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June 3, 2011

VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

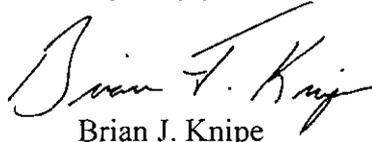
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SECRETARY'S BUREAU

Re: *Investigation of Pennsylvania's Retail Electricity Market,*
Docket No. I-2011-2237952

Dear Secretary Chiavetta:

In accordance with the Order entered April 29, 2011 in this proceeding, I have enclosed for filing an original and five (5) copies of the *Comments of FirstEnergy Solutions Corp.*, with an accompanying Appendix A.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/kra

Enclosures

cc: Office of Competitive Market Oversight (w/encls., via e-mail ra-OCMO@state.pa.us)
Patricia Krise Burket, Esq., Assistant Counsel (w/encls., via messenger)
H. Kirk House, Esq., Assistant Counsel (w/encls., via messenger)

generally working in Pennsylvania, in both the wholesale and retail markets, though certain changes would be beneficial for all electric power consumers in the Commonwealth, including changes which would allow for opt-out municipal aggregation. FES further understands that the Commission may wish to consider other approaches to the default service structure.

Every major Pennsylvania EDC conducts competitive wholesale procurements of power to serve its default service load. In these procurements, sophisticated and experienced wholesale market participants compete to supply the utility with the lowest cost products from the wholesale markets administered by PJM Interconnection, LLC ("PJM"), and the winning bids translate into retail default service rates. Through wholesale competition, retail customers benefit from each competitor's assessment of data from PJM's transparent markets, and each competitor's expertise in managing costs and risks. Further, competition among wholesale suppliers to provide default service supply lowers the benchmark price against which customers can evaluate offers from alternative retail suppliers. As a result of this competitive benchmark price, all customers benefit from competition at the wholesale level.

FES competes with many other experienced, sophisticated wholesale suppliers in the default service supply procurement of every major EDC in the Commonwealth.¹ Based on its experience as an active wholesale bidder in these procurements, FES believes wholesale competition is robust in Pennsylvania, with a default service structure that provides customers with stability and price certainty.

At the retail level, shopping statistics clearly indicate that retail competition in Pennsylvania continues to develop and will likely continue to increase, now that rate caps have

¹ These include the descending clock auctions for Metropolitan Edison Company ("Met Ed"), Pennsylvania Electric Company ("Penelec") and Pennsylvania Power Company ("Penn Power"), and the requests for proposals for PPL Electric Utilities Corporation, Inc. ("PPL"), PECO Energy Company ("PECO"), and West Penn Power Company ("West Penn").

expired across the state, as customers better understand their supply options. The Commission is to be commended for proactively exploring and implementing improvements in the competitive retail markets, including but not limited to its encouragement of EDCs to offer purchase of receivables ("POR") programs, its efforts to develop a uniform supplier tariff, the work of the Office of Competitive Market Oversight ("OCMO"), the Committee Handling Activities for Retail Growth in Electricity ("CHARGE") working group, and the activities of the Electronic Data Exchange Working Group ("EDEWG").

Nevertheless, FES understands that the Commission may seek to explore additional changes regarding retail competition in Pennsylvania. Therefore, as part of this investigation, FES proposes a number of specific suggestions to improve retail competition within the existing structure of default service. FES further respectfully suggests that as described more fully in FES's pleadings filed in the Commission's proceedings regarding municipal aggregation,² the Commission should allow for opt-out municipal aggregation. FES also sets forth a general framework for a possible alternative to change the structure of default service. Under the alternative set forth below, default service could come from an alternative default service provider ("ADSP"), coupled with an auction of willing customers to qualified EGSs for competitive retail electric generation service. FES believes that if the current default service paradigm were to be changed, this is a plan that merits consideration by the stakeholders and participants in this investigation.

In the comments which follow, FES will identify specific possible improvements to a properly functioning and workably competitive retail electricity market. In addition, FES will describe for the Commission's consideration one alternative to the current structure of default

² See *Petition of the Retail Energy Supply Association*, Docket No. P-2010-2207062, *Petition of Dominion Retail, Inc.*, Docket No. P-2010-2207953 and *Petition of FirstEnergy Solutions Corp.*, Docket No. P-2010-2209253 (the "Municipal Aggregation Proceedings").

service, including the process for competitive suppliers to acquire customers, and suggests regulatory changes and legislative amendments necessary to implement its recommendations.

II. COMMENTS

1. What is the present status of competition for retail electric generation for customers, by class and service territory, and for alternative suppliers?

Based on FES's participation in the default service procurements of all of the largest Pennsylvania EDCs, wholesale competition in Pennsylvania is robust with many financially strong and sophisticated market participants competing to supply the lowest cost products, relying on data from PJM's transparent markets and their own expertise in managing costs and risks. As a result of the current wholesale competition to provide the generation supply for default service, retail customers receive a level of stability and price certainty. However, even though shopping levels continue to rise across the Commonwealth, the majority of customers do not take advantage of better pricing or product options from qualified EGSs.

