

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

**IN THE MATTER OF THIRD PARTY
SUPPLIERS – N.J.A.C. 14:4-7 – THE
BOARD’S REVIEW OF CONSUMER
PROTECTION PROVISIONS OF ITS
RULES CONCERNING THIRD PARTY
SUPPLIERS**

BPU DOCKET NO: EX14060579

AND

**IN THE MATTER OF THE
IMPLEMENTATION OF THE SPECIAL
RULE ADOPTION IN COMPLIANCE WITH
L. 2013, C. 263**

BPU DOCKET NO. EX14060610

COMMENTS OF FIRSTENERGY SOLUTIONS CORP.

Mark A. Lazaroff, Esquire
Cozen O’Connor
LibertyView, Suite 300
457 Haddonfield Road
Cherry Hill, NJ 08002
Telephone: (856) 910-5000
Facsimile: (877) 443-9460
Email: mlazaroff@cozen.com
Attorney for FirstEnergy Solutions Corp.

Amy M. Klodowski, Esquire
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
Telephone: (724) 838-6765
Facsimile: (234) 678-2370
Email: aklodow@firstenergycorp.com

INTRODUCTION

FirstEnergy Solutions Corp. (“FES”), a subsidiary of FirstEnergy Corp., is a licensed third party supplier (“TPS”) in New Jersey, authorized by the Board of Public Utilities (“Board” or “BPU”) to provide competitive electric generation supply to retail customers in the state. In addition to providing generation supply products to retail customers in New Jersey, FES also participates as a supplier in Government Energy Aggregation Programs pursuant to BPU regulations at N.J.A.C. §14:4-6. In addition to New Jersey, FES provides retail electric generation supply to residential, commercial and industrial customers in Ohio, Pennsylvania, Maryland, Michigan and Illinois.

FES appreciates this opportunity to comment on the topics listed in the Notice issued by the BPU on June 24, 2014, which concern consumer protection provisions of the Board’s rules and the special rule adoption concerning TPSs. In addition to commenting on some of those topics, FES will address certain proposals contained in the written remarks and testimony provided during the July 17, 2014 Stakeholder Meeting on these issues by Mr. Brian Lipman, Litigation Manager of the Division of Rate Counsel (“Rate Counsel”), on behalf of the Director of the Division of Rate Counsel (Rate Counsel’s written remarks are hereafter referred to as “Rate Counsel Remarks at p. xx”). FES respectfully submits that some of Rate Counsel’s proposals will create unnecessary and burdensome obstacles to law-abiding TPSs operating in New Jersey without providing meaningful protections to New Jersey consumers.

It was the intent of the Legislature, in enacting the Electric Discount and Energy Competition Act (“EDECA”) to foster competitive and reliable energy markets in New Jersey that would place New Jersey in an improved competitive position in regional, national and international markets. See N.J.S.A. 48:3-50. Implementation of some of these proposals could

be an impediment to the provision of competitive and reliable service to New Jersey customers, and could require substantial expenditures that would likely ultimately result in higher TPS prices without providing corresponding benefits to New Jersey consumers. The implementation of such proposals would not be in the spirit of EDECA as they would likely impede the growth of New Jersey's competitive energy markets and decrease its competitive standing in relation to other states. FES respectfully requests that when considering Rate Counsel's proposals, the Board keep in mind the primary goal of EDECA of creating and fostering a competitive and reliable energy market in New Jersey.

These concerns are further addressed below.

A. Adequacy of Current Regulations and Enforcement Authority of Executive Agencies

In general, FES believes current regulations and enforcement authority adequately provide necessary consumer protections. While FES appreciates the Board's concern about maintaining customer protections and supports that effort, we respectfully suggest that the Board must remain cognizant of the business climate it creates for TPSs through its regulations and the detrimental impact that unnecessary and burdensome regulations could have on the provision of competitive retail service in New Jersey. To that end, FES appreciates that the Board has instituted this proceeding to receive input from all stakeholders in order to assure that any new regulatory requirements provide an appropriate response to customers' actual needs while maintaining the viability of the retail electric market in New Jersey.

B. Content of Advertising and Marketing Materials

While the actions of some “bad actors” among licensed TPSs can create negative perceptions of the electric generation shopping experience for the entire market, FES believes that a very small number of companies fall into this category. FES fully supports enforcement efforts undertaken to prevent or punish false advertising, slamming or other alleged “unconscionable marketing practices”, as described by Rate Counsel in its testimony. Rate Counsel Remarks at p. 5. The actions of these few bad actors harm consumers and thus cast the retail power industry as a whole in a bad light and discourage shopping.

