BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF
FIRSTENERGY SOLUTIONS CORP.

I. INTRODUCTION

FirstEnergy Solutions Corp. ("FES" or "Company") respectfully submits these Comments addressing issues raised during the Pennsylvania Public Utility Commission's ("Commission") en banc hearing held in Harrisburg on November 10, 2011 in the above-referenced proceeding (hereafter, the "Retail Markets Investigation" or "RMI"). FES, a subsidiary of FirstEnergy Corp., is experienced in wholesale and retail markets, and offers wholesale and retail energy and related products to customers located throughout the Mid-Atlantic and Midwest regions. In addition to being a licensed Electric Generation Supplier ("EGS")[1] authorized to serve all categories of retail customers throughout the Commonwealth, FES also participates in the default service supply procurements of all of the largest electric distribution companies ("EDCs") in Pennsylvania.

Since the Commission initiated the RMI in an Order entered April 29, 2011 ("April 29 Order"), FES has actively participated by filing comments, presenting testimony by Tony Banks, FES' Vice President of Competitive Market Policies, at the Commission's two en banc hearings on June 8, 2011 and November 10, 2011, and by participating in working groups, sub-groups and technical conferences to try to reach consensus on specific issues impacting the future design of the Pennsylvania retail electricity market and default service programs.

[1] Docket No. A-110078 (1998).

FES submits these comments in accordance with the Secretarial Letter dated October 7, 2011 which invited interested parties to submit written comments after the November 10, 2011 en banc hearing for the Commission to consider in reviewing Staff recommendations associated with the development of an intermediate work plan. In the Comments which follow, FES will address certain issues upon which participants testified during the November 10, 2011 en banc hearing, including Consumer Education, Customer Referral Program and Retail Opt-in Auctions. FES respectfully submits that these Comments reflect its experience in the Pennsylvania retail and wholesale electricity markets, including results from customer surveys and actual experience offering a variety of products and services to retail and wholesale markets. Adoption of these proposals will foster the Commission's goals of ensuring a properly functioning and workable competitive retail market and default service programs in the Commonwealth.

II. COMMENTS

A. <u>Introduction</u>

FES believes that programs to further promote retail electric competition among residential and small commercial customers should be developed in consideration with three overarching principles:

1. The most important consideration in designing customer programs should be to give customers what they want. In today's market as supported by independent survey results presented at the November 10, 2011 en banc hearing, customers want and value products that provide the lowest possible price.
2. There should be no restrictions on qualified EGS participation in any of the programs.

3. The start of the programs should be well coordinated with the beginning of EDCs' Default Service Plans with power flow starting June 1, 2013.

With these principles in mind, FES offers the following comments on the programs discussed at the November 10, 2011 en banc hearing.

B. Timely Coordination Among the Commission's Several Initiatives Is Essential to the Success of the Intermediate Work Plan

FES wishes to stress that a critical factor to the success of any programs deployed through this RMI is program coordination. Timely and coordinated consumer education relating to programs in the RMI, along with careful consideration of how each of the program implementation details work together, will eliminate or minimize customer confusion and should result in significant customer and supplier participation. The most well-designed and well-intentioned programs will not succeed unless consumers understand them and believe that participation in such programs will be to their benefit.

Each of the programs that are part of the RMI (consumer education, customer referral, opt-in auction, and 2013 default service) should be considered holistically and not in isolation. This view is consistent with the position taken by Dr. Terry Madonna when he stated during the Consumer Education panel at the November 10, 2011 en banc hearing:

> "... but I certainly agree: holistic, take the problems, think them through, and figure out how to get more information out to consumers...."[2]

The structure and timing of one program can alter or affect the structure, timing, and ultimate success of another. In its Retail Opt-in Auction Program panel handout at the November 10th hearing, FES included a proposed timeline which suggests when each of the various program elements could be implemented, all leading up to a June 1, 2013 power flow date. The timeline

[2] Transcript of November 10th En Banc Hearing ("Tr.") at 178.

is included with these Comments as Attachment A. Whatever programs the Commission adopts through this proceeding, FES respectfully submits that timely and careful coordination among those programs will be crucial to their success.