FES has also been an active participant in the Pennsylvania retail electric market for many years during which time it has seen substantial improvement in the retail competitive environment. And even though the retail market is more competitive today than it was several years ago, customer shopping and supplier participation vary significantly among EDCs, and by customer class within EDCs. It is FES's opinion that this variance in the degree of retail competition, particularly for small and medium-sized customers, is based primarily on the amount of "headroom" that exists between the default service price and the wholesale market price at any given time. Competitive retail suppliers will generally enter the retail market when the EDC's Price to Compare ("PTC") is high relative to the market price for electric energy. Competitors generally will not enter the retail market or make new offers, however, if the default

service PTC is set below the market price to provide service. Accordingly, a default service price that falls below wholesale energy prices for prolonged periods stifles retail competition for customers.

In its 2008 investigation into the status of retail natural gas competition,³ the Commission developed standards for determining whether a market is workably competitive:

1. Participation in the market by many sellers so that an individual seller is not able to influence significantly the price of the commodity.
2. Participation in the market by many buyers.
3. Lack of substantial barriers to supplier entry and participation in the market.
4. Lack of substantial barriers that may discourage customer participation in the market.
5. Sellers are offering buyers a variety of products and services.

FES respectfully submits that these standards are useful for evaluating whether the retail electricity market is workably competitive as well.

It appears that retail competition is meeting the first standard relating to participation by many sellers, since there are over 200 EGSs licensed in Pennsylvania.⁴ In FES's experience, it also appears to be meeting the fifth standard, since the suppliers offer a variety of products and services, including fixed costs of various levels and durations, variable rates, demand response, and renewable energy products.

The shopping statistics shown in the tables below are instructive in evaluating whether the second standard identified above is satisfied, specifically, whether there is participation in the market by many buyers:

³ *Investigation into the Natural Gas Supply Market*, Docket No. I-00040103F0002 (Order entered Sept. 11, 2008).

⁴ See the Commission's list of licensed suppliers at http://www.puc.state.pa.us/electric/electric_suppliers_list.aspx.

Industrial Shopping by Percentage of Load⁵				
	January 1, 2009	January 1, 2010	January 1, 2011	June 1, 2011⁶
Duquesne Light	87.7	89.1	88.5	93.62
Met Ed ⁷	9.1	10.9	47.8	83.5
PECO	0.1	0.1	17.5	91.0
Penelec	9.15	10.9	47.8	85.7
Penn Power	97.9	84.1	96.6	96.3
PPL	0.0	64.1	92.1	95.7
UGI	0.0	16.7	77.0	76.34
West Penn	0.0	0.0	16.1	64.6

Commercial Shopping by Percentage of Load				
	January 1, 2009	January 1, 2010	January 1, 2011	June 1, 2011
Duquesne Light	50.9	56.2	60.1	76.35
Met Ed	0.7	0.2	10.2	37.5
PECO	6.5	5.6	9.5	54.0
Penelec	0.7	0.2	10.2	39.8
Penn Power	57.1	60.1	60.6	64.7
PPL	0.1	36.4	82.8	84.0
UGI	0.0	5.3	28.9	29.43
West Penn	0.0	1.1	17.3	53.8

Residential Shopping by Percentage of Load				
	January 1, 2009	January 1, 2010	January 1, 2011	June 1, 2011
Duquesne Light	19.3	19.0	19.8	30.37
Met Ed	0.0	0.0	0.2	1.1
PECO	0.2	0.2	1.2	18.0
Penelec	0.0	0.0	0.2	1.1
Penn Power	7.8	11.2	12.2	12.6
PPL	0.0	17.3	39.9	42.4
UGI	0.0	0.0	0.0	0.0
West Penn	0.0	0.0	0.0	0.7

According to these statistics, it appears that there is participation in the market by many buyers in the larger customer classes, particularly in the large commercial and industrial ("C&I") class which generally has only an hourly priced default service option. However, there has not been

⁵ See Commonwealth of Pennsylvania Office of Consumer Advocate ("OCA"), Electric Shopping Statistics, available at <http://www.oca.state.pa.us/Industry/Electric/elecstats/ElectricStats.htm>.

⁶ For June 1, 2011 statistics, see PaPowerSwitch, available at <http://extranet.papowerswitch.com/stats/PAPowerSwitch-Stats.pdf?/download/PAPowerSwitch-Stats.pdf>.

⁷ Met Ed and Penelec were reported on a combined basis until April 2011.

significant customer shopping activity in the residential and small commercial customer classes, other than in the PPL service territory where there is ample headroom as described above, and in territories where rate caps have been off for a number of years (*e.g.*, Penn Power and Duquesne Light). While there has been more shopping in the smaller customer classes, as previously indicated, that increased shopping along with participation by retail suppliers has been uneven across utility jurisdictions.