FES agrees it is necessary that marketing materials truthfully and accurately portray the product offered. However, FES respectfully submits that current New Jersey law and regulations contain the necessary authorization and tools for the Board to pursue the alleged offenders. For example, all TPSs must be licensed and undergo Board review on an annual basis to renew their license. N.J.A.C. 14:4-5.4. Furthermore, the Board’s regulations contain significant consumer protections, see N.J.A.C. 14:4-7.1, which if violated can result in a denial, suspension, or revocation of a TPS license; financial penalties; a prohibition on accepting new customers; and any other remedies authorized by law. N.J.A.C. 14:4-5.13.

C. Methods of Customer Education

FES believes that customer education is the most important initiative the Board can undertake to avoid confusion and customer complaints. Some customers have stated they did not understand the products for which they enrolled. FES supports the proposal by the Retail Energy Supplier Association that the Board conduct a stakeholder meeting so that all parties can focus on the best ways to educate New Jersey consumers about electric choice.

It seems inarguable, however, that the Board’s customer choice information website

could be the single most valuable tool in furthering consumer education about shopping and the products that TPSs offer. Consumers generally trust that the information provided by their state regulatory agencies is knowledgeable and objective. Electric choice shopping portals are in place in several jurisdictions in which FES operates. For example, see:

Pennsylvania: <http://www.papowerswitch.com>

Ohio: <http://energychoice.ohio.gov/ApplesToApplesComparison.aspx?Category+Electric>

Illinois: <http://pluginillinois.org/offers.aspx?said+1>

The above websites include currently available offers in each utility service territory in a format that enables consumers to easily compare products and find the one that best suits their particular needs. The state regulatory commissions control the formatting for posting offers, general information about shopping, FAQs, etc. Offer data on the websites are populated by suppliers, and updated by suppliers as necessary to provide consumers with current information. The Commissions actively promote these websites in public service advertising and through bill inserts and other mailings to customers by utilities. These websites convey to consumers the regulators' objective message that electric shopping is a good choice. The Board's website offers the opportunity to reach a large number of consumers with up-to-date shopping and consumer protection information. It can give consumers necessary information about the products TPSs offer, and direct consumers to the chosen product's supplier website or phone number for details about the concomitant contractual obligations both parties will accept when they enroll.

D. Rate Counsel Proposals

The great majority of TPSs want consumers to have all the information they need to make informed choices. As Rate Counsel acknowledged in its written remarks presented during

the Board Staff stakeholder meeting on July 17, 2014 most TPSs are reputable and follow the rules. Rate Counsel Remarks at p. 5. However, many of Rate Counsel’s proposals to address the alleged actions of a few “bad actors” among New Jersey TPSs are excessive and unnecessary, and are not required in any other jurisdiction in which FES operates. Several of the proposals will require substantial expenditures which will ultimately be passed through to consumers in the form of higher TPS prices. FES will address the proposals in the order in which they were raised in Rate Counsel’s written remarks. If the Board determines to adopt any of Rate Counsel’s proposals (with the exception of accelerated switching), FES submits that the applicability should be limited to residential and small commercial customers (and that “small commercial customer” needs to be defined so that all parties know to whom precisely the rules apply).

Larger commercial and industrial customers are sophisticated purchasers of electric supply, most of whom have been shopping for years, and do not require the protections purportedly offered by Rate Counsel’s proposals. The Board’s current regulations recognize the inherent differences with respect to large commercial and industrial customers versus small commercial and industrial customers and residential customers. For example, the Board requires broader marketing and contracting protections for residential customers and small commercial and industrial customers. See N.J.A.C. 14:4-7.4, 7.6. FES respectfully requests that when considering any new customer standards, the Board consider the differences between these types of customers and how new regulations could affect the provision of TPS service to them.

1. Rate Counsel Proposed Rule Change #1

Rate Counsel proposes that TPSs provide hard copy enrollment materials to customers

who enroll over the internet. FES's website contains all materials relevant to a customer's contract, and during the enrollment process the customer is directed to the terms and conditions ("T&Cs") applicable to his/her chosen product several times and prompted to print them out if desired. Requiring that the TPS follow up a web enrollment with a hard copy mailing is unnecessary, wasteful and burdensome. It would require extensive changes to FES's computer system and would result in a substantial increase in FES's mailing costs, both of which would be passed on to consumers in the form of higher prices. Customers generally prefer electronic communications and paper mailings are fast becoming a thing of the past. However, for those that prefer hard copies, FES continues to make print copies available. Rate Counsel's proposal does not reflect current customer preferences.

In addition, when FES conducts direct mail advertising it includes the terms and conditions applicable to the offer in its mailings. This way, the customer has all the information necessary to make an informed decision before signing up. Customers are encouraged to enroll by returning a tear-off, by telephone or on FES's website. Requiring that another set of T&Cs be sent after the customer enrolls by telephone or on the internet in response to a direct mail advertising campaign is wasteful, expensive and unnecessary. FES has not received any customer complaints about its process. Many customers prefer electronic documents and/or are environmentally conscious and prefer not to receive paper copies for these reasons.

