

COMMONWEALTH OF PENNSYLVANIA



PATRICK M. CICERO  
Consumer Advocate

OFFICE OF CONSUMER ADVOCATE  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
(800) 684-6560

 @pa\_oca  
 /pennoca  
FAX (717) 783-7152  
consumer@paoca.org  
www.oca.pa.gov

May 1, 2024

**Via Electronic Filing**

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 Prehearing Memorandum in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Andrew J. Zerby  
Andrew J. Zerby  
Assistant Consumer Advocate  
PA Attorney I.D. # 332222  
AZerby@paoca.org

Enclosures:

cc: The Honorable Katrina L. Dunderdale (Email Only)  
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 filed electronically on the Commission’s electronic filing system and served a true copy of the following document, the Office of Consumer Advocate’s Prehearing Memorandum, 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.

Dated this 1<sup>st</sup> day of May 2024.

SERVICE BY E-MAIL ONLY

Scott B. Granger, Esquire  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
sgranger@pa.gov  
*Counsel for I&E*

Rebecca Lyttle, Esquire  
Sharon E. Webb, Esquire  
Office of Small Business Advocate  
Forum Place  
555 Walnut Street, 1st Floor  
Harrisburg, PA 17101  
relyttle@pa.gov  
swebb@pa.gov  
*Counsel for Office of Small Business Advocate*

Tori L. Giesler, Esquire  
Darshana Singh, Esquire  
Angelina M. Umstead, Esquire  
FirstEnergy Service Company  
76 South Main  
Akron, OH 44308  
tgiesler@firstenergycorp.com  
singhd@firstenergycorp.com  
aumstead@firstenergycorp.com  
*Counsel for FE PA*

David B. MacGregor, Esquire  
Garrett P. Lent, Esquire  
Nicholas A. Stobbe, Esquire  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
dmacgregor@postschell.com  
glent@postschell.com  
nstobbe@postschell.com  
*Counsel for FE PA*

SERVICE BY E-MAIL ONLY

Devin T. Ryan, Esquire  
Post & Schell, P.C.  
One Oxford Centre  
301 Grant Street, Suite 3010  
Pittsburgh, PA 15219  
dryan@postschell.com  
*Counsel for FE PA*

Susan E. Bruce, Esq.  
Charis Mincavage, Esq.  
Kenneth R. Stark, Esq.  
Harrison Ryan Block, Esq.  
McNEES WALLACE & NURICK LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
sbruce@mcneeslaw.com  
cmincavage@mcneeslaw.com  
kstark@mcneeslaw.com  
rblock@mcneeslaw.com  
*Counsel for MEIUG, PICA, and WPPH*

Ria M. Pereira, Esq.  
Elizabeth R. Marx, Esq.  
John W. Sweet, Esq.  
Lauren N. Berman, Esq.  
118 Locust Street  
Harrisburg, PA 17101  
pulp@pautilitylawproject.org  
*Counsel for CAUSE-PA*

Brian T. Kadlubek, Esq.  
Pullman Center  
112 Hollywood Drive, Suite 101  
Butler, PA 16001  
btkadlubek@lawgol.com  
*Counsel for IBEW*

Annete Martin  
3350 White Church Road  
Chambersburg PA, 17202  
g15a20@yahoo.com

/s/ Andrew J. Zerby  
Andrew J. Zerby  
Assistant Consumer Advocate  
PA Attorney I.D. # 332222  
AZerby@paoca.org

Darryl A. Lawrence  
Senior Assistant Consumer Advocate  
Harrison Breitman  
Assistant Consumer Advocate  
OCAFirstEnergy2024@paoca.org

*Counsel for:*  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
717-783-5048

Dated: May 1, 2024

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission : Docket Nos. R-2024-3047068  
v. : C-2024-3048327 et al.  
FirstEnergy Pennsylvania Electric Company :  
: :  
: :  
: :

---

PREHEARING MEMORANDUM  
OF THE  
OFFICE OF CONSUMER ADVOCATE

---

AND NOW, before the Pennsylvania Public Utility Commission (Commission), and pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and the Prehearing Conference Order issued by the Honorable Administrative Law Judge (ALJ) Katrina L. Dunderdale on April 25, 2024, in the above-captioned matter, the Office of Consumer Advocate (OCA) files this Prehearing Memorandum.

