



March 24, 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: Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms; Docket No. L-2014-2409385; 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.

Should 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

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

DPZ/kmg  
Enclosure

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rulemaking to Amend the Provisions of 52 Pa. Code,	)	
Section 54.5 Regulations Regarding Disclosure	)	
Statement for Residential and Small Business	)	Docket No. L-2014-2409385
Customers and to Add Section 54.10 Regulations	)	
Regarding the Provision of Notices of Contract	)	
Renewal or Changes in Terms	)	

**COMMENTS OF FIRSTENERGY SOLUTIONS CORP.**

**I. INTRODUCTION**

By Secretarial Letter dated March 19, 2014, the Pennsylvania Public Utility Commission (“Commission”) promulgated a “final-omitted” rulemaking to amend existing regulations at 52 Pa. Code, Chapter 54, which contain requirements for information to be provided by Electric Generation Suppliers (collectively “EGSs” and singularly “EGS”) in Disclosure Statements to residential and small business customers. In addition, the Secretarial Letter contains a new proposed regulation that codifies “with some modifications” the current Interim Guidelines<sup>1</sup> for notices to be provided to residential and small business customers prior to EGS contract renewals or changes. A draft of the proposed regulations and a new EGS Contract Summary template (not part of the proposed regulations) were attached to the Secretarial Letter. The Secretarial Letter states that implementation of the rulemakings will be required within thirty (30) days of publication in the *Pennsylvania Bulletin*, absent good cause shown. The Commission directed

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<sup>1</sup> *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, M-0001437, Order entered September 3, 2010.

that any comments to the rulemaking be submitted within five (5) days of the date of the Secretarial Letter, and that comments address the proposed changes, the practicality of implementing the proposed changes within thirty (30) days of their effective date and the costs of doing so. FirstEnergy Solutions Corp. (“FES”) hereby submits its Comments in response to the Commission’s request.

## **II. COMMENTS ON THE PROPOSED CHANGES**

The amendments to existing Disclosure Statement requirements in 52 Pa. Code § 54.5(c) pertain to disclosures required for variably priced contracts. The proposed amendments to § 54.5(c) will require costly changes to existing Disclosure Statement templates for variable price contracts, for those EGSs that offer such products. Likewise, the revision to the Disclosure Statement language specified in § 54.5(g), while consistent with EGSs’ current business practices based upon the Commission’s Interim Guidelines, will require costly changes to existing Disclosure Statement templates for all types of contracts, whether fixed or variable priced.

The proposed § 54.10 would be a new regulation in Chapter 54. The new § 54.10 will require language changes to existing Initial Notice and Options Notice templates that were prepared consistent with the currently-effective Interim Guidelines. In the Secretarial Letter, § 54.10 was characterized as codifying, “with some modifications, existing contract renewal/change in terms notice requirements.” However, these modifications will require that the notices be substantially revised. While FES does not take issue with the substance of the proposed changes, they are too burdensome for EGSs to meet the Commission’s rigorous implementation time frame, as described below.

In addition to the above Disclosure Statement and notice requirements, the Commission is proposing a new § 54.5(i) which would require that EGSs provide customers with a new document entitled an EGS Contract Summary, in the form of Appendix A to the Secretarial Letter, together with the Disclosure Statement. Again, EGSs will have to devote substantial resources to complete this document for all of their Pennsylvania offers. Because the template has so many subparts, it will end up recreating nearly the entire customer contract in a different sequence, instead of providing a “summary.” As a result, it will have no added value for Pennsylvania customers. FES respectfully submits that the EGS Contract Summary is unnecessary and burdensome on EGSs, will be confusing to customers, and will add to the cost of preparing and mailing Disclosure Statements. The EGS Contract Summary should be deleted from this rulemaking.

### **III. TIMING AND COSTS**

The Commission requests comments on whether affected parties will be able to implement the proposed changes within thirty (30) days of their effective date, which will be upon publication in the *Pennsylvania Bulletin*. Assuming that publication in the *Pennsylvania Bulletin* will occur within a few weeks, FES believes most EGSs would not be able to meet this deadline. Drafting, finalizing and implementing the required changes to its contracts and notices, and preparing the new EGS Contract Summary for all of its Pennsylvania offers would entail substantial time and effort. Making the necessary arrangements for printing and mailing the new Disclosure Statements and revising the mailing schedules for the notices will all take time. Based on its preliminary review, FES estimates it would require at least ninety (90) days to finalize all of the revisions. Due to the extremely limited time afforded parties to prepare these

Comments, FES cannot fully estimate the timing required or the cost of complying with these new requirements.

#### **IV. LEGAL ISSUES RAISED BY THE COMMISSION'S PROCESS**

The Secretarial Letter states that the primary intent of this rulemaking is to make variable priced products more understandable and the associated Disclosure Statements more useful to consumers. In that case, the Commission should consider requiring the implementation of the new requirements only for variable priced products in the envisioned time frame, and allow EGSs more time to comply with the new requirements for their fixed price products. That would satisfy the Commission's determination to protect consumers with variable priced contracts as quickly as possible, and ameliorate any compliance timing issues associated with fixed price products, which are not such an immediate concern.

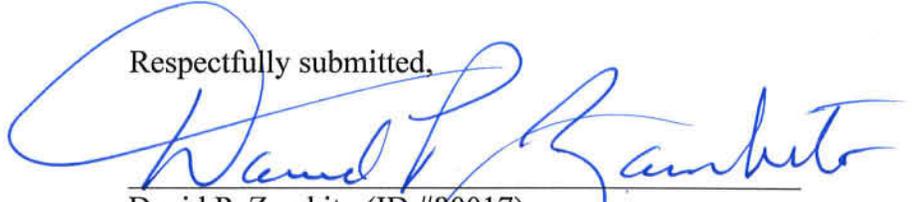
In further support of this suggestion, the Commission's use of the "final-omitted" rulemaking process for these proposals is limited to situations meeting the rigid criteria set forth in the statutory provisions cited in the Secretarial Letter. Ordinarily, a regulation must be promulgated in accordance 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. While FES respectfully questions whether only five (5) calendar days is sufficient to gather sufficient information regarding challenges of this magnitude and complexity, and vet the Commission's proposals adequately among stakeholders and reach a workable solution that has no unintended consequences, FES understands the Commission's desire to take swift action through the "final-omitted" rulemaking process with regard to the regulatory changes proposed to variable-priced contracts and notices. However, FES respectfully asserts that no extraordinary measures are necessary in connection with fixed-price contracts and notices, such that the process enacted by the Pennsylvania Legislature in the Regulatory Review Act can be avoided. Due process requires that the full regulatory review process be conducted for the revised and new Commission regulations as they relate to fixed price products, and that the Commission qualify any regulations adopted through the final-omitted rulemaking procedure by expressly limiting them to variable priced products.

V. CONCLUSION

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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