In FES's experience, as suppliers receive accurate price signals in any given service territory, suppliers tend to move aggressively toward the EDC service territories and customer classes that exhibit: (1) consistent opportunities to serve customers due to the existence of headroom; (2) a lack of a fixed price default service that is below the market price due to the timing of the default service supply procurement (*i.e.*, procurement occurred during a "low point" in the market); (3) the availability of a POR program; (4) flexible billing options; and (5) a robust consumer education program.

With respect to the third and fourth standards, relating to substantial barriers to buyer and seller participation in the market, while FES sees ample evidence of real competition in the Pennsylvania retail market, possible improvements to participation in the retail market by customers and suppliers continue to exist, and there is always room for more competition and competitors. Therefore, in response to the questions that follow, FES will identify possible improvements, and recommend ways to further improve retail electric competition within the existing regulatory scheme. Further, should the Commission determine a change in the default service structure is appropriate, FES provides a general framework for the Commission's consideration.

2. Does the existing retail market design in Pennsylvania present barriers that prevent customers from obtaining and suppliers from offering the benefits of a fully workable and competitive retail market? To the extent barriers exist, do they vary by customer class?

While the Pennsylvania retail electricity market is workably competitive, there are several improvements that, if implemented, could further enhance competition:

a. Under the existing default service structure, the inclusion of spot market purchases in the default service provider's supply portfolio results in dramatic swings in the retail electricity prices of several EDCs. More predictability in pricing would benefit EGSs and customers, and provide more certainty to EGSs regarding the PTC, which could foster additional participation by EGSs.

b. There is still inconsistency among EDCs regarding the disclosure of default service solicitation results and the creation of a default service rate calculation model, notwithstanding the helpful Secretarial letter issued October 12, 2010 at Docket No. M-2009-2082042.⁸ Additional consistency and transparency would be helpful. An EGS should be able to direct customers to a place where the estimated PTC is publicly posted, and can be relied upon for at least the next quarterly period.

c. There is also inconsistency among EDCs with regard to, among other things, billing options, budget billing of supplier charges, EDI testing, POR, supplier websites, eligibility files, and enrollment verification letters. For example, most EDCs offer no ability to calculate a price that represents a "percentage off" the PTC. While FES acknowledges that achieving consistency among EDCs may take time due to limitations in utility billing software,

⁸ *Disclosure of Default Service Solicitation Results and Creation of a Default Service Rate Calculation Model*, Docket No. M-2009-2082042 (Secretarial Letter issued October 12, 2010). Through the Secretarial Letter, the Commission required EDCs to release, for each procurement class, the weighted average winning price for each individual solicitation of several enumerated products, and to publish a default service rate calculation model, and further urged each EDC to clearly explain the methodology used to project or estimate any updateable or variable costs that are components of its calculation model.

such consistency is an important goal worth pursuing. The overall communication process between EDCs and suppliers should be further improved as well, including making information available on EDCs' supplier websites, shortening response times to supplier support inquiries, and conducting supplier webinars or providing other forums to improve EDC/EGS transactions.

d. With respect to residential customers, FES believes certain consumer protections have unintended adverse consequences for retail competition.

(1) The requirement for EGSs to include PTC charts on marketing materials effectively requires the supplier to provide potential customers with an estimate that is quickly outdated. Given that Pennsylvania PTCs typically change on a quarterly basis, and reconciliations can be volatile, these estimates are unreliable. Because supplier offers are typically for 1-, 2-, or 3-year terms, including these charts on the marketing materials does not offer a fair comparison to the products suppliers are offering, and is unintentionally misleading.

(2) Pursuant to Commission Regulations, EDCs send 10-day confirmation letters to notify customers of a proposed change of EGS. These letters include notice of a 10-day waiting period in which the order may be canceled before the change of the EGS, to protect consumers against slamming. Some EDCs' 10-day confirmation letters also include references to the customer's right to rescind a contract with an EGS, a reference to customers' 3-day right of rescission following receipt of an EGS's disclosure statement.⁹ These references to rescission are unnecessary and unrelated to the purpose of the 10-day confirmation letter, and may inadvertently caution customers against switching to an EGS.

(3) The Commission's guidelines for advance notification of contract renewals allow a residential or small commercial customer to retroactively cancel a contract that has been automatically renewed because of the customer's failure to respond to a renewal notice,

⁹ See 52 Pa. Code § 54.5(d).

without cancellation penalties.¹⁰ Requiring customers to change their behavior and affirmatively agree to the new fixed term contract creates an unnecessary hurdle for EGSs seeking to renew contracts with customers who choose not to respond to notices.

e. The absence of legislation or Commission action recognizing opt-out municipal aggregation as a legitimate option for customers to shop hampers the development of a full and robust competitive retail electricity market. FES respectfully submits that local referendums and votes for municipal aggregation should be no less valid for selecting electricity aggregation service than for approving local budgets and other municipal services. FES considers municipal aggregation to be a very viable option in a market framework designed to move customers from default service to competitive suppliers. The value of municipal aggregation is explained at length in the Petition and Answer FES filed in the Municipal Aggregation Proceedings, which FES incorporates by reference in these Comments.¹¹

f. EDC tariff sheets with historical PTCs are not available in one place on the Commission's Web site, such as a single docket number, or a linked page on the EDC Web site, making it difficult for an EGS to research an EDC's historical tariff changes and pricing. Such historical information provides important information to an EGS considering whether to make offers in the EDC's territory, and making the information easier to access may facilitate more activity in that territory.

g. There is a lack of uniformity in rate classifications among EDCs with respect to large C&I customers. For example, the threshold for a customer to qualify as large

¹⁰ *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service; Amendment re: Supplier Contract Renewal/Change Notices*, Docket Nos. M-2010-2195286 and M-0001437 (Order entered September 23, 2010).

