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June 24, 2013

**VIA E-FILING**

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

**RE: Use of Fixed Price Labels for Products With a Pass-Through Clause;**  
**Docket No. M-2013-2362961**

Dear Secretary Chiavetta:

Enclosed for electronic filing are the *Comments* of FirstEnergy Solutions Corp. as directed in the Tentative Order entered on May 23, 2013 in the above-referenced proceeding.

Very truly yours,



Amy M. Klodowski  
Attorney  
FirstEnergy Solutions Corp.

AMK:dml

Enclosure

cc: Dan Mumford, Manager—Compliance and Competition, PAPUC  
Patricia Wiedt, Assistant Counsel, PAPUC

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Use of Fixed Price Labels for Products : Docket No. M-2013-2362961  
With a Pass-Through Clause :

**COMMENTS OF FIRSTENERGY SOLUTIONS CORP.**

FirstEnergy Solutions Corp. (“FES”), through its attorneys, files these Comments to the Tentative Order entered by the Pennsylvania Public Utility Commission (“Commission”) on May 23, 2013 regarding a proposed Policy Statement on “pricing labels” for products offered by electric generation suppliers (“EGSs”) to Residential and Small Commercial and Industrial (“Small C&I”) customers. The Tentative Order asserts that labeling an EGS’s product as “fixed price,” when the EGS’s disclosure statement includes a pass-through clause allowing the EGS to pass through to the customer the costs imposed on the EGS by the unforeseen action of a government entity, regional transmission organization (“RTO”) or other entity, is “misleading.” To address this perceived problem, the Tentative Order proposes a Policy Statement which would, among other things: (1) prohibit the use of the term “fixed price” where an EGSs’ disclosure statement includes a pass-through clause, (2) require such products be known by the new label “price with pass-through clause,” (3) require the pass-through clause to “specifically describe” the various factors that could result in a pass-through event, and (4) change the definitions of “fixed price” and “variable price” in the Commission’s “Electric Competition Dictionary.”

**I. Introduction**

FES urges the Commission to reject the Tentative Order’s proposal to create and change product labels, and instead focus on ensuring adequate and accurate disclosure statements. As

explained below, the use of pass-through clauses in fixed price products is a standard retail electric industry practice. Pass-through clauses have been openly used in EGS contracts in Pennsylvania for several years with Commission Staff's awareness. Pass-through clauses are a necessary measure for mitigating regulatory risk associated with fixed price products and protecting an EGS's business against an unforeseen event. They enable EGSs to offer customers lower prices and maximize customer savings, and facilitate supplier entry into Pennsylvania retail electric markets. The clauses also enable competitive EGSs to put themselves on equal footing with regulated electric distribution companies ("EDCs") which may protect their businesses by obtaining Commission approval to pass along unexpected, uncontrollable costs to customers.

It is not an EGS's intent to invoke the clause. Whether to invoke the clause in response to an unforeseen event is a business decision that is not taken lightly, and an EGS may elect not to pass costs through to customers. In fact, the Commission's Tentative Order does not allude to any instance in which the clause has been invoked with respect to a Pennsylvania Residential or Small C&I customer. Nevertheless, the clause is necessary, particularly if EGSs are to continue offering competitive fixed price products, which appeal to many Pennsylvania customers. With the pass-through clause, customers purchasing fixed price products pay lower prices while an increase in charges to the customer as the result of a pass-through event is unlikely. If one occurs and the EGS elects to pass through the costs, the EGS will pass through the actual costs, with no mark-up. Without the pass-through clause, however, the EGS's uncertainty will result in a definite increase in the fixed commodity price, whether or not a pass-through event actually occurs. Further, the price increase will reflect the EGS's evaluation and pricing of the risk, not the actual cost of any actual pass-through event.

If the existence and meaning of a pass-through clause is properly disclosed and explained, there is nothing misleading about referring to a fixed commodity price as “fixed price.” FES respectfully submits that the Commission should focus on ensuring adequate and accurate disclosure and explanation, rather than crafting new, awkward product labels which are confusing and will diminish customer interest. Enhanced standards for disclosure statements can ensure adequate and accurate disclosure and explanation of retail contract terms, including pass-through clauses, without regulatory control of licensed EGSs’ contract terms, marketing practices and business plans. In an enhanced disclosure statement, customers’ attention will be immediately drawn to the necessary information regarding a fixed price product, including the existence of a pass-through clause which can be prominently disclosed through conspicuous placement, bolding, etc. Requiring EGSs to explain in the disclosure statement the existence, meaning and purpose of a pass-through clause and other contract terms would provide the Commission with an excellent tool to educate customers so they can understand retail electric contracts and make informed shopping decisions.