FES does not object to sending a customer a set of T&Cs upon request. FES also agrees it is appropriate to require that a customer be sent T&Cs if he/she enrolls as a result of a phone call or other contact initiated by the seller. As stated before, FES agrees that consumers should be fully informed about the product they sign up for. FES submits that duplicative and unnecessary mailings do not serve any purpose other than increased costs and the creation of

customer confusion.

2. Rate Counsel Proposed Rule Change #2

FES does not object to Rate Counsel's proposal that the material terms of customer contracts be set forth in a standardized summary form. The summary form would be provided to the customer with the T&Cs, either with the marketing materials or posted on the supplier website before the customer enrolls, or sent with the T&Cs after enrollment if the enrollment results from a supplier-initiated contact. However, FES does object to the requirement that customers sign and return the form. The vast majority of TPS transactions are completed to customers' full satisfaction without requiring sending multiple sets of documents. This requirement would be burdensome to TPSs by increasing costs and requiring modifications to TPS' computer and operations systems while conferring minimal (if any) benefit to customers.

3. Rate Counsel Proposed Rule Change #3

Rate Counsel proposes requiring that once written materials have been provided, customers must return a signed acknowledgment (print or electronic), confirming the customer wants to sign up for service and/or extend their contract period. Again, this proposal requires that a customer provide an additional affirmative consent to an enrollment they already completed. This proposal would create a logistical nightmare. FES believes that this proposal reveals a fundamental misunderstanding of the contracting procedures TPSs like FES utilize. As previously stated, FES provides T&Cs to the customer on its website and in its marketing materials before the customer enrolls; that is how FES ensures that customers fully understand the product they are signing up for. Thus, the customer has ample time before

enrolling to review the terms of the contract. Further, New Jersey law already provides for a seven day rescission period after the customer enrolls, which is clearly stated in the T&Cs. Requiring the customer to take yet another affirmative action to sign up creates an unnecessary obstacle to receiving electric supply from a TPS and places an unnecessary burden on both TPSs and customers.

New processes and system changes would need to be established to track receipt of the customer's consent and to delay New Jersey enrollments according to the proposed open-ended "rescission period". Pre-renewal, renewal and government aggregation activities would be greatly impacted by a requirement for an additional customer affirmative consent. Call center activity would be increased with incoming calls (customer lost the consent form, customer confusion, etc.) and outgoing calls (reminding customer to send in consent form). Furthermore, enrollment take rates would decrease considerably as many customers would not follow through with sending in the consent form. FES respectfully submits that Rate Counsel's proposal should not be adopted.

4. Rate Counsel Proposed Rule Change #4

Rate Counsel proposes the Board require that information regarding price, the end of a fixed price period, cancellation fees, and other major contract terms be explicitly detailed on a standard disclosure form. As stated above, FES does not object to the proposal that a summary document containing material terms of the contract be included with the T&Cs. However, FES does object to the suggestion that the document should contain "the TPS's historic pricing for at least the prior 12 months." Rate Counsel Remarks at p. 9. Pricing varies by offer terms and market conditions, so historic prices may not have any relevance to current offers. This proposal

is likely to add to, rather than eliminate confusion. Providing the current price-to-compare is a more relevant point of reference for a shopping customer and will better enable customers to make informed contract decisions than providing historical data.

5. Rate Counsel Proposed Rule Change #5

Rate Counsel proposes requiring TPSs to maintain recorded sales calls for at least three months after the end of a customer's contract period. FES interprets this proposal to apply to marketing calls initiated by the TPS. If that understanding is accurate, FES does not object to Rate Counsel's proposal that recorded sales calls be retained by the TPS for a reasonable period of time after the customer's contract ends.

6. Rate Counsel Proposed Rule Change #6

Rate Counsel opines that the time it currently takes to effectuate customer switching, whether among TPSs or between a TPS and BGS, is too long, and defers to the Board and utilities to "establish procedures to shorten the current time frame." Rate Counsel Remarks at p. 9. FES supports a shortened time frame for customer switching, but recognizes that there are a number of details that have to be considered before accelerated switching can be achieved, such as system limitations, costs and the reasonable timeframe for implementation. These details should be vetted through a stakeholder process so that all interested parties can work together to arrive at a reasonable accelerated switching timeline.

CONCLUSION

FES appreciates the opportunity to submit these Comments and thanks the Board for its continued support of the retail electricity market in New Jersey.

Respectfully submitted,



Mark A. Lazaroff, Esquire
Cozen O'Connor

LibertyView, Suite 300
457 Haddonfield Road
Cherry Hill, NJ 08002
Telephone: (856) 910-5000
Facsimile: (877) 443-9460
Email: mlazaroff@cozen.com
Attorney for FirstEnergy Solutions Corp.

Amy M. Klodowski, Esquire
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
Telephone: (724) 838-6765
Facsimile: (234) 678-2370
Email: aklodow@firstenergycorp.com