**I. INTRODUCTION AND PROCEDURAL BACKGROUND**

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 Commission, seeking to increase total distribution revenues by an additional \$503.8 million per year, or by 34%. By Order entered April 25, 2024, the Commission suspended the proposed Supplement No. 3 to Tariff Electric Pa. P.U.C. No. 4 until January 1, 2025. The Commission has ordered that an investigation be made to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations in the proposed Supplement No. 3.

FE PA is engaged in the business of furnishing electric service to approximately 2.1 million residential, commercial, and industrial customers across 55 counties. On a rate district basis, the Company proposes to increase annual revenues as follows:

Rate District	Total Increase in Annual Distribution Revenues	% Increase
Met-Ed	\$146.3 million	28.4% increase
Penelec	\$133 million	26% increase
Penn Power	\$54.8 million	42.3% increase
West Penn	\$169.8 million	39.5% increase

Under the Company’s proposal, the total bill for a residential customer using 1,000 kWh per month in each rate district would increase as follows:

Rate District	Current Monthly Bill 1,000 kWh usage	Proposed Monthly Bill 1,000 kWh usage	% Increase
Met-Ed	\$188	\$205	9.2% increase
Penelec	\$201	\$221	9.8% increase
Penn Power	\$181	\$202	11.8% increase
West Penn	\$156	\$173	10.6% increase

FE PA has also proposed an increase in the monthly residential charge for each rate district that would result in the following increases:

Rate District	Current Customer Charge	Proposed Customer Charge	% Increase
Met-Ed	\$11.25	\$14.50	28.9% increase
Penelec	\$11.25	\$14.50	28.9% increase
Penn Power	\$11.00	\$14.50	31.8% increase
West Penn	\$7.44	\$11.50	54.6% increase

The Consumer Advocate is empowered to represent the interests of consumers before the Commission, pursuant to Act 161 of the General Assembly, as amended, 71 P.S. §§ 309-1, et seq.

The Consumer Advocate filed a Formal Complaint in this matter to ensure that the Commission fully and fairly adjudicates issues pertaining to whether the Company's existing and proposed rates – and all rate policy changes – are just, reasonable, not unduly discriminatory, and otherwise lawful.

## **II. ISSUES AND SUB-ISSUES**

At this early stage in the proceeding, the OCA has identified the following issues and sub-issues that it anticipates will be included in its inspection of the Company's proposed rate increase. It is anticipated that other issue may arise and be pursued once more discovery has been conducted and responses have been reviewed and analyzed. A list of issues and sub-issues the OCA has identified is listed below. The OCA will investigate more issues as they arise.

### **A. Rate of Return**

1. The OCA will conduct a detailed analysis of the Company's proposed Return on equity of 11.3%. The OCA will carefully examine the methodologies and supporting data used to develop the proposed return on equity.

2. The OCA will investigate whether the capital structure proposed by the Company of 53.81% equity and 46.19% debt is reasonable.

3. The OCA will examine the proxy companies utilized by the Company and determine whether the proxy group selected is a proper comparison. The OCA will analyze the methodology for selection and exclusion from the group.

B. Rate Base

1. The OCA will examine and analyze the proposed rate base in this proceeding and review any proposed additions.

2. The OCA will analyze all claims to ensure that the proposed plant in service being claimed is used and useful.

C. Revenues and Expenses

1. The OCA will review the company's proposed revenues and expenses.

2. The OCA will examine the Company's proposed collection of COVID-19 expenses and analyze whether the collection is in line with the Commission's Orders and regulations.