¹¹ *See Petition of FirstEnergy Solutions Corp.*, filed November 9, 2010 at Docket No. P-2010-2209253; *Answer of FirstEnergy Solutions Corp. to the Petitions of the Retail Energy Supply Association and Dominion Retail, Inc.*, filed November 22, 2010 at the consolidated Docket Nos. P-2010-2207062, P-2010-2207953 and P-2010-2209253.

C&I in the service territories of PECO, PPL and West Penn is 500 kW; in the territories of Met-Ed, Penelec and Penn Power it is 400 kW; and in the territory of Duquesne Light it is 300 kW. This creates unnecessary confusion for large C&I customers that have facilities in multiple EDC territories with different thresholds, and prevents suppliers from making consistent product offerings across the Commonwealth.

h. FES respectfully submits that the enrollment window for residential customers is too long. In light of the 10-day confirmation period required by Commission Regulations, and the policy against mid-cycle switches, the enrollment process currently takes anywhere between 16 and 45 days. Such a lag prevents customers from seeing savings as quickly as they should (and do in other jurisdictions), and may be a deterrent to EGSs who have the ability to serve customers much more quickly in other jurisdictions.

i. There is inconsistency among EDCs in the inclusion of gross receipts tax ("GRT") and the state tax adjustment surcharge ("STAS") in default service rates and in posted PTC calculations and estimates. FES respectfully submits that PTC calculation criteria need to be standardized throughout the Commonwealth so that customers and EGSs can more easily understand each EDC's true PTC.

j. It would be very helpful to EGSs if all of the Commission's rules governing EGSs were easier to locate. While the OCMO and the CHARGE working group have been extremely helpful in this regard, FES is still concerned that there have been instances in which important interim guidelines dating back to the late 1990s¹² have not yet been

¹² See, e.g., *Interim Guidelines Regarding Notification by an Electric Generation Supplier of Operational Changes Affecting Customer Service and Contracts*, Docket No. M-00960890F0013 (Order entered August 13, 1998); *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service; Amendment re: Supplier Contract Renewal/Change Notices*, Docket Nos. M-2010-2195286; M-00001437 (Order entered September 23, 2010); *Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers*, Docket No. M-2010-2185981 (Order entered November 5, 2010).

incorporated into the Commission's Regulations or posted in an easily accessible place on the Commission's Web site. FES appreciates that the Commission has initiated rulemakings to incorporate some of these requirements into its Regulations,¹³ and has recently published certain of these interim guidelines on its Web site, such as those adopted at Docket No. M-00960890F0013 regarding notification of operational changes. FES submits that convenient access to all the applicable rules will enable suppliers to concentrate their efforts on marketing products and services to Pennsylvania customers. FES also submits that statutes and Commission Regulations should be evaluated to determine whether they reflect the current state of the industry, and that those statutes and Regulations which are outdated should be removed or amended.

3. What are the economic and managerial costs associated with electric distribution companies (EDCs) fulfilling the default service role?¹⁴ Are the EDCs accurately passing those costs along to default service customers? Do default service rates include any elements that are not cost-based? Is an examination of distribution rates needed to ensure proper cost allocation? Are there barriers to competition as a result of having EDCs provide default service?

FES has no direct knowledge of, and therefore takes no position on, EDC default service rate elements or cost allocations relating to their fulfillment of the default service role.

FES believes that the EDC's involvement in default service presents no barriers to retail competition. As described above, the current default service structure provides for robust wholesale competition and also allows for workable and competitive retail competition. To the extent that there is opportunity to improve competition at the retail level, FES suggests that the current structure and pricing mechanisms of default service do not provide the consistent

¹³ See, e.g., *Rulemaking Re: Marketing and Sales Practices for the Retail Residential Energy Market*, Docket No. L-2010-2208332 (Proposed Rulemaking Order entered February 14, 2011).

¹⁴ See generally 52 Pa. Code §§ 54.182 and 54.184.

headroom necessary to allow EGSs opportunities to serve customers. Changes to the existing default service construct which would allow for that headroom, and making the other improvements identified in FES's responses to Question Nos. 2 and 9, would further foster effective retail competition.

4. Are there unintended consequences associated with EDCs providing default service, and related products, such as time-of-use rates?