In contrast, overly prescriptive rules for labeling products, like those proposed in the Tentative Order, incorrectly presume customers cannot be educated about pass-through clauses. They exceed the Commission’s legal authority, not only by micromanaging EGSs’ contracts, business plans and marketing, but also by impacting generation pricing and effectively eliminating some types of products from Pennsylvania’s retail electric market. Requiring the use of the proposed “price with pass-through clause” label will significantly reduce the number of fixed price offers to Pennsylvania customers, and likely eliminate long-term fixed price offers in Pennsylvania because customers would be confused and unreceptive to the perceived “new” product offering. In addition, the proposed requirement that a pass-through clause “specifically

identify” the various factors that could result in a pass-through event would limit the clause’s protection to factors an EGS can foresee, when the very purpose of the clause is to protect an EGS against factors it cannot predict. Such results contradict the Commission’s goals of encouraging EGS participation in Pennsylvania’s retail electric market, and promoting robust, sustainable retail electric competition in Pennsylvania and the continued development of the market through innovative product offerings. Moreover, adopting the proposed Policy Statement will have significant unanticipated consequences, including price increases which do not reflect the actual cost of any actual pass-through event, and adverse impacts on the upcoming Standard Offer Programs.

For the reasons explained in further detail below, FES respectfully recommends that the proposed Policy Statement’s attempt to craft an acceptable label to fit every product EGSs may want to offer is unworkable, bad policy, and unnecessary to address any concerns with customers’ awareness of pass-through clauses in retail electric contracts. Rather, any concerns are best addressed through the use of enhanced language in disclosure statements that describes the existence of the pass-through clause and other contract terms, explains why they are included in the contract (e.g., the risk the pass-through clause is intended to address), and what this means for the customer. Rather than approaching the issue by restricting EGSs’ ability to effectively market their products by imposing overly restrictive labels and descriptions which will only confuse and discourage customers from buying the product, the better approach is one that educates customers and ensures they are making truly informed decisions.

To the extent the Commission wants to revise the definition of “fixed price” in its Electric Competition Dictionary, FES recommends revising it to conform to standard industry practice by indicating that the product may include a pass-through contingency clause. If the

Commission elects to make further revisions to its definitions and prescribe product labels, any changes must apply only prospectively, to new customers or future renewals of existing customers, to avoid exacerbating the Policy Statement's harm to retail electric competition.

## **II. Comments**

### **A. The "Fixed Price" Label for a Product with a Pass-Through Clause Is a Standard Industry Practice and Is Not Misleading**

FES respectfully disagrees with the Tentative Order's blunt description of any label including the word "fixed" for a product with a pass-through clause as "oxymoronic and inherently misleading." Tentative Order at 10. FES submits that the inclusion of a pass-through clause in a product labeled as "fixed" is a standard retail electric industry practice which is not misleading in any way. Retail customers who may not be familiar with such usage should be educated about why the clause is necessary, not deprived of fixed price products which appeal to customers for their savings and price stability. The pass-through clause is an important protection that enables EGSs to offer these products at a lower price while protecting their businesses. While an EGS can hedge commodity risk, it cannot hedge risks that it cannot predict. Many EGSs are unwilling and unable to assume the regulatory risk that unforeseen costs will be imposed or shifted to EGSs by RTO, regulatory agency, legislative or court action during the term of a contract, particularly for longer term offers. Contrary to the Tentative Order's suggestion on page 8, a higher risk premium is no substitute for the mitigation a pass-through clause ensures, since there is no reliable way to hedge against all possible regulatory risks. If not properly mitigated, such risks could endanger an EGS's future. The use of a pass-through clause also enables a competitive EGS to put itself on a level playing field with regulated EDCs, which

may protect themselves by obtaining Commission approval to pass similar costs through to customers, without defending accusations that customers are being misled.