C. Consumer Education

FES supports a statewide communication campaign that raises consumer awareness of shopping and promotes switching from utility default service to retail suppliers. In these comments, FES takes no position on the specific formats of Commission or EDC communications since both have been the subject of considerable discussion in an RMI working group and during Technical Conferences. However, FES suggests for consideration by the Commission the following points relating to its consumer education plan. The plan should:

1. Encourage customer shopping by clearly identifying customers' options and procedures for selecting an EGS.
2. Promote active supplier participation and offers to residential and small commercial customers through www.PaPowerSwitch.com and other written promotions.
3. Provide thirty days' notice to suppliers of any EDC or Commission mailings to allow for supplier preparedness (call center and back office).
4. Provide for EDCs to bear and recover the cost of the consumer education plan, since it will be aimed at currently non-shopping customers, who will be its primary beneficiaries.

D. Customer Referral Programs

FES' witness Mr. Banks testified regarding Customer Referral Programs at the November 10, 2011 en banc hearing. A Customer Referral Program should apply to situations involving EDC contacts from new or moving residential or small commercial customers requesting new service or providing notification of an address change. New or moving customer account changes should be "seamless" and should not result in customers being placed on EDC default service before EGS service can begin. Based on the principle of giving customers what they want, as supported by independent customer survey results, the referral product should be a standard fixed price or percent-off of the price to compare ("PTC") product that guarantees customers will save money, with a contract term of 24 months. A survey presented during the November 10th en banc hearing by Chris Kallaher, Senior Director, Government & Regulatory Affairs of Direct Energy, indicates that price is far and away the main driver of customer migration. Fully 88% of the 800 customers surveyed cited lower price as the primary factor in customer shopping.[3] Additional support for this proposition is found in the survey results presented by Alphabuyer representatives Kevin McCloskey and John Raisch. Alphabuyer's survey found that, while 89% of Pennsylvania residents are aware of energy deregulation, only 27% of the customers surveyed had switched to an electric alternative supplier. When the non-shopping customers were asked why they had not switched, the primary reason was that the savings are not worth the effort.[4] In addition, the telephone survey conducted by Dr. Madonna emphasized that those customers who have not shopped are looking for long-term savings.[5]

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[3] *"Pennsylvania Retail Electricity Market Investigation – Direct Energy Customer Survey Results,"* Slide 3; Tr. at 185.

[4] *"Alphabuyer Survey,"* Slides 1-3; Tr. at 181-182.

[5] Tr. at 168, 175.

To minimize complexity and customer/supplier confusion, FES proposes that first power flow under the Customer Referral Program pricing should start June 1, 2013, to coincide with the start of power flow under the two-year EDC default service procurements as directed in the Commission's Tentative Order entered October 14, 2011[6] ("October 14th Tentative Order"). For customers not currently on EGS service, the EDC would refer the customer to the EGS offering the lowest price that is below the default service price for that customer's class. Participating EGSs should be able to frequently make and update their referral price offers so as to promote head to head competition among suppliers for referral customers. The referral process should be fully supported by EDC systems and processes that will allow EGSs to make such new and updated offers available to residential and small commercial customers in their service territories. If moving customers already receive generation supply service from an EGS, those customers should be referred by the EDC to their existing EGS, the rationale being that an EGS should not lose a customer simply because the customer moves.

Some participants have advocated the offering of short-term introductory prices for participating customers (*e.g.*, 2-3 months), followed by month-to-month prices set at the discretion of the EGS. FES respectfully submits that short term introductory prices are unnecessary and counterproductive, and month-to-month pricing following introductory pricing will result in customer confusion and dissatisfaction.