There has been a robust debate about whether customers stay with default service because it is administered by the incumbent EDC. The question might more appropriately be whether customer apathy is the cause of more customers staying with the incumbent supplier, regardless of the identity of the incumbent supplier. Results in the Texas market, where only 52% of customers are switching,¹⁵ suggest that customer apathy may play a greater role in customer behavior (or lack thereof) than the fact that EDCs provide the default service. Customer apathy may be the primary cause of customers not taking advantage of opportunities to switch from the default service option.

5. Should default service continue in its current form? Does default service impede competition or otherwise prevent customers from choosing electricity products and services tailored to their individual needs? Does default service provide an advantage to the incumbent EDC and/or its generation affiliate(s)?

Having a default service in and of itself does not impede competition or provide an advantage to the incumbent or its generation affiliate. With one exception, utilities in Pennsylvania merely pass through supplier default service prices. Therefore, utilities do not financially benefit from customers staying on default service. However, FES understands that

¹⁵ See Public Utility Commission of Texas, *Summary of Performance Measure Data*, available at http://www.puc.state.tx.us/electric/reports/RptCard/Market_Share_Data.xls.

the Commission may want to further explore other alternatives to the current default service structure, and if the Commission does so, FES sets forth in response to Question No. 6 below a general framework it believes merits consideration. Additional enhancements in retail competition would provide customers with more pricing options and help to spur product and service innovation in the retail electricity markets.

With respect to competitive affiliates of the utility, the Electricity Code of Conduct¹⁶ and affiliated interest laws¹⁷ are designed to ensure that there is no unfair, competitive advantage to the generation affiliate of an EDC. FES is unaware of an instance where an electric generation affiliate has been found to be in violation of these Pennsylvania laws. A competitive electricity market is made more competitive by allowing as many qualified suppliers as possible to participate in that market. To ensure markets are more efficient, everyone — affiliates and non-affiliates — should be able to participate in any wholesale or retail supply alternatives, provided they meet Commission financial, operational and managerial requirements to be an EGS and continue to comply with all applicable Code of Conduct requirements.

6. Can/should the default service role be fulfilled by an entity, or group of entities, other than the EDC? If the default service role should be filled by an entity other than an EDC, what mechanisms could be employed to transition the default service role away from the EDC and onto competitive electric generation suppliers (EGSs)? Are different approaches appropriate for different customer classes? What criteria should be used to ensure that EGSs are qualified to assume the default service role and maintain reliable service?

FES believes that the retail markets are workable and competitive under the current structure. However, FES is also providing one alternative the Commission may consider in which the EDC serves merely as the administrator of default service plans. If this framework

¹⁶ See 52 Pa. Code § 54.122; see also 66 Pa.C.S. § 1502 (statutory prohibition against discrimination in service).

¹⁷ See 66 Pa.C.S. § 2101 *et seq.*

were adopted by the Commission, the EDC's role as an administrator should be clearly distinguished from the role of the default service provider. The EDC's administrative services should include customer data management, coordination with the alternative default service provider ("ADSP") described below or the customers' suppliers, and supplier billing services.

FES sets forth for consideration a two-part process to attract additional retail suppliers and achieve a level of price certainty for customers. This alternative includes the following elements: (1) licensed EGSs to acquire non-shopping residential and small commercial customers through an opt-out descending clock auction process that would determine the price at which auctioned customers would be served; and (2) an ADSP to act as a backstop for non-shopping customers by offering default service through a revamped procurement process and rate design.

The EGS auction process would apply to all customers with monthly peak load contributions under 200 kW, but would not include customers who have opted out of the auction process or who are already taking service from an EGS. Excluding shopping customers respects the sanctity of EGS contracts and the affirmative choices customers have made. It also assures EGSs that they may enter the Pennsylvania markets without concern that their contracts will be voided. Further, excluding customers who are already shopping with an EGS will avoid confusion and negative experiences for customers who find themselves reassigned from their chosen EGS, which might cause them to reject the concept of electric competition.

The auction process would be a one-time process for each EDC within the state, approved by the Commission, and administered by an independent entity. In each EDC auction, customers would be auctioned off to EGSs through a descending clock auction on a \$/MWh basis to achieve the lowest possible price. Customers would be divided into a number of

tranches (e.g., blocks of 100,000 customers). In each auction round, the auction administrator would post a price at which EGSs could bid to serve a block of customers for 36 months. In each successive auction round the price would decrease, until the number of bidding EGSs, multiplied by the number of blocks they collectively bid to serve, equals the number of blocks to be served. The price at the time that EGS supply equals customer load would be the price at which all customer blocks are served by the EGSs.

If this framework were implemented, the EGS auction would set customer prices for three years. After that time, there would be no restrictions on the price that the EGS could charge customers. FES believes that setting the price for three years provides a transition period to establish the appropriate balance between customer choice and consumer protection. At the end of the three years, a customer would remain with the EGS to which their service was auctioned, unless and until the customer chooses to switch to another EGS or return to the ADSP. In any case, the customer is free to take advantage of other competitive offers, from the incumbent EGS or others, at any time after the auction, even during the initial 3-year period.