3. The OCA will review the Company's proposed storm damage expenses.

4. The OCA will review proposed expenses related to changes in staffing levels.

5. The OCA will review the Company's proposed changes to the recovery of pension and OPEB costs.

6. The OCA will review the allocation of FESC costs to ensure that these costs are properly allocated.

D. Taxes

1. The OCA will examine the Company's proposed changes to its tax accounting practices to determine if they are in line with recent changes to tax law.

E. Depreciation

1. The OCA will carefully examine the proposed change in depreciation methodology from Average Straight Line depreciation to Equal Life Groups depreciation. The OCA will investigate the reasonableness of this shift and the effects that it will have on consumers.

F. Rate Structure/ Cost of Service/ Rate Design

1. The OCA will analyze the Company's proposed cost of service studies to determine the accuracy of each study. If necessary, the OCA will propose modifications or new Cost of Service studies.

2. The OCA will examine the Company's proposed allocation of its proposed Electric Vehicle (EV) program costs to ensure that these costs are properly allocated.

3. The OCA will examine the Company's proposed allocation of expenses related to low-income programs.

G. Low-Income Programs/ Affordability

1. The OCA will examine the proposed creation of the Energy Assistance Outreach Team.

2. The OCA will analyze the enrollment rates of low-income customers into the Company's low-income programs and, if necessary, recommend changes to enrollment.

H. Customer Service

1. The OCA will examine the Company's performance in areas of customer service such as call center response times, call center satisfaction, and overall customer satisfaction.



I. Reliability

1. The OCA will perform a detailed analysis of the proposed addition to vegetation management.

2. The OCA will analyze the Company's proposed steps to increase reliability within its service territory.

J. Other Issues

1. The OCA will examine the Company's proposed costs and recovery methods of the proposed EV program.

2. The OCA will analyze the Company's proposed transition to LED street lights and the effects that this transition will have on consumers.

3. The OCA will review the Company's proposed customer refunds.

**III. WITNESSES**

The OCA intends to present the direct, rebuttal, and surrebuttal testimony, as may be necessary, of the following expert witnesses in this proceeding. Each witness will present testimony in written form and will also attach various exhibits, documents, and explanatory information which will assist in the presentation of the OCA's case. In order to expedite the resolution of this proceeding, the OCA requests that, in addition to emailing copies to OCA counsel, parties send copies of all interrogatory answers and testimony directly to the expert witness(es) responsible for the appropriate area of the case. The OCA also requests that CDs/thumb drives containing any interrogatory responses be mailed directly to applicable expert witness.

Accounting/ Revenue Requirement: Dante Mugrace  
PCMG and Associates  
90 Moonlight Court  
Toms River, NJ 08753  
[OCAFirstEnergy2024@paoca.org](mailto:OCAFirstEnergy2024@paoca.org)

Rate Design/ Cost Allocation: Karl Pavlovic  
PCMG and Associates  
90 Moonlight Court  
Toms River, NJ 08753  
[OCAFirstEnergy2024@paoca.org](mailto:OCAFirstEnergy2024@paoca.org)

Rate of Return/ Capital Structure: Marlon Griffing  
PCMG and Associates  
90 Moonlight Court  
Toms River, NJ 08753  
[OCAFirstEnergy2024@paoca.org](mailto:OCAFirstEnergy2024@paoca.org)

Depreciation: David Garrett  
Resolve Utility Consulting PLLC  
101 Park Avenue, Suite 1125  
Oklahoma City, OK 73102  
[OCAFirstEnergy2024@paoca.org](mailto:OCAFirstEnergy2024@paoca.org)

Reliability: Rao Konidena  
Rakon Energy LLC  
Roseville, MN 55113  
[OCAFirstEnergy2024@paoca.org](mailto:OCAFirstEnergy2024@paoca.org)

Low-Income Programs/ Affordability: Roger D. Colton  
Fisher, Sheehan & Colton  
34 Warwick Road  
Belmont, MA 02478  
[OCAFirstEnergy2024@paoca.org](mailto:OCAFirstEnergy2024@paoca.org)

Customer Service: Barbara R. Alexander  
44 Beech St.  
Hallowell, ME 04347  
[OCAFirstEnergy2024@paoca.org](mailto:OCAFirstEnergy2024@paoca.org)

The OCA specifically reserves the right to call additional witnesses, as necessary, and retains the flexibility to have the witnesses above address other areas of this case as the case proceeds. If the OCA determines that additional witnesses will be necessary for any portion of its case, it will notify all parties of record immediately.

