



March 25, 2014

VIA E-FILE

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Proposed Rulemaking: Standards For Changing a Customer's Electricity Generation Supplier; Docket No. L-2014-2409383; COMMENTS OF FIRSTENERGY SOLUTIONS CORP.

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is FirstEnergy Solutions Corp.'s Comments in the above-referenced proceeding.

If you have any questions or concerns regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read "David P. Zambito", written over the printed name and firm name.

By: David P. Zambito
Counsel for *FirstEnergy Solutions Corp.*

DPZ/kmg
Enclosure

cc: Office of Competitive Market Oversight @ ra-OCMO@pa.gov

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Rulemaking: Standards For Changing a : Docket No. L-2014-2409383
Customer's Electricity Generation Supplier :

COMMENTS OF FIRSTENERGY SOLUTIONS CORP.

I. INTRODUCTION

By Secretarial Letter dated March 18, 2014, the Pennsylvania Public Utility Commission (“Commission”) initiated a “final-omitted” rulemaking to amend existing regulations at 52 Pa. Code, Chapter 57 to direct Electric Distribution Companies (“EDCs”) to accelerate switching time frames through off-cycle meter reads in a fashion that would permit Pennsylvania retail electric customers to switch suppliers within three calendar days. A draft of the proposed regulations (“Proposed Switching Regulations”) was attached to the Secretarial Letter. The Secretarial Letter states that implementation of the rulemaking will be required within six months of publication in the *Pennsylvania Bulletin*, absent good cause shown, and that cost recovery for implementation of the changes is anticipated to be addressed in each EDC’s next base rate proceeding.

The Commission directed that any comments to the rulemaking be submitted within seven days of the date of the Secretarial Letter, and that comments address the proposed changes, the practicality of implementing the proposed changes within six months of their effective date, and the costs of doing so. FirstEnergy Solutions Corp. (“FES”), a Pennsylvania-licensed Electric

Generation Supplier¹ (“EGS”), hereby submits its Comments in response to the Commission’s request.

As explained below, the truncated time frame of this final-omitted rulemaking makes analysis of the proposed amendments and the preparation of comments exceedingly challenging.² Some of the proposed amendments are subject to differing interpretations, and stakeholders have had insufficient time to properly analyze the proposals and formulate a position. Given the uncertainty surrounding the Commission’s intent and the ambiguous language of the proposed regulations, FES will endeavor to provide the Commission with the most helpful comments it can prepare in the limited time allowed. However, given the high potential for unintended consequences, FES urges the Commission to allow stakeholders more time for analysis and comments in this rulemaking process.

II. COMMENTS ON THE PROPOSED CHANGES

A. The Focus of the Switching Regulations Should Remain Switching Between Suppliers, Not Switching Between Products.

In an earlier Commission proceeding related to accelerated switching,³ FES supported the Commission’s efforts to shorten the timeframe in which customers who want to switch suppliers are able to do so.⁴ FES still supports this goal, and commends the Commission’s efforts to improve retail competition in Pennsylvania. However, FES respectfully submits that the proposed amendments go beyond the Commission’s goal of permitting Pennsylvania retail electric customers to switch suppliers within three (3) calendar days, by changing the focus of

¹ Docket No. A-110078 (1998).

² In addition, on March 19, 2014, the Commission issued a Secretarial Letter initiating a separate final-omitted rulemaking proceeding at Docket No. L-2014-2409385 regarding Disclosure Statements. That Secretarial Letter set a comment period of only five (5) days, with comments due yesterday, March 24, 2014.

³ *Interim Guidelines Regarding Standards For Changing a Customer’s Electricity Generation Supplier*, Docket No. M-2011-2270442 (the “Interim Guidelines”).

⁴ *Id.*, Comments of FirstEnergy Solutions Corp. (December 14, 2011).

the switching regulations from switches between suppliers and protections against slamming to switches *between products*.