As previously indicated, the ADSP would serve as the backstop and serve customers who do not want to participate in the auction process, or who return to default service because of retail supplier default. There could be one ADSP for the entire Commonwealth, or one or more EDC service territories could have their own ADSPs. The default service would be administered by the EDC as described above.

While customers would be given the opportunity to opt out of the auction process and remain with the ADSP, the ADSP price should be one that is sufficiently high to encourage customers to consider the auction or an EGS for their generation service. The ADSP price should also be sufficiently high to provide EGSs with reasonable assurance that such price will

likely not be below the market at any point in time. This assurance will attract retail suppliers to the auction process. To meet this objective, FES proposes that the ADSP price be the sum total of a monthly spot market price plus the EDC administrative cost adders, plus an adder determined by the Commission, which would be set at a sufficiently high level to compensate the ADSP for taking on the risk of being a backstop and perhaps to fund low income assistance, ongoing customer education, and other Commission initiatives. FES's proposed changes to default service as well as its recommendation for an auction of customers to qualified suppliers should be preceded by a statewide customer education effort to minimize any confusion about the transition.

Further details regarding this alternative framework are included in the document attached as **Appendix A** to these Comments.

7. How can Pennsylvania's electric default service model be improved to remove barriers to achieve a properly functioning and robust competitive retail electricity market? Are there additional market design changes that should be implemented to eliminate the status quo bias benefit for default service?

See the alternative framework detailed in response to Question No. 6 above, and further described in **Appendix A**. As previously indicated in its response to Question No. 4, FES believes that customer apathy may play a larger role in a customer's decision not to shop than a status quo bias, to the extent such bias exists.

8. What modifications are needed to the existing default service model to remove any inherent procurement (or other cost) advantages for the utility?

FES has no evidence that inherent procurement (or other cost) advantages exist for the default service EDCs provide. However, FES recognizes that to the extent the Commission

considers alternative frameworks for default service, such as the one FES sets forth in response to Question No. 6 above and **Appendix A**, the utility would no longer have a role in the procurement of default service.

9. What changes, to Regulations or otherwise, can the commission implement on its own under the existing default service paradigm to improve the current state of competition in Pennsylvania?

If the Commission determines that it would rather adjust the current default service structure, FES recommends the following changes to the Commission's Regulations, guidelines and/or processes within the existing default service paradigm to improve the current state of competition in Pennsylvania:

a. Under the existing default service structure, each EDC's default service supply portfolio must include a "prudent mix" of long and short-term contracts and spot market purchases. FES submits that in order to further enhance wholesale competition, there should be more consistency among EDCs as to what exactly constitutes a "prudent mix." Also, the Commission should not require a "prudent mix" to include a spot market component for smaller customer classes, as this results in significant volatility from quarter to quarter.

b. EDCs should be required to provide more current and consistent notification of default service solicitation results and default service rate calculations, and to prominently display and consistently post them on the supplier portion of the EDC's Web site. Also, EDCs should improve their processes for notifying suppliers when information has been updated. While FES understands the need to update posted PTC estimates as assumptions change (and appreciate the EDCs' efforts to do so), any changes to the estimates should be communicated to all suppliers so offers may be adjusted accordingly. All updates to the model

should be dated and maintained on the Web site so suppliers can compare them to previous versions. Finally, the EDCs should include greater detail on the assumptions that went into the estimated PTC calculations.

c. Regulations should be modified to require consistency among EDCs with respect to, among other things, billing options, budget billing of supplier charges, EDI testing, POR, supplier websites, eligibility files and enrollment letters. Also, to improve communications between EDCs and EGSs, EDCs should be required to hold quarterly webinars for suppliers, similar to what Met-Ed, Penelec and Penn Power currently offer. In addition, EDCs should hold an annual conference with suppliers to discuss operations and the implementation of applicable rules and regulations. The annual supplier conference could be similar to the conference held in Harrisburg in November 2010 to discuss the newly adopted interim guidelines for sales and marketing activities.

d. In the pending rulemaking on the Commission's sales and marketing guidelines, the Commission should eliminate or modify sales and marketing regulations that are too restrictive and/or cause customer confusion, including the following:

(1) The PTC charts that EGSs are currently required to provide potential customers in their marketing information cannot contain accurate pricing information due to the timing of the service that EGSs propose to provide; the requirements should be modified to remove this requirement.

(2) All EDCs should be required to adopt uniform 10-day confirmation letters which provide only the required notice of a 10-day waiting period in which an order to change the customer's EGS may be canceled, and omit references to customers' 3-day right of rescission following receipt of an EGS's disclosure statement.

