

Mark A. Hayden
Attorney

330-761-7735
Fax: 330-384-3875

September 13, 2010

VIA MESSENGER

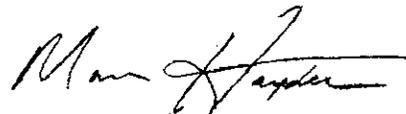
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

Re: *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*

Dear Secretary Chiavetta:

Enclosed for filing are an original and five (5) copies of the *Comments of FirstEnergy Solutions Corp.* These Comments are submitted in accordance with the Commission's Order entered September 3, 2010 in the above referenced proceeding. Also enclosed is an additional copy of the Reply Comments, to be date stamped and returned to our messenger. Please call me if you have any questions.

Very truly yours,



Enclosures

cc: Office of Competitive Market Oversight (via e-mail ra-OCMO@state.pa.us, w/encls.)

RECEIVED
2010 SEP 13 PM 4:12
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Interim Guidelines Regarding Advance Notification)	Docket No. M-2010-2195286
by an Electric Generation Supplier of Impending)	
Changes Affecting Customer Service; Amendment)	Docket No. M-0001437
re: Supplier Contract Renewal/Change Notices)	

RECEIVED
2010 SEP 13 PM 4:12
PA-PUC
SECRETARY-BUREAU

COMMENTS OF FIRSTENERGY SOLUTIONS CORP.

I. INTRODUCTION

On September 3, 2010, the Pennsylvania Public Utility Commission (“Commission”) entered its Tentative Order at the above referenced Dockets, opening proceedings to consider proposed amendments to the *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service* (“Interim Guidelines”). The Interim Guidelines were initially updated and approved in a Final Order entered on March 9, 2001 at Docket No. M-0001437, but have infrequently been practiced due to decreased shopping levels in Pennsylvania prior to the expiration of rate caps.

The Office of Competitive Market Oversight (“OCMO”) reviewed the Interim Guidelines and determined that the following two items need to be addressed: the use of an estimated Price to Compare (“PTC”) on customer contract renewal notices when an actual PTC is not yet available from the electric distribution company (“EDC”), and the treatment of contract renewals when a customer does not respond to a supplier’s contract renewal notice. The OCMO worked with the Committee for Handling Activities for Retail Growth in Electricity (“CHARGE”) to develop recommendations on how each of these issues should be handled going forward.

In the Tentative Order, the Commission tentatively adopted OCMO’s recommendation to include an estimated PTC on the second notice provided to the customer prior to the expiration of the contract (the “options notice”). However, with respect to the renewal of contracts when a

customer does not respond to renewal/change notices, the Commission rejected OCMO's recommendation, which was to allow a fixed term agreement to be converted to a new fixed term agreement, provided that the customer can cancel, without penalty, the new agreement within the first 30 days of receiving the initial bill under the new agreement. Instead, the Commission tentatively adopted a rule that mirrored a regulation applicable to the gas industry, which allows a fixed term agreement to convert to a month-to-month agreement that contains no cancellation penalties, or to convert to another fixed term agreement that includes a customer-initiated cancellation provision.

Pursuant to the Commission's September 3, 2010 Tentative Order, FirstEnergy Solutions Corp. ("FES") offers these comments for the Commission's consideration. FES thanks the Commission for this opportunity to submit comments and, as explained further below, urges the Commission to adopt OCMO's recommendation regarding the PTC, with some additional language explained below. With respect to the question of contract renewals in the absence of a customer's response, FES believes the best option is to allow a fixed term agreement to convert into a new fixed term agreement, either at the same terms and conditions or at revised terms and conditions, including cancellation penalties. This would be Option 3 identified in the September 3, 2010 Tentative Order. FES is strongly opposed to the "gas rule" option tentatively adopted by the Commission, which would increase the prices of EGSs' product offerings to account for increased risk.

II. COMMENTS

A. Amendment of Guideline II(b)(iii) – The Price to Compare on Option Notices

FES supports the Commission's tentative adoption of OCMO's recommendation to include an estimated PTC on the options notice, as well as information on how and when to obtain the actual PTC when it is available, with two additional requirements that are described below. FES agrees with the OCMO's assessment that the inclusion of the PTC is problematic due to timing differences between when the options notice is sent out and when the PTC is known.

In our experience, it is helpful for customers to have the estimated PTC information to aid in the decision-making process. However, if this information is to be included, it is critical that all suppliers are using the same source for the PTC calculations, and not performing the calculations themselves. There is a lot of room for error or differences in interpretation, so FES strongly believes that the EDC is the appropriate source of the estimate.