This is illustrated by the proposed definitions of “Current EGS Product” and “Selected EGS Product” in Section 57.171. These definitions would extend the regulations’ requirements to product switches that do not require expedited treatment. For instance, under these new definitions, a simple renewal of an existing fixed rate product with the same EGS, or the provision of a special promotional offer by the same EGS (such as a customer discount, gift card, etc.), would trigger the extensive requirements of the Proposed Switching Regulations.

Indeed, the proposed §57.173(2) would require an EDC to send a shopping customer a confirmation letter every time there is a product change (even when staying with the same supplier). There are already processes in place to notify a customer of a change in the terms of his or her existing contract and to send the customer the terms and conditions for a newly selected product, so it is unnecessary to involve an EDC and confirmation letter in these situations. Further, the Electronic Data Interchange (“EDI”) transactions that exist today were built around effectuating changes in supplier or price (for customers billed through rate ready billing), not a change in product. There is no current EDI capability for an EGS to notify an EDC of a change in product choice by a current customer. It would be extremely costly and would require significant time and resources on the part of both EDCs and EGSs to add the functionality to alert EDCs to product changes, without advancing the Commission’s objective.

The confirmation letter and switching regulations protect consumers against slamming and should continue to do so. The introduction into the Commission’s regulations of the concept of “switching products” rather than “switching suppliers” adds unnecessary complexity and cost to the switching process. Most of the desired enhancements in the switching process can be

made without this shift in focus. With the necessary time and analysis, any concerns with enabling a customer and supplier to collaborate in moving a customer promptly from one product to another can be addressed without generally changing the regulations' focus from switching between suppliers to switching between products. The Commission should remove any references to switching products from the proposed rules, and focus primarily on the stated goal of accelerating the switching timeframe between suppliers and/or the default service supplier.

B. The Commission Should Retain the Current Practice that EGSs Send Enrollments to the EDC by the End of the Next Business Day, and All EDCs Should be Required to Allow the EGS to Rescind a Customer's Enrollment on the Customer's Behalf.

Under existing rules, the EGS must notify the EDC of the customer's EGS selection by the end of the next business day following the customer contact.⁵ The new rule would also identify two instances when the EGS would not notify the EDC by the end of the next business day. In the first instance, the proposed regulation provides that the EGS shall hold the enrollment until the end of the 3-business day rescission period with customer consent; if the customer does not consent the EGS is supposed to forward the enrollment to the EDC by the end of the next business day. In the second instance, the proposed regulation provides that the EGS shall hold the enrollment to a future date specified by the customer. It is unclear whether the proposed regulation requires an EGS to affirmatively request customer consent to hold an enrollment for 3 business days or until a future date specified by the customer. These two variations to the current rule are problematic for at least two reasons.

First, the creation of multiple potential enrollment deadlines (with the "default" deadline subject to interpretation) will necessitate changes in EGS systems. A supplier should not be

⁵ 52 Pa. Code § 57.173(1); *Interim Guidelines*, Docket No. M-2011-2270442, Appendix A.

required to have systems in place to accommodate sending enrollments both by the next business day or three days later, and tracking which customer chose which option. This is administratively burdensome, costly, and will be subject to error.

Second, to the extent the regulation can be read to require the EGS to affirmatively seek customer consent to hold an enrollment for two extra business days, this delay would diminish the benefit of reducing the five-day confirmation period to a three-day enrollment processing period. There is no reason to have a default procedure that requires the EGS to seek customer consent to hold an enrollment until the end of the rescission period, when the vast majority of customers do not exercise the right to rescind. Given the Commission's goal to accelerate switching, absent the customer's request for a delayed start date, the normal default procedure should remain strictly as it is today, with the EGS sending the enrollment by the end of the next business day. Currently, not all EDCs allow the EGS to rescind on a customer's behalf in the rare event of a customer contacting the EGS to rescind within the 3-day "cooling off" period; this functionality should be standardized so that EGSs can effectuate the rescission on the customer's behalf.