(3) The Commission's Regulations should permit automatic renewal of retail supply contracts with small commercial and residential customers who have not responded to a renewal notice, without allowing customers to retroactively cancel without penalty.

e. The Commission should assign one consolidated "tariff docket" to each EDC/ADSP, and post all of the EDC's/ADSP's tariffs at that docket, sorted by date. Such a system is in place in other states and FES finds it to be very helpful. An enhanced docketing system would enable all suppliers to easily access any changes to tariffs all in one place, and historical pricing would be easier to locate. An acceptable alternative would be to require EDC supplier Web sites to have a "historical pricing" section for all PTC components, similar to what ComEd and Ameren do in Illinois.

f. FES respectfully recommends the need for Commission action that recognizes opt-out municipal aggregation as a legitimate option for customers to shop.

g. The Commission should develop uniform rate classifications for large C&I customers. This would greatly enhance suppliers' ability to market to these customers.

h. The Commission should continue its efforts to shorten the enrollment window. For example, the Commission might reduce the 10-day confirmation period and allow mid-cycle switches.

i. Default service providers should be uniformly required to include GRT and STAS in their default service rates and in any PTC calculations presented to customers (on the Web, on the bill, or elsewhere).

j. The rules governing EGSs, including early Interim Guidelines that remain in force, should be easily accessible in one place, and incorporated into the Commission's Regulations as soon as practicable. Any rules that are not enforced in practice should be

eliminated. The OCMO and the CHARGE working group should continue their invaluable efforts to educate suppliers on the Commission's requirements.

10. What legislative changes, including changes to the current default service model, should be made that would better support a fully workable and competitive retail market?

There are at least three legislative changes that would better support a fully workable and competitive retail market. First, if Pennsylvania modifies its default service construct, then to support such changes, Section 2807(e) of the Choice Act would need to be amended to eliminate the “least cost over time” default service supply procurement standard,¹⁸ as well as the requirement that the default service provider offer residential and small commercial customers a generation supply service rate that shall change no more frequently than on a quarterly basis.¹⁹

Second, if Pennsylvania keeps the existing default service construct, then to prevent the dramatic price swings described in FES's response to Question No. 2, it is important to eliminate spot market and short term contracts from the procurement portfolio and, instead, require the default service provider to offer a fixed annual price. This would require another amendment to Section 2807(e), to eliminate the requirement that default service include a “prudent mix” of contracts which includes spot market pricing and short-term prices, and limits the use of long-term contracts to no more than 25% of the default service provider's supply obligation.²⁰

¹⁸ 66 Pa.C.S. § 2807(e). Even if the Commission were to determine that there is no need to switch from the current default service model, there are a number of problems with the overly broad “least cost over time” language, which FES expanded upon in previous comments in Docket No. L-2009-2095604.

¹⁹ 66 Pa.C.S. § 2807(e).

²⁰ 66 Pa.C.S. § 2807(e).

Third, to the extent the Commission feels constrained by the existing language of Section 2807 of the Choice Act,²¹ FES respectfully recommends the needs for legislation that recognizes opt-out municipal aggregation as a legitimate option for customers to shop.

11. Are there, or could there be, potential barriers being created by the implementation of the EDC Smart Meter plans?

Smart meters are thought to be a technology that will enhance retail suppliers' ability to provide innovative products and services to customers. However, a couple of items to consider during the transition to smart meters are: (1) EGSs currently offering time-of-use rates based on a customer "standard profile" may experience a change to their cost to serve upon installation of smart meters since the customer's EDC will then have access to PJM hourly load shape upon which the customer should be served and billed; and (2) smart meters could complicate data management and coordination between EDCs and EGSs.

III. CONCLUSION

FES believes that there has been positive movement in the development of competitive markets in Pennsylvania and that the retail electricity markets are both competitive and working. However, FES respectfully submits that a number of specific changes can be made to enhance competition further. FES considers municipal aggregation to be a very viable option designed to move customers from default service to competitive suppliers. To the extent the Commission seeks to investigate alternative frameworks for the provision of default service, FES has sets forth a general framework it believes merits consideration, as more fully described above and in the attached **Appendix A**. FES appreciates this opportunity to submit these Comments, thanks

²¹ 66 Pa.C.S. § 2807(d)(1).

the Commission for its support for robust retail electric competition, and looks forward to participating in the Commission's efforts to improve customers' direct access to competitive markets across the Commonwealth.