Given their importance to EGSs' ability to offer fixed price products, pass-through language is commonly included in disclosure statements by major EGSs offering fixed price products to Pennsylvania Residential and Small C&I customers. Attached as **Appendix A** are nine (9) examples of pass-through language included in EGS disclosure statements for fixed price products offered to Pennsylvania Residential and Small C&I customers. While the Tentative Order suggests that pass-through language in disclosure statements only came to light in the autumn of 2012, Tentative Order at 2, the Commission's Bureau of Consumer Services for years has reviewed Residential disclosure statements for fixed price products with pass-through language in connection with EGS applications for licenses to serve Residential or Small C&I customers. EGSs have relied on the Commission's approval of these licensing applications in developing disclosure statements and other marketing materials and in planning their businesses. In light of the prevalence of their use and the Commission's awareness of pass-through clauses in Pennsylvania and elsewhere, their inclusion in disclosure statements for products advertised as "fixed price" cannot in fairness be called misleading.

Because the use of pass-through clauses is so prevalent among major EGSs, the proposed Policy Statement will have immediate, unanticipated, adverse consequences. For instance, eliminating the use of pass-through clauses in fixed-price products will result in higher prices for customers purchasing these popular products. With the pass-through clause, customers pay lower prices, and an increase in charges to the customer as the result of a pass-through event is unlikely. If a pass-through event occurs and the EGS elects to pass through the costs, the EGS will pass through the actual costs of the event, with no mark-up. Without the pass-through

clause, however, the EGS's uncertainty will result in a definite increase in the fixed commodity price, whether or not a pass-through event actually occurs, and the price increase will not reflect the actual cost of any actual pass-through event. Without the protection of the pass-through clause, uncertainty requires customers to pay more, based on the EGS's evaluation and pricing of the risk. The resulting increase in price eliminates valuable headroom below the regulated EDC's price-to-compare for fixed price products, creating another barrier to supplier entry into Pennsylvania's retail electric market.

In addition, if the Commission adopts the proposed Policy Statement, it will have a difficult choice with regard to its upcoming Standard Offer Programs, a major achievement of the Retail Markets Investigation: either risk minimizing EGS participation in the Standard Offer Programs because offering the 12-month fixed price set 7% below the price-to-compare at the time of enrollment would require an EGS to assume regulatory risks that cannot be hedged, or coordinate quickly with the EDCs to publicize the Standard Offer Programs to default service customers as a "price with pass-through clause initially set 7% below the utility's price-to-compare at the time of enrollment." Neither alternative promises a successful program.

FES submits that there is nothing misleading about advertising a product as a "fixed price" when an appropriately designed disclosure statement includes a pass-through clause, that these offerings are consistent with the Commission's current definition of a "fixed price," and that the Tentative Order takes too narrow of a view of what is meant by "fixed price." It is important to recognize that the pass-through clause is included as a contingency. The commodity price never changes, and as explained above, the EGS never intends for the "all-inclusive" fixed price to change. In fact, not all pass-through clauses are drafted so that they would automatically pass through the costs of unforeseen regulatory changes to customers.

Rather, many pass-through clauses require the EGS to make a business decision about a pass-through event, and the EGS may choose not to pass through the cost of the pass-through event to customers. Indeed, the Tentative Order references informal complaints, Tentative Order at 2, but never specifies whether an EGS has ever actually invoked a pass-through clause with respect to a Pennsylvania Residential or Small C&I customer. Also, the Tentative Order never states whether any customer has complained that they would not have bought an EGS product labeled “fixed price” had they understood that the product included a pass-through contingency clause. Given the lack of a pervasive problem with pass-through clauses, the Commission is well equipped to address any perceived abuses on a case-by-case basis, rather than through broad statements of policy such as the Tentative Order proposes.

**B. The Commission Should Focus on Ensuring Adequate Disclosure and Explanation to Ensure Customers Receive “Adequate and Accurate” Information**

The Tentative Order explains that it is “primarily concerned” that fixed price offers might be misleading, especially in instances where the fixed price is “prominently advertise[d]” while the pass-through clause is “burie[d]” in the fine print or on a second page. Tentative Order at 5. FES appreciates the Commission’s duty to ensure that EGSs “provide adequate and accurate customer information to enable customers to make informed choices,” and that “[i]nformation...[is] provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.” 66 Pa. C.S. § 2807(d)(2). FES submits that the better way to address the Commission’s concern is by improving the accuracy and format of disclosure statements, not by adopting a broad, overly prescriptive Policy Statement that attempts

to create a label for every type of product — an impossible goal in a market where innovation is encouraged.

