FirstEnergy Solutions

800 Cabin Hill Drive
Greensburg, PA 15601

Amy M. Klodowski
Attorney

724-838-6765
Fax 234-678-2370

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VIA E-FILING

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

RE: Public Utility Commission Bonding Requirements for Electric Generation Suppliers; Acceptable Security Instruments; Docket No. M-2013-2393141

Dear Secretary Chiavetta:

Enclosed for electronic filing are the *Comments* of FirstEnergy Solutions Corp. as directed in the Tentative Order entered on December 5, 2013 in the above-referenced proceeding.

Very truly yours,

Amy M. Klodowski
Attorney
FirstEnergy Solutions Corp.

AMK:dml

Enclosure

cc: Brent Killian, Technical Utility Services Bureau, PAPUC
H. Kirk House, Assistant Counsel, Office of Special Assistants, PAPUC

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Public Utility Commission Bonding Requirements for Electric Generation Suppliers; Acceptable Security Instruments	: : :	Docket No. M-2013-2393141

COMMENTS OF FIRSTENERGY SOLUTIONS CORP.

I. Introduction

FirstEnergy Solutions Corp. ("FES"), through its attorneys, files these Comments to the Tentative Order entered by the Pennsylvania Public Utility Commission ("Commission") on December 5, 2013 in the above-referenced matter (the "Tentative Order"). The Tentative Order proposes to reduce the bonding requirement for EGSs after their initial year of operation from the current level of ten percent (10%) of annual gross receipts to five percent (5%).[1] Further, the Tentative Order proposes to expand the types of acceptable security instruments that EGSs may utilize to satisfy the bonding requirement. Finally, the Commission requests comments on whether the proposals "require a change to our current regulations to be implemented, or whether the Commission can temporarily waive the current regulations until a formal regulation change is completed or whether these changes can be implemented under the current regulation provision that allows the Commission to set an alternative level of bonding commensurate with the nature and scope of the EGSs operations."[2] As explained below, FES agrees with the Commission's tentative proposal to reduce the level of security required of EGSs after their initial year of operation, and to expand the types of acceptable security instruments. FES believes the Commission may implement this proposal under its existing regulations.

[1] 52 Pa. Code §54.40(d); the *Tentative Order* proposes to retain the current requirement that EGS applicants post an initial security level in the amount of $250,000. 52 Pa. Code §54.40(c).
[2] *Tentative Order* at 12.

II. Comments

A. A Reduction of the EGS Security to be Maintained After the First Year of Licensure from 10% to 5% of Annual Gross Receipts Is Appropriate.

FES supports the proposal in the Tentative Order to reduce the security EGSs must post after their initial year of operation, from 10% to 5% of their annual gross receipts. FES agrees with the Commission's tentative conclusion that the 10% level is excessive in relation to the risk intended to be secured, unnecessarily burdensome and presents a barrier to entry into Pennsylvania's retail electric market.[3] The current bond amount far exceeds the potential credit risk the obligation is intended to cover, and is much larger than bonding requirements of public utility commissions in other states in the region.

As the Commission notes in the Tentative Order, the EGS security level is intended to ensure payment of the Pennsylvania Gross Receipts Tax ("GRT") and to ensure the supply of electricity at retail in accordance with contracts, agreements or arrangements.[4] With respect to the GRT obligation, the Pennsylvania Department of Revenue requires EGSs every March 15th to prepay ninety percent (90%) of the expected annual GRT.[5] Underpayment of the amount due results in the assessment of a substantial interest amount[6], and nonpayment of GRT results in a substantial penalty.[7] The prepayment requirement early in the calendar year, together with the potential underpayment interest and nonpayment penalty, significantly reduce the risk that the total GRT owed will not be paid. Thus, the likelihood that the Commission's security will be needed for the purpose of collecting the GRT is also limited.

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[3] Tentative Order at 11.
[4] 52 Pa. Code §54.40(f)(2).
[5] 72 Pa.C.S. §10003.2(c)(5).
[6] 72 Pa.C.S. §10003.3(a).
[7] 72 Pa.C.S. §8102.