Appendix A
Comments of FirstEnergy Solutions
Default Service Alternative

Topic	Details	Differences from Current Situation
Summary	<ul style="list-style-type: none"> FES proposes that all customers be served by an ADSP or EGS, with the EDC role limited to the provision of traditional utility T&D reliability based services, customer data management and billing services to the ADSPs and EGSs 	
EDC	<ul style="list-style-type: none"> The EDC no longer serves as the DSP EDC provides data management and billing services to the ADSP(s) and EGSs who will provide electric generation supply to all customers 	<ul style="list-style-type: none"> EDC currently acts as DSP
Alternative Default Service Provider (ADSP)	<ul style="list-style-type: none"> An ADSP will serve all customers as the back-stop in the event of EGS default, and will serve customers who do not choose an EGS directly or indirectly via the auction process Each EDC service territory will have one or more ADSPs The Commission will conduct a competitive process to select the ADSP based on the ADSP's proposed administrative charge (similar to §54.183(d)) Any entity that wishes to be considered for the role of ADSP will file a petition with the Commission demonstrating operational and financial fitness to serve and the ability to comply with all applicable rules and regulations All retail or wholesale EGSs are eligible to participate in the competitive process If no petitioner meets the Commission's standards, the incumbent EDC will serve as the ADSP If one or more petitioners meet the Commission's standards, the Commission will approve the winning ADSP based on the ADSP administrative bids and their ability to fulfill the ADSP obligation in a safe, cost-effective and efficient manner. 	<ul style="list-style-type: none"> The EDC currently serves as the back-stop in the event of EGS default or for customers who have not chosen an EGS Each EDC acts as the DSP in their home territory §54.183 contemplates several scenarios in which the DSP may be changed. Under the FES proposal, the initiating event would be based on the outcome of the statewide investigation.
ADSP Initial pricing	<ul style="list-style-type: none"> The ADSP price will be exempt from Act 129 "least cost over time" provisions. The ADSP will also be exempt from the statute which states that prices cannot change more frequently than quarterly Customers will be charged a monthly rate that includes a spot energy price + the ADSP administrative fee + a Commission-determined adder. The Commission adder is intended to ensure that the ADSP price is sufficiently high to encourage customer shopping. At the Commission's discretion, excess funds from the Commission-determined adder could be used for customer education programs, low income assistance, economic development, or other programs. 	<ul style="list-style-type: none"> The current default service provider must follow all provisions of Act 129 DSP prices can not change more frequently than quarterly Prices are set based on the Commission-approved default supply plan, which offers a "prudent mix" of long and short term products, including some spot market component
Opt-out process	<ul style="list-style-type: none"> Customer education will be provided jointly by the EDC and the chosen ADSP to include the customer auction process, how to opt out of the auction and the ADSP price alternative (which will be established prior to the opt out process) The Commission will approve all customer education materials and communications with the objective to standardize customer education in all utility jurisdictions across the state. 	<ul style="list-style-type: none"> Not applicable in today's process since there is no customer auction
Customer auction	<ul style="list-style-type: none"> Once the ADSP is determined and the opt-out process is complete, the independent auction manager will auction off customers to the lowest bidding EGSs based on a \$/MWh via a descending clock auction. For auction purposes, customer classes will be divided and auctioned in 2 categories: 1) residential and 2) small C&I (under 200 kW). All customers above 200 kW will be classified as large C&I, and will be handled similarly to the current process. Large C&I customers who are not shopping will be served by an ADSP on hourly default service. There will be a one-time, statewide auction by EDC (each EDC will coordinate with the single auction manager). Customers who are already shopping with an EGS will be excluded from the auction. There will be 100,000 customers per residential tranche, with a minimum of two tranches in EDC territories with fewer than 200,000 residential customers There will be 20,000 customers per small C&I tranche, with a minimum of two tranches in EDC territories with fewer than 40,000 small C&I customers Customers will be randomly assigned to tranches, but all tranches will only contain customers from one EDC. Each tranche will also have an equal proportion of customers from each rate code. Customers who were auctioned will be switched to the winning EGS on June 1, 2013. Customers are free to take advantage of other competitive offers whether from the incumbent EGS or another supplier 	<ul style="list-style-type: none"> Not applicable in today's process since there is no customer auction

Appendix A
 Comments of FirstEnergy Solutions
 Default Service Alternative

Topic	Details	Differences from Current Situation
EGS requirements for auction participation	<ul style="list-style-type: none"> • Must be a licensed EGS • Must meet financial and credit standards • Must be an LSE in the RTO in which the auction is occurring • Must have market based rates authority with FERC • Must provide pre-bid security (cash or LOC) • Must make various certifications (by officer of company) <ul style="list-style-type: none"> - Ability to perform - Binding bid - Association – bidding alone - Confidentiality 	<ul style="list-style-type: none"> • Not applicable in today's process since there is no customer auction
Initial pricing for winning EGSs	<ul style="list-style-type: none"> • Customer pricing for auctioned customers in each EDC will be set at a \$/MWh for each product (separate customer groupings) based on the results of the EGS descending clock auctions and are fixed for 3 years • In a simultaneous descending clock auction, supplier bid prices tick down in each round until the supply (number of tranches or groups of customers being bid on) meets the demand (number of customers or customer load). The auction is simultaneous because the tranches for all the products (residential product, small C&I product) are offered in the same auction at the same time. The auction proceeds in rounds and a going price for the various products is stated by the auction manager and the bidders bid on the number of tranches of each particular product they want to serve at that stated price. If the number of tranches bid is greater than the number of tranches needed (supply exceeds demand) the auction continues to the next round. The descending clock term comes from the fact that the prices tick down each round. 	<ul style="list-style-type: none"> • Not applicable in today's process since there is no customer auction
Future pricing for winning EGSs	<ul style="list-style-type: none"> • After the initial three year period, prices will be solely at the EGS's discretion 	<ul style="list-style-type: none"> • Not applicable in today's process since there is no customer auction
Billing	<ul style="list-style-type: none"> • The EDC will continue to provide billing for both the ADSP and the EGS (unless dual billing or supplier consolidated billing option is selected) 	<ul style="list-style-type: none"> • No difference, except the EDC is no longer the DSP

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