FES recommends that the Commission instead address its concern by focusing on the aspects of the proposed Policy Statement that would improve disclosure. The Commission could develop an enhanced set of standards that every disclosure statement must meet, including standards for disclosing and explaining pass-through provisions. The Commission could set minimum standards for EGSs to disclose and explain, among other things: a fixed-price; a pass-through clause; a variable price and how the variable charges will be determined; guaranteed savings conditions; contract length; early termination fees and when they are triggered; notice requirements; and definitions of acronyms. These minimum standards could require that pass-through language be moved toward the front of the disclosure statement, consolidated in the pricing area, bolded, etc. Enhanced disclosure statement standards would provide an excellent vehicle for the Commission and other stakeholders to educate customers about how to read their disclosure statements, understand the terms of their contracts and make fully informed shopping decisions. This approach to educating customers is preferable to the Policy Statement, which presumes that customers cannot understand these concepts and need products limited to fit within three or four administratively determined labels.

**C. The Tentative Order’s Overly Prescriptive Proposal Will Effectively Regulate Generation Supply Prices and Exceed the Commission’s Authority**

The Tentative Order considers a variety of possible third labels, and settles on “Price With Pass-Through Clause” to describe products which are not necessarily “variable” in the traditional sense but are subject to change. Tentative Order at 10. According to the Tentative Order, this label is consistent with the way cell phone, cable and internet services are presented

and billed. “[I]t is simply a ‘price’ for a specified period of time that may change due to certain circumstances, such as tax increases.” Tentative Order at 10, 13. However, the Tentative Order provides no examples of offers it has examined in these industries, no examples of what other labels are used for products offered in these industries, no details on how products are marketed in these other industries, no details on how pass-through clauses are used in these other industries, and no explanation of whether there are customer complaints about pass-through events in these other industries. The Tentative Order provides no reason for its conclusion that borrowing product labels from these other industries is appropriate for retail electric competition.

The unfortunate reality is that no one will buy an electricity product labeled “Price With Pass-Through Clause,” or any of the other names considered in the Tentative Order. Requiring such a label will significantly reduce the number of fixed price offers to Pennsylvania customers, and likely eliminate long-term fixed price offers in Pennsylvania. This is contrary to the Tentative Order’s intent to accommodate the existing standard practice in a way that is “more transparent and fairer to customers,” while making available a pricing option that will hopefully serve to retain the presence of long-term products in the market. Tentative Order at 8, 13. Moreover, by taking actions that preclude the offering of a popular type of product, to the benefit of other types of products, and requiring EGSs to raise their fixed prices to attempt to account for unhedgeable risks, the Policy Statement would effectively regulate the pricing of competitive generation, which even the Tentative Order recognizes as beyond the Commission’s legal authority. Tentative Order at 4, note 3 (“[T]he Commission does not regulate the price itself. Prices for competitive generation service offered by EGSs are not regulated and are instead set by the EGS.”).

The Policy Statement would also exceed the limits of the Commission's authority by prescribing specific labels for competitive generation products. While the Commission has the authority to ensure that EGSs "provide adequate and accurate customer information to enable customers to make informed choices," and that "[i]nformation...[is] provided to consumers in an understandable format," 66 Pa. C.S. § 2807(d)(2), this authority to require adequate disclosure and explanation does not empower the Commission to prescribe the specific names EGSs use for their products, particularly in ways that influence which products are offered. Deciding what retail products to offer and what to label them is part of how a licensed EGS manages its competitive business. Even in the case of fully regulated public utilities, the Commission refrains from engaging in management, based on the courts' recognition that "the Public Utility Commission is not a super board of directors for the public utility companies of the State and it has no right of management of them." *Bell Telephone Company of Pennsylvania v. Driscoll*, 343 Pa. 109, 118, 21 A.2d 912, 916 (1941); see *Southwestern Bell Telephone Company v. Public Service Commission*, 262 U.S. 276, 289 (1923) ("[T]he State...is not the owner of the property of public utility companies and is not clothed with the general power of management incident to ownership.").

Because generation is no longer regulated as a public utility function, 66 Pa. C.S. §§ 2802(14), 2806(a), the Commission must exercise even greater restraint in refraining from micromanaging EGSs. Notwithstanding this limitation on the Commission's authority, the proposed Policy Statement would engage in the management of competitive licensed EGSs by improperly regulating and interfering with the labeling and marketing of their products, and by effectively causing EGSs to discontinue the use of certain types of products.