**IV. EVIDENCE**

The OCA will rely on the direct, rebuttal, and surrebuttal testimony of its expert witnesses as well as the testimony of other parties to the proceedings, and testimony provided by members of the public at public input hearings. The OCA will also present relevant exhibits to support its own testimony, including but not limited to, materials obtained from the Company through discovery and cross-examination.

**V. PUBLIC INPUT HEARINGS**

Given the size of the proposed rate increase, the OCA proposes that a combination of in-person and telephonic public input hearings be held in this proceeding. The OCA Proposes that four telephonic public input hearings be held. Given the vast size of the Company’s service area, the OCA also proposes that in-person afternoon and evening public input hearings be held in the following locations:

Proposed Date and Time	Proposed Location
June 26, 2024 at 1:00 and 6:00 p.m.	To Be Determined Reading, PA
June 27, 2024 at 1:00 and 6:00 p.m.	East Stroudsburg University Innovation Center 562 Independence Road East Stroudsburg, PA 18301
June 28, 2024 at 1:00 and 6:00 p.m.	Days Inn 240 South Pugh Street State College, PA 16801

July 9, 2024 at 1:00 and 6:00 p.m.	Ambassador Center 7794 Peach St. Erie, PA 16509
July 10, 2024 at 1:00 and 6:00 p.m.	Tanglewood Center 10 Austin Avenue Lyndora, PA 16045
July 11, 2024 at 1:00 and 6:00 p.m.	Greensburg Garden & Civic Center 951 Old Salem Road Greensburg, PA 15601
July 12, 2024 at 1:00 and 6:00 p.m.	DoubleTree by Hilton 340 Racetrack Road Washington, PA 15301
July 16, 2024 at 1:00 and 6:00 p.m.	Telephonic
July 17, 2024 at 1:00 and 6:00 p.m.	Telephonic

**VI. SERVICE ON THE OCA**

The OCA will be represented in this case by Darryl A. Lawrence, Senior Assistant Consumer Advocate, and Harrison W. Breitman, Andrew J. Zerby, and Emily A. Farren, Assistant Consumer Advocates. For purposes of the prehearing conference, the OCA will be represented by Harrison W. Breitman. The OCA has created a group e-mail address provided below. This is the only email address that is required for service on the OCA; it will provide the emailed materials to all members of the OCA team including the expert witnesses listed above. The OCA will not be providing service via mail and does not expect other parties to serve the OCA by mail. All documents should be served on the OCA by email as follows:

- Darryl A. Lawrence, Senior Assistant Consumer Advocate
- Harrison W. Breitman, Assistant Consumer Advocate
- Emily A. Farren, Assistant Consumer Advocate
- Andrew J. Zerby, Assistant Consumer Advocate
- [OCAFirstEnergy2024@paoca.org](mailto:OCAFirstEnergy2024@paoca.org)

## VII. PROPOSED SCHEDULE

The OCA proposes the following schedule:

Non-Company Direct	June 25, 2024
Rebuttal	July 22, 2024
Surrebuttal (Except for OCA Witness Alexander)	August 8, 2024
Surrebuttal OCA Witness Ms. Alexander	August 9, 2024
Written Outline of Rejoinder	August 12, 2024
Hearings and Rejoinder	August 14-16, 2024
Main Briefs	September 4, 2024
Reply Briefs	September 13, 2024
Recommended Decision	October 21, 2024
Exceptions	November 8, 2024
Reply Exceptions	November 21, 2024
Public Meeting	December 19, 2024
End of Suspension	January 1, 2025

The OCA requests that email distribution will satisfy all in-hand service dates contained in the schedule.