III. TIMING AND COSTS

As shown above, the proposed amendments are susceptible to multiple interpretations. Under one possible interpretation, communication from the EGS to the EDC is required every time a customer changes a *product* rather than a supplier. Also under one interpretation, EGSs must stage enrollments based upon customer preference. Under these interpretations, these proposed amendments will impose considerable costs upon EGSs. With the limited time permitted for these comments, FES cannot estimate these costs. Nor can FES estimate the time

necessary to implement new EDI capabilities that the amended rules envision. However, based upon FES's experience with changing EDI functionalities, a six month deadline would be difficult to meet. Costs involved in the changes to EDI functionality and to the processes required for the tracking of customer preferences for transmitting the product change information to the EDC would necessarily result in higher contract prices, regardless of the product chosen. For the reasons noted above, the benefits of some of the proposed changes to the switching process do not justify these extra costs.

With regard to EDCs' recovery of costs, FES agrees with the Commission's proposal in the Secretarial Letter that cost recovery for implementation of the changes should be addressed in each EDC's next base rate proceeding. The changes are for the overall promotion of retail customer choice within the Commonwealth, which will inure to the benefit of all shopping and non-shopping customers.

IV. USE OF THE FINAL-OMITTED RULEMAKING PROCESS

Because this is a "final-omitted" rulemaking, interested stakeholders have been afforded an extremely limited amount of time to review and interpret the proposed amendments, much less formulate a position and prepare helpful comments. The proposed amendments reflect the Commission's sense of urgency, but include ambiguities that could have unintended consequences, and that diminish the usefulness of stakeholders' comments on such fundamental changes in the switching processes.

The Commission's use of the "final-omitted" rulemaking process for these proposals is limited to situations meeting the rigid criteria set forth in the statutory provisions cited in the Secretarial Letter. Ordinarily, a regulation must be promulgated in accordance with the

Pennsylvania Regulatory Review Act, including review by the Independent Regulatory Review Commission. *See* PA Regulatory Review Act, 71 P.S. §§ 745.1 - 745.15. In support of its use of the final-omitted rulemaking procedure, the Commission's Secretarial Letter cites 45 P.S. § 1204(3), which authorizes the Commission to modify the rulemaking procedure if it for good cause finds that the procedural requirements of the Pennsylvania Regulatory Review Act are in the circumstances impracticable, unnecessary, or contrary to the public interest. The Secretarial Letter states that "the public interest requires extraordinary measures," due to the recent impact of wholesale electricity market price increases on Pennsylvania consumers and concerns that similar events could occur again in the immediate future.

FES respectfully questions whether all aspects of the proposed amendments require the exigent treatment and suspension of due process afforded by the final-omitted rulemaking process. FES also questions whether only seven (7) calendar days is sufficient to gather sufficient information regarding challenges of this magnitude and complexity, vet the Commission's proposals adequately among stakeholders and reach a workable solution with no possibility of unintended consequences. FES respectfully urges the Commission to allow more time for consideration and comments on these significant revisions to the accelerated switching rules.

V. CONCLUSION

FES commends the Commission for its efforts to help and protect Pennsylvania customers by accelerating the time frame for customer switching. However, FES is concerned that the Proposed Switching Regulations will have far-reaching unintended effects, for the reasons explained above. Unless the proposed amendments are more tailored to address the

current challenges, competitive EGS products would be hampered and EDC ratepayers would incur unnecessary costs. The genesis of this rulemaking is the price spikes experienced by certain customers with variable rate products during the polar vortex events of January 2014. The Commission should focus on remedying that specific problem without imposing unnecessary restrictions on the competitive retail market that the Commission has fostered and promoted through deliberative processes over the past decade and a half.

FES appreciates the opportunity to submit these Comments, and thanks the Commission for its continued support of retail electric competition in Pennsylvania.

Respectfully submitted,



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