While an Electric Competition Dictionary with the most commonly used terms is a helpful resource, expanding and detailing it to the point of telling EGSs what to call their products, how to price their fixed price products, or how to market, runs counter to the Commission's overarching objective of encouraging more EGSs and competitive generation products to enter Pennsylvania's retail market and encouraging product innovation. The Commission's proposed changes will increase prices for many fixed price products, entirely eliminate other fixed price products, and stifle innovation and competition. As long as all the terms and conditions are disclosed and explained adequately and accurately in the disclosure statement, the Commission should not micromanage the naming of products.

Further, the proposed definition of "price with pass-through clause" would require the pass-through clause to "specifically describe" the "various factors" that could lead to a pass-through of costs. This requirement would defeat the purpose of the pass-through clause. As explained earlier, the pass-through clause is required to protect an EGS against the costs of unforeseen events. Its protection cannot be limited to only those pass-through events an EGS can foresee. As evidenced by the several pass-through clauses shown in **Appendix A**, an EGS may be able to list the most likely entities to trigger a pass-through clause, and some examples of actions by these entities that may trigger a pass-through clause, but a definitive list is impossible.

In light of the lack of legal authority and the negative consequences described above, if the Commission proceeds with revising definitions in its Consumer's Electric Dictionary, FES recommends the Commission revise the definition of "fixed price" to conform to standard retail electric industry practice by indicating that the product may include a pass-through contingency clause. In addition, any action the Commission undertakes in this proceeding should only apply prospectively, to new customers or future renewals of existing customers. Any retroactive

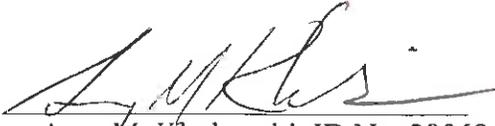
application will cause great customer confusion and lead to complaints, strain most major EGSs' relationships with customers, and increase the Policy Statement's negative impacts on retail electric competition in Pennsylvania.

### III. Conclusion

As explained above, a fixed price product with a pass-through clause is not misleading if the pass-through clause is adequately and accurately disclosed and explained. FES respectfully recommends that the Commission reject the proposed Policy Statement and focus its efforts on enhancing disclosure and explanation and educating customers. Such efforts will increase customers' interest in retail electric competition and their knowledge of how the retail electric industry works. Broader efforts to prescribe the labels EGSs use for their generation prices exceed the Commission's legal authority and will harm competition and competitors by essentially eliminating a standard retail electric industry practice in Pennsylvania, raising prices, and requiring EGSs to assume unknown regulatory risks if they are to continue offering popular fixed price products. Further, the proposed Policy Statement would eliminate these popular products from the market and stifle innovation. For these reasons, the proposed Policy Statement should be rejected.

Respectfully submitted,

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Dated: June 24, 2013

Attorneys for FirstEnergy Solutions Corp.

## APPENDIX A

### **EXAMPLES OF PASS-THROUGH LANGUAGE INCLUDED IN EGS DISCLOSURE STATEMENTS FOR PENNSYLVANIA RESIDENTIAL CUSTOMERS**

#### **Pass-Through Example 1:**

In addition, you may be required to pay any additional or increased fees or charges that are generally beyond [Supplier]'s reasonable control including, but not limited to, fees for switching, disconnecting, reconnecting or maintaining electric service or equipment, or transmission or transmission-related charges, that are imposed by law, rule, regulation or tariff, or Commission rule or order. These charges or fees will be passed through to you and added to your price.

#### **Pass-Through Example 2:**

Governmental Actions: If action is taken by federal or state governmental authorities which significantly changes the way [Supplier] does business with you, [Supplier] may change its price to you, or terminate this agreement upon thirty (30) days written notice, after which you can return to your local utility to provide your electricity needs or enroll with another supplier.

#### **Pass-Through Example 3:**

[Supplier] reserves the right, with fifteen (15) days' written notice, to amend this Contract to adjust its service to accommodate any change in regulations, law, tariff or other change in procedure required by any third party that may affect [Supplier]'s ability to continue to serve you under this Contract.

#### **Pass-Through Example 4:**

Change in Law: If there is a change in law, regulation, or any fees or costs imposed by a Governmental Authority or the regional Independent System Operator ("ISO") ("Change in Law") and the change causes [Supplier] to incur operating or other costs or expenses related to the services in this Agreement, in order to maintain the same level and quantity of delivery of electric energy, these costs will be added to your invoice as a Pass-Through Charge and you agree to pay the Pass-Through Charge.