Additionally, the EDC should clearly list which components are being included in the PTC calculation, and this information should be subject to Commission review. This would further mitigate concerns about either suppliers or EDCs manipulating the PTC to make prices look more attractive, and allow for greater transparency in the process. To effect these additional requirements, the last sentence under II(b)(iii) of Appendix A of the September 3, 2010 Tentative Order should be further modified to read: “The EDC shall be the source of the estimated price to compare as well as a list of components included in the calculation. The calculation of the estimated price to compare is subject to Commission review;” (additional language proposed by FES is underlined).

If the Commission does not adopt the OCMO recommendation in its Final Order, then FES, alternatively, would urge the Commission to adopt Option 2 considered by CHARGE, and require that no PTC be included on the options notice, but that customers be provided with information on how to obtain it online or by telephone.

B. New Interim Guideline II(d) – Customer Fails to Respond to Renewal/Change Notices

The second issue posed by the OCMO is how electric generation suppliers ("EGSs") should handle situations when a customer does not respond to the renewal/change notices. In its discussions, CHARGE considered a total of four options to address non-responsive customers. Option 3, which was neither recommended by OCMO nor tentatively adopted by the Commission, was to allow a fixed term agreement to be converted to a new fixed term agreement, either at the same terms and conditions or at revised terms and conditions, and including cancellation penalties. FES respectfully submits that the current auto-renewal process has served the market well and does not need to be changed.

In those EDC territories where customers have experienced contract renewals following the expiration of rate caps, FES is not aware of any complaints by customers who believe that they were unfairly entered into another fixed term agreement, much less a significant number of complaints necessitating the guidelines tentatively adopted by the Commission or recommended by OCMO. These customers have already participated in choice by entering into the initial contract, and the auto-renewal process makes it easier for these customers to continue to enjoy the benefits of choice. Requiring customers to change their behavior and affirmatively agree to the new fixed term contract creates an unnecessary roadblock for customers who chose not to

respond to notices sent by the supplier. We therefore strongly support Option 3 considered by CHARGE, *i.e.*, that the new agreement should go into effect including cancellation penalties.

Should the Commission believe a change is essential, FES respectfully submits that Options 2 and 4 considered by CHARGE are not ideal, but represent reasonable compromises for all parties involved. FES does not oppose either of these options. In Option 4, the renewal procedure and customer response requirements would be contingent on the terms of the EGS's proposed renewal agreement. Customer consent would not be required if the terms and conditions do not change, or are viewed as "beneficial" to the customer. Affirmative action would only be required if the EGS is proposing significant changes to the terms and conditions. FES does not oppose this option, but agrees with OCMO's concerns regarding the subjective nature of the determinations as to what would constitute "significant changes" or "beneficial" terms, and therefore prefers Option 3.

In Option 2, there would be an "escape window" in which the fixed term agreement converts to a new agreement at the same or revised terms and conditions, and the customer has 30 days to cancel, without penalty, upon receiving the first bill under the new agreement. FES does not oppose this option either, but cautions that there would be a premium associated with this extra risk, which would result in a higher price to the customer. FES prefers Option 3 to Option 2 because Option 3 would not result in higher pricing.

The only option that FES strongly opposes is Option 1, which it realizes is the one the Commission has tentatively adopted. As the Tentative Order explains, Option 1 is designed to mirror the gas rule, and would allow a fixed term agreement to either be converted to a month-to-month agreement with no cancellation penalties, or to another fixed term agreement which allows the customer to cancel at any time with no penalty. Both alternatives presented by the gas

rule, the month-to-month contract and a fixed term contract with a customer-initiated cancellation provision, present the same problem. As with the 30 day escape window of Option 2, in both Option 1 alternatives the supplier is now taking on extra risk, and the product would have to be priced accordingly. However, while the potential for cancellation under Option 2 ends 30 days after the customer receives the initial bill under the renewal contract, the uncertainty presented by Option 1 does not end until the customer cancels or responds to a renewal notice. Further, the conversion to a month-to-month contract may require a customer that has already made an affirmative choice to shop to continually receive renewal notices from the EGS. We believe that this option would be the most damaging to customers and is the least favorable option for suppliers, and strongly urge the Commission to reconsider the tentative adoption of this option.

III. CONCLUSION

FES appreciates this opportunity to submit comments, and supports the Commission's adoption of the tentative amendment to Interim Guideline II(b)(iii) concerning the PTC, with the additional modification described above. However, FES respectfully but strongly urges the Commission not to adopt the "gas rule" regarding contract renewals for non-responsive customers. Rather, FES recommends that the Commission revise Section II(d) of the Interim Guidelines consistent with Option 3, in which a fixed term agreement may be converted to another fixed term agreement with the same or revised terms and conditions, in the event that a customer does not respond to the renewal/change notifications.

FES thanks the Commission for its consideration.