is December 19, 2024, and the one prior to that is December 5, 2024. However, use of the December 5, 2024, Public Meeting would compress the procedural schedule by at least two weeks, causing prejudice to all non-Company litigants. Using the December 19, 2024, Public Meeting date would provide Commission staff with sufficient time to prepare and enter the rewrite order following that Public Meeting and prior to the end of the suspension period, to the extent that is even necessary. Hence, the Commission should direct the Office of Administrative Law Judge (OALJ) to use the scheduled December 19, 2024, Public Meeting date as the deadline for a final Commission determination in this matter and for purposes of developing a litigation schedule in this matter.
- K. The Consumer Advocate is empowered to represent the interests of Pennsylvania consumers before the Pennsylvania Public Utility Commission (Commission), pursuant to Act 161 of the General Assembly, as amended, 71 P.S. §§ 309-1, *et seq.*
- L. In reaching a decision on whether to grant FE PA's rate increase as well as its various rule and tariff changes, the Public Utility Commission must give "due consideration to the interests of consumers." 71 Pa. Stat. Ann. §309-5(2).
- M. A preliminary examination of FE PA's filing indicates that the proposed increase in rates may be unjust, unreasonable, in violation of law, and will or may produce

an excessive return on investment in violation of the Public Utility Code, 66 Pa. C.S. § 1301, *et seq.*, sound ratemaking principles, and public policy.

- N. The Consumer Advocate avers that the rates, charges, tariff changes, and other rules that FE PA seeks to implement may be unjust, unreasonable, and unlawfully discriminatory in violation of the Public Utility Code, 66 Pa. C.S. §§ 1301 and 1304, *et seq.*, and may otherwise be contrary to sound ratemaking principles and public policy.
- O. The Consumer Advocate has significant concerns about the rate increase requests filed by FE PA including the amounts sought, proposed returns on equity, the capital structure, many of the proposed tariff changes, rate designs, and new and novel proposals that seek to shift risks onto consumers and away from the Company. Many of FE PA's proposals are an affront to the regulatory compact that has long existed in Pennsylvania to protect the public from monopolistic excess.
- P. The Consumer Advocate avers that the Company's existing rates, rules, and regulations are or may not be just and reasonable or otherwise proper under the Public Utility Code, 66 Pa. C.S. § 1301, *et seq.*, and applicable ratemaking principles.
- Q. The Consumer Advocate files this Formal Complaint to ensure that the Commission will fully and fairly adjudicate issues pertaining to whether the Company's existing and proposed rates and all rate policy changes are unjust, unreasonable, unduly discriminatory, or otherwise unlawful.

5. RELIEF

The Consumer Advocate respectfully requests that the Commission take the following actions:

- A. Suspend and investigate the operation of the proposed Tariff pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S. § 1308(d);
- B. Direct the Office of Administrative Law Judge to use the December 19, 2024 Public Meeting as the deadline for a final Commission determination in this matter and for purposes of setting a deadline for a Recommended Decision and developing a litigation schedule in this matter;
- B. Consolidate all complaints filed against the proposed Tariff;
- C. Hold full evidentiary hearings examining the reasonableness of the Company's current rates and its proposed increase in rates;
- D. After providing the public with adequate notice, hold in person public input hearings in the Company's service territory, as well as by telephone or virtually, as early as feasible, in order to provide customers with an opportunity to be heard on the record;
- E. Deny any charges or changes contained in the Company's proposal that cannot be fully justified by the Company or that would result in rates that are unjust, unreasonable, unduly discriminatory, or otherwise inconsistent with the Public Utility Code, sound ratemaking principles, and public policy;
- F. Determine the justness and reasonableness of the Company's current and proposed rates; and
- G. Grant such other relief that the Commission deems necessary and proper.

6. VERIFICATION AND SIGNATURE

Verification:

I, Patrick Cicero, Consumer Advocate, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

/s/ Patrick Cicero
Signature

04/10/2024
Date

7. LEGAL REPRESENTATION

Darryl A. Lawrence, Senior Assistant Consumer Advocate, PA Attorney I.D. # 93682
Harrison W. Breitman, Assistant Consumer Advocate, PA Attorney I.D. # 320580
Andrew J. Zerby, Assistant Consumer Advocate, PA Attorney I.D. # 332222

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**PUBLIC STATEMENT OF THE OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(e)**

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Formal Complaint and participate in proceedings before the Commission involving the proposed rate increase requested by FirstEnergy Pennsylvania Electric Company (FE PA or Company).

FE PA is engaged in the business of furnishing electric service to approximately 2.1 million residential, commercial, and industrial customers in 55 counties in western, northwestern, southern, and central Pennsylvania. On April 2, 2024, the Company filed for an overall increase in revenues of \$503,849,000 per year. FE PA proposes that the rate increase become effective on June 1, 2024. The total bill for a residential customer using 1,000 kWh per month are as follows: Met-Ed – \$205, or an increase of 9.2%; Penelec – \$221, or an increase of 9.8%; Penn Power - \$202, or an increase of 11.8%, and; West Penn – \$173, or an increase of 10.6%. The increase to distribution revenue totals \$503,849,000 per year, or 34%. FE PA’s proposed rate increase, if approved, would produce an 8.19% overall rate of return on its original cost rate base, including an excessive return on equity of 11.3% utilizing an equity-rich capital structure.

The objective of the Consumer Advocate in filing a Formal Complaint in this matter is to protect the interests of FE PA’s customers. The Consumer Advocate will participate in this proceeding in order to determine whether the rate increase and other tariff changes proposed by FE PA are just and reasonable and that its service quality meets the adequate, efficient, safe, and reasonable standards of the Public Utility Code based upon the information submitted by the Company in support of its claims, including any information that the Consumer Advocate may

obtain in discovery during the proceedings. The Consumer Advocate will represent the interests of FE PA's customers before the Commission and seek to ensure that customers are not charged rates that are unjust, unreasonable, unduly discriminatory, or otherwise inconsistent with the Public Utility Code, sound ratemaking principles, and public policy.