**Pass-Through Example 5:**

Change in Law or Regulation: In the event that there is a change (including changes in interpretation) in law, regulation, rule, ordinance, order, directive, filed tariff, decision, writ, judgment, or decree by a governmental authority (including ERCOT), or in the event any of the foregoing which is existing as of the date of this Agreement is implemented or differently administered, including, without limitation, changes in tariffs, protocols market rules, load profiles, and such change results in [Supplier] incurring additional costs and expenses in providing the services contemplated herein, these additional costs and expenses may, at our option, be assessed in your monthly bills for service as additional pass-through charges, to the extent permitted by applicable rules.

**Pass-Through Example 6:**

Notwithstanding any other provision in this Contract, this Contract may be changed by [Supplier] upon the occurrence of any event beyond its reasonable control that increases the obligations of [Supplier] or the cost of performing such obligations under this Contract. If we request such a change, we will provide you notice of the changed prices and/or terms and conditions and you will have an opportunity to cancel this Contract without any further obligation by notifying us in writing within 30 days after receiving notice of the new prices and/or terms and conditions, in which case your electric generation service will be canceled effective as of a date set by your EDC, after expiration of the required notice period. You will remain responsible for any unpaid balance as of the cancellation date but we will not assess a cancellation payment.

**Pass-Through Example 7:**

In addition to the charges described above, if any regional transmission organization or similar entity, EDC, governmental entity or agency, NERC and other industry reliability organization, or court requires a change to the terms of the Agreement, or imposes upon [SUPPLIER] new or additional charges or requirements, or a change in the method or procedure for determining charges or requirements, relating to your electric supply under this Agreement (any of the foregoing, a "Pass-Through Event"), which are not otherwise reimbursed to [SUPPLIER], Customer agrees that [SUPPLIER] may pass through any additional cost of such Pass-Through Event, which may be variable, to Customer. Changes may include, without limitation, transmission or capacity requirements, new or modified

charges or shopping credits, and other changes to retail electric customer access programs.

**Pass-Through Example 8:**

For the term of this Contract, you agree to pay [Supplier] the Basic Service Price as indicated on your EPS. This price per kWh may only change during the term of this Contract to reflect actual changes in electric utility charges; changes to administrative fees charged to loads by your regional transmission organization (RTO) or regional reliability entity; or changes resulting from federal, state, or local laws that impose new or modified fees or costs on [Supplier] that are beyond [Supplier]'s control. Price changes resulting from these limited circumstances do not require [Supplier] to provide you with advance notice.

**Pass-Through Example 9:**

Proposed Changes to Terms. Regardless of any other provision in this Agreement, this Agreement (including for example, your price) may be changed by [Supplier] upon the occurrence of any event beyond its reasonable control that increases the obligations of [Supplier] or the costs of performing such obligations under this Agreement. If we request such a change, [Supplier] will provide you notice of the changed prices and/or terms and conditions and you will have an opportunity to terminate this Agreement without any further obligation by notifying us in writing within thirty (30) days after receiving notice of the new prices and/or terms and conditions, in which case your electric generation service will terminate effective as of the next meter read date after expiration of the required notice period. You will remain responsible for any unpaid balance as of the termination date but we will not assess a termination penalty. No changes or edits to your Agreement will be valid unless duly approved in a signed writing by [Supplier].

\* \* \*

Change in Law. If there is a change in law, or if the PUC, applicable ISO, or other State or Federal agency adopts any regulation, rules, tariff, protocol or law, and such changes, adoptions, and/or implementations result in a fee or other charge (or an increase in a fee, cost or charge) that modifies the cost of delivering or providing electricity or capacity to you, to the fullest extent permitted by law, [Supplier] may adjust your price or any component of the price and/or fees charged under your Agreement, whether up or down, only to the extent necessary to reimburse and

cover [Supplier] for such change in the costs of providing or delivering electricity and/or capacity to you, and you agree to pay the resulting adjusted price(s) and/or fee(s). If there is a future change in any applicable law, rule, regulation, order, filed tariffs, market rules or pricing structure, or in charges or new charges, imposed by your EDC, PJM, the Commission or any governmental agency, whereby [Supplier] incurs additional charges or costs as a result of such changes, then [Supplier] will have the right in its sole discretion to (i) propose to adjust your price to reflect such additional charges or costs to [Supplier] by giving two advance written notices in separate mailing between 45 and 90 days before the proposed effective date, and (ii) if you do not accept such proposed price change, cancel this Agreement; or (ii) cancel the Agreement, by giving notice to you as required under applicable law.