As for the other stated purpose of the security, to ensure the continued supply of electricity at retail in accordance with suppliers' contractual obligations, PJM's security requirements already address this risk. Further, a reduced security level will not in any way jeopardize customers' retail supply of electricity. Again, other states in the region have much lower bonding requirements than the current level in Pennsylvania; reducing the level from 10% to 5% of annual gross receipts will provide ample customer protections if a supplier fails to honor its contractual obligations. Current rules provide that customers whose supplier does not perform can return to utility default service or choose another supplier. The utility retains the obligation to serve, and other suppliers would have the opportunity to obtain additional customers. The defaulting supplier's bond could if necessary be used to make customers whole, but the exposure should be minimal (i.e. the difference between the defaulting supplier's price and the utility's Price to Compare) or nonexistent (i.e. if a new supplier matches or beats the customer's previous price). Thus, the preservation of customer protections does not justify excessive bonding requirements.

B. Expansion of Acceptable Financial Credit Instruments Is Appropriate.

The Commission's regulations at 52 Pa. Code §54.40 currently specify only bonds as acceptable security, though they provide for "other security approved by the Commission." As the Commission observes in the Tentative Order, "typically this requirement has been fulfilled by Letters of Credit (LOC) or Surety Bonds."[8] 66 Pa.C.S. §2809(c)(i) permits the Commission to approve the use of other forms of security to satisfy its statutory obligation to ensure the financial responsibility of the EGS "and the supply of electricity at retail in accordance with

[8] Tentative Order at 3.

contracts, agreements or arrangements."[9] FES supports the option of having many types of financial credit instruments that are commonly used in the electric industry available for EGSs to satisfy their security obligations, including surety bonds, letters of credit, parental guarantees (issued by an investment-grade parent), or cash. Segregated cash accounts should certainly be an acceptable form of security for those EGSs that choose to use them. A combination of allowed instruments should be permitted as well.

C. The Commission Should Implement the Above Changes Immediately And Begin the Process to Revise 52 Pa. Code §54.40 to Lower the Percentage Amount

In the Tentative Order the Commission requests comments on whether the proposals "require a change to our current regulations to be implemented, or whether the Commission can temporarily waive the current regulations until a formal regulation change is completed or whether these changes can be implemented under the current regulation provision that allows the Commission to set an alternative level of bonding commensurate with the nature and scope of the EGSs operations."[10] FES submits the above proposals can be implemented immediately under the current regulation, which envisions the possibility of a reduced security obligation.[11] Finally, the Public Utility Code permits the Commission to determine the amount and what types of security instruments can be used to satisfy the bonding requirement and leaves to the Commission's discretion whether to permit a mix of instruments to satisfy the requirement.[12] Nevertheless, FES urges the Commission, in addition to implementing the above proposals immediately, to formally amend Sections 54.40(d), (f) and (g) to reflect the reduction of the

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[9] 66 Pa.C.S. §2809(c)(1).

[10] *Tentative Order* at 12.

[11] 52 Pa. Code §54.50(d), (g).

[12] See 66 Pa.C.S. §2809(c)(1)(i); 52 Pa. Code §54.40(g).

security level to the proposed 5% following the initial year, to recognize additional acceptable types of security instruments, and to allow for the bonding requirement to be met by a mix of different types of security.

III. Conclusion

FES appreciates the Commission's consideration of the above issues about the form and amount of security required of EGSs who do business in the Commonwealth. Excessive credit requirements are unnecessarily burdensome and can present a barrier to entry into Pennsylvania's retail electric market. Whatever amounts and forms of security are determined to be acceptable, security requirements must be based upon the transparent analysis of identified and definable credit risks that directly address the potential financial fallout of an EGS default, with the goal of protecting the intended beneficiaries of the security without imposing inordinate cost on the EGS.

Respectfully submitted,

By: ______________________

Brian J. Knipe, ID No. 82854
FirstEnergy Solutions Corp.
76 South Main St.
Akron, OH 44308
Telephone: (330) 384-5795
Facsimile: (330) 384-3875
bknipe@firstenergycorp.com

Amy M. Klodowski, ID No. 28068
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
Telephone: (724) 838-6765
Facsimile: (234) 678-2370
aklodow@firstenergycorp.com

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Attorneys for FirstEnergy Solutions Corp.