## VIII. DISCOVERY

The OCA proposes the following modifications to the Commission's procedural rules regarding discovery. The OCA requests that the Presiding Officer direct that the modifications will

take effect when addressed during the on the record prehearing conference and apply to all future discovery requests served as of the day of the prehearing conference.

- A. Answers to written interrogatories and requests for document production, entry for inspection, or other purposes shall be served in-hand within ten (10) calendar days of service.
- B. Objections to interrogatories and/or requests for production shall be communicated orally to the propounding party within three (3) calendar days of service of the interrogatories; unresolved objections shall be served in writing to the propounding party within five (5) calendar days of service of the interrogatories and/or requests for production.
- C. Motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production shall be filed within three (3) calendar days of service of written objections.
- D. Answers to motions to dismiss objections and/or answering of interrogatories and/or requests for production shall be filed within three (3) calendar days of service of such motions.
- E. Requests for admissions will be deemed admitted unless answered within ten (10) calendar days or objected to within five (5) calendar days of service.
- F. Answers to on-the-record data requests shall be served in-hand within five (5) calendar days of the requests.
- G. Any discovery or discovery-related pleadings (such as objections, motions, and answers to same) served after served after 4:30 p.m. Monday through Thursday or after 1:30 p.m. on a Friday or the day before a holiday will be deemed to have been served on the next business day for purposes of calculating the due date for any responsive filing.

After rebuttal is served, the OCA proposes that the deadlines should be reduced as follows:

- A. Answers to interrogatories and responses to requests for document production, entry for inspection, or other purposes shall be served within five (5) calendar days of service of the interrogatories or requests for production.
- B. Objections to interrogatories and/or requests for production shall be communicated orally to the propounding party within two (2) calendar days of service; unresolved objections shall be served on the propounding party in writing within three (3) calendar days of service of the interrogatories and/or requests for production.

- C. Motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production shall be filed within two (2) calendar days of service of written objections.
- D. Answers to motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production shall be filed within two (2) calendar days of service of such motions.
- E. Requests for admission shall be deemed admitted unless answered or objected to within three (3) calendar days of service.
- F. Discovery requests and discovery related pleadings (such as objections, motions, and answers to same) served after 4:30 p.m. Monday through Thursday or after 1:30 p.m. on a Friday or the day preceding a holiday shall be deemed to have been served on the next business day.

The OCA believes that these modifications will assist parties in clarifying and narrowing issues and developing a complete record for the Commission. The shortened timeframes are reasonable and appropriate given the timeframe and size of the case. Additionally, the OCA respectfully requests that, if adopted, the proposed modifications: (1) take effect on the date of the Prehearing Conference; and, (2) apply to pending discovery served on and after May 1, 2024.

## **IX. SETTLEMENT**

The OCA is willing to participate in settlement discussions.

Respectfully submitted,

/s/ Harrison Breitman  
Harrison W. Breitman  
Assistant Consumer Advocate  
PA Attorney I.D. # 320580  
[HBreitman@paoca.org](mailto:HBreitman@paoca.org)

Andrew J. Zerby  
Assistant Consumer Advocate  
PA Attorney I.D. #332222  
[AZerby@paoca.org](mailto:AZerby@paoca.org)

Emily A. Farren  
Assistant Consumer Advocate  
PA Attorney I.D. # 322910  
[EFarren@paoca.org](mailto:EFarren@paoca.org)

Darryl A. Lawrence  
Senior Assistant Consumer Advocate  
PA Attorney ID # 93682  
[DLawrence@paoca.org](mailto:DLawrence@paoca.org)

Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048

Counsel for:  
Patrick M. Cicero  
Consumer Advocate

DATED: May 1, 2024