FES has conducted customer surveys to help determine what products and services FES offers into the residential market. FES' survey results mirror those cited earlier that the main

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6 Investigation of Pennsylvania's Retail Electricity Market: Recommended Directives on Upcoming Default Service Plans, Docket No. I-2011-2237952 (Tentative Order entered October 14, 2011). Commission Staff stated during the November 17th Technical Conference Call that it is considering recommending that Customer Referral Programs and Retail Opt-in Auctions not be included in EDCs' default service plan filings. However, since the October 14th Tentative Order states that such programs are to be included in the EDC plans, and a Final Order will not be issued until after these Comments are due, FES' comments assume the programs will be included in EDC filings as set forth in the Tentative Order.

reason customers do not shop is the belief that they will not save enough to make shopping worthwhile. Another one of the top reasons customers have not shopped is the fear of introductory prices that increase later. With independent survey results suggesting that complexity of the process is yet another important reason that customers do not shop for electricity,[7] FES is further concerned that short term introductory prices will force customers to deal with supplier selection again, after having dealt with that issue just a couple of months earlier, leading to customer frustration and confusion and dissatisfaction with the shopping experience.

In addition to concerns about how customers will react to introductory pricing, FES respectfully disagrees with the RESA recommendation that mirrors the New York referral program model of moving customers from a short-term introductory price to a month-to-month product after the introductory period. Month-to-month volatility in customer rates guarantees uncertainty, customer confusion and unhappiness with the shopping experience, particularly if the customer's EGS rate exceeds EDC default service pricing. It is important to note that month-to-month pricing after the introductory period in New York may make more sense than it would in Pennsylvania, since utility default service residential rates in New York change monthly. Customers in Pennsylvania do not have month-to-month pricing for default service, which FES believes would lead to customer confusion and dissatisfaction with month-to-month pricing after an introductory period. It is very telling that, even after several years with New York customer referral programs in place,[8] residential customer shopping in New York is lower than current

[7] The Alphabuyer survey results presented during the November 10th en banc hearing show that 14% of customers cited "process is confusing" as their reason for not switching to an alternative energy supplier.
[8] New York referral programs were designed based on guidelines issued by the NYS Public Service Commission on December 22, 2005. *See* http:/www.dps.state.ny.us/ESCO_UtilityReferralProgram.html.

residential customer shopping levels in Pennsylvania,[9] further supporting the idea that the New York referral program model is not right for Pennsylvania. So, regardless of the structure of referral programs in other states, introductory pricing followed by month-to-month pricing is not the appropriate structure for a referral program in the Commonwealth. While FES is not in favor of introductory prices, if the Commission determines that an introductory price is appropriate, it should be followed by a fixed price term contract that is below the PTC and known by the customer at the time of referral to the EGS.

FES offers one final point on this topic. Since EGSs currently enroll shopping customers and have call centers with personnel trained in the necessary processes, EGSs should continue to be responsible for customer enrollment after receiving a referral notification from the EDC. There is no need to place the enrollment responsibility on the EDC and doing so would increase the burden on EDC call centers and likely result in EDC requests for cost recovery.

E. Retail Opt-in Auctions

FES' witness Mr. Banks testified regarding Retail Opt-In Auction models at the November 10, 2011 en banc hearing. The Commission has tentatively determined that opt-in auctions are a desirable means to encourage currently non-shopping customers to move from EDC default service to EGS service, and the October 14th Tentative Order ordered EDCs to include opt-in auction proposals in their next Default Service Plan filings.[10] FES has actively participated in the RMI retail opt-in auction working group, in which the details of an opt-in auction structure have been discussed at length. While the opt-in auction subgroup made

[9] As of April, 2011 (the most recent data available on the NY PSC's website), New York residential shopping is 20.4% of load and 12.1% of customers. *See* http://www.dps.state.ny.us/Electric_Migration_apr11.pdf. By contrast, in Pennsylvania as of November 16, 2011, residential shopping is 22.4% of load and 23.6% of customers. *See*, http://extranet.papowerswitch.com/stats/PAPowerSwitch-Stats.pdf?/download/PAPowerSwitch-Stats.pdf.
[10] *See* fn. 6, *supra*.

progress in understanding and gaining consensus on some issues, there continues to be a wide variety of opinions on how an opt-in auction should work.

