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March 1, 2012

VIA HAND DELIVERY

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

RECEIVED

MAR -1 2012

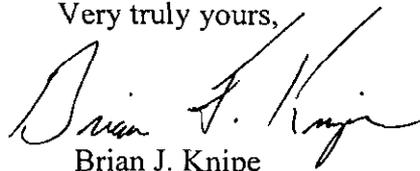
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670*

Dear Secretary Chiavetta:

On behalf of FirstEnergy Solutions Corp., I have enclosed the original and three (3) copies of the *Answer of FirstEnergy Solutions Corp. to the Retail Energy Supply Association's Motion to Dismiss Objections and Compel Response*. Copies of this document have been served in accordance with the attached Certificate of Service.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/kra

Enclosures

cc: The Honorable Elizabeth H. Barnes (via e-mail and hand delivery, w/encls.)
Certificate of Service

MAR -1 2012

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Joint Petition of Metropolitan	:	
Edison Company, Pennsylvania	:	Docket Nos. P-2011-2273650
Electric Company, Pennsylvania	:	P-2011-2273668
Power Company and West Penn	:	P-2011-2273669
Power Company for Approval of	:	P-2011-2273670
Their Default Service Programs	:	

**ANSWER OF FIRSTENERGY SOLUTIONS CORP.
TO THE RETAIL ENERGY SUPPLY ASSOCIATION'S MOTION
TO DISMISS OBJECTIONS AND COMPEL RESPONSE**

FirstEnergy Solutions Corp. ("FES"