Since the last of the EDC rate caps expired in December 2010, Pennsylvania residential shopping has increased from approximately 10% in January 2011 to over 22% in November 2011[11] and FES believes residential shopping will continue to increase at a rapid pace with or without implementation of an opt-in auction program. Independent survey results presented by Dr. Madonna and Alphabuyer during the November 10th en banc hearing show that about 88% of Pennsylvania residents know that they can choose an EGS for their electricity generation service, even though only about 22% have made that choice. Considering this high level of awareness but relatively low level of shopping, FES believes that the opt-in program design should avoid creating a negative experience for those customers who know about shopping but have not yet made the decision to move to an EGS.

For the above and other reasons, FES is not in favor of "pilot" programs that result in power flow prior to June 1, 2013. Pilot programs will interfere with existing EDC default service supply contracts, add another layer of confusion for customers and are unlikely to result in useful information sufficient to offset customer confusion caused by the pilot(s). Further, there will not be sufficient time to incorporate lessons learned from the pilot programs before the beginning of full-scale programs with power flow starting June 1, 2013.

There has been discussion in the subgroup about whether the number of customers eligible to participate in the opt-in auction should be limited. FES suggests that the only limit on customer participation should be determined by system and process limitations of individual EDCs. If customer interest in the opt-in auction reaches those limits, this would indicate a

[11] http://extranet.papowerswitch.com/stats/PAPowerSwitch-Stats.pdf?/download/PAPowerSwitch-Stats.pdf.

significant success and a second "Stage 2" auction could be held 6 months or so later to include additional customers.

FES believes that the primary objectives of the opt-in auction structure should be to:

1. Provide customers the lowest possible price.
2. Foster an environment where all qualified suppliers can actively participate in head to head competition by removing artificial barriers.
3. Increase participation by making the program easy to understand.

Toward that end, FES proposes that an opt-in auction be limited to residential and small commercial customers (since large commercial and industrial customers are already shopping in large numbers) structured as a 24-month, fixed price or percent-off of PTC product with power flow beginning June 1, 2013, to coincide with the start of new EDC Default Service Plans. The 24-month contract term will apply whether the power flow starts June 1, 2013 or at a later date during the term of the applicable Default Service Plan. The opt-in customer price should be determined by a descending clock auction, which in FES' experience in other contexts, results in customers receiving the lowest possible price compared with alternative bidding processes, such as one-time sealed bids.[12]

FES believes that incentive payments will not attract a meaningful number of customers, and will undoubtedly lead to higher bid prices by suppliers. FES' first-hand experience in Pennsylvania markets shows that customers prefer the lowest possible price over upfront incentive payments with higher rates.[13] In addition, offering an incentive does not differentiate

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[12] This position is also supported by comments from the Analysis Group who, in the November 10, 2011 en banc hearing, recommended the descending clock auction as the preferred method to procure supply for the opt-in auctions. *"Analysis Group"* handout during November 10 En Banc hearing, page 10; *see also* Tr. at 300.

[13] Dr. Madonna's testimony during the November 10th en banc hearing supports this proposition. Dr. Madonna cited customer skepticism that they will see long-term savings as a primary reason customers are resistant to shopping. *See,* Tr. at 168, 175.

the opt-in auction from the various supplier offers currently in the market that include incentive payments as part of their product offerings. Finally, FES believes that an incentive-payment based auction will limit supplier participation to the largest suppliers with the ability to fund upfront payments and could have the effect of limiting the participation of small and mid-size suppliers and thus having a negative effect on supplier diversity.

While FES strongly recommends against any incentive being a part of the opt-in process, if there is to be an incentive payment as part of the program, FES recommends that it be minimal and that it be paid only to customers who remain with the original supplier for at least six months.[14] The shorter the period of time that customers have to earn the incentive payment, the higher the bid prices will be to reflect the risk that customers will leave immediately after receiving the incentive payment. Finally, any incentive amounts approved by the Commission should be uniform across the state; if the Commission supports variable and arbitrary incentive amounts among EDC territories, customers in the lower incentive payment service territories will view that as unfair.

Another detail being considered for opt-in auction programs is whether to establish load caps for suppliers. There are already over 200 EGSs registered to serve Pennsylvania customers and at least six EGSs offering fixed price term contracts in all of the major EDC service territories in the Commonwealth. This is the best indication that supplier load caps are not necessary. A properly designed auction structure that removes all barriers to qualified suppliers being able to participate will result in robust competition and produce the lowest possible price. Artificial and arbitrary load caps will result in customers paying more than they need to by

[14] The six month requirement is based on a 24-month fixed price contract, which, as described above is the contract duration that FES recommends for the benefit of customers to provide price stability and a positive customer experience. FES suggests a three month service requirement for the incentive payment if the Commission orders a twelve month contract instead.

preventing suppliers who are willing to offer a lower price from making that price available to all customers if they exceed the load cap. This again would create a negative customer experience with the program. To assure that the opt-in auction process is competitive, FES proposes that instead of load caps, the opt-in auction structure require a minimum of three auction participants in each EDC service territory.

At any time during the term of a customer's EGS contract, any EGS, including the original winning EGS, should be able to make offers to that customer, and the customer should be able to switch to any other EGS. After the contract term expires, customers should be free to shop with any supplier, but should not be allowed to return to EDC default service as long as any EGS offers a price lower than or equal to the default service price. Prior to the end of the opt-in auction term, customers should receive notification that they will automatically be renewed by their current EGS at a specified price and term, unless they take action to change suppliers. FES believes that the above criteria benefit both customers and suppliers. Customers will be fully informed of their options and retain the ability to shop for the best price or product at any time during and after the opt-in contract period, while suppliers will be able to freely market their products at any time during and after the opt-in contract period to retain and attract customers. These are characteristics of a truly competitive retail electric market.

Finally, as stated above, it is critically important that the opt-in auction be well-coordinated with the timing of consumer education, Customer Referral Programs and EDC Default Service Plans to avoid customer and supplier confusion and to allow both groups to make informed decisions regarding whether to participate or not. For effective coordination, default service supply auctions must be completed before opt-in auctions are held so that EDC PTCs are known by opt-in auction suppliers before the opt-in auctions. The program structure and details of opt-in auctions in each EDC territory (except for the opt-in auction price) should be well-defined and known in advance of default service supply auctions so that default service bidders can accurately assess the shopping risk inherent in supplying default service. After the EDC default service prices have been established, the opt-in auction process would include the following sequence of events:

1. In a descending clock auction, suppliers would bid a load volume (and/or representative customer count based on load profile data) by customer class that it is willing to serve at each of the declining prices at or below the PTC as established by the auction administrator (suppliers would know the PTC and any supplier obligation to make incentive payments).
2. Based on the above supplier auction results, customers would be informed of the range of supplier bid prices, the savings compared to the EDC's PTC resulting from the supplier auction, and the applicable incentive amount, if any.
3. During the defined enrollment period, customers would provide notice of their decision to opt-in to the auction.
4. The auction administrator would determine the customers' final prices based on the numbers of residential and small commercial customers and their attendant load that will participate in the auction.
5. Customers would be randomly assigned to suppliers, informed of their final price, and enrolled by the EGS.

FES believes the process outlined above allows for each stakeholder in the process to have as much information as possible when deciding whether or not to participate.

III. CONCLUSION

In order for both the referral and opt-in auction programs to be successful, the programs must be properly structured and the programs' implementation must be well coordinated with each other and EDC default service procurements, including effective communication and consumer education. Doing so will minimize the chance of failure caused by confusion for both customers and interested suppliers. The best way in FES' view to avoid the above pitfalls is to adhere to the principles stated at the beginning of these Comments:

1. Give customers what they want.
2. There should be no restrictions on qualified EGS participation in any of the programs.
3. The start of the programs should be well coordinated with the beginning of EDCs' Default Service Plans with power flow starting June 1, 2013.

FES appreciates the opportunity to submit these Comments, thanks the Commission for its support for robust retail electric competition, and looks forward to continuing to participate in the Commission's efforts to improve customers' direct access to competitive markets throughout the Commonwealth.

Attachment A: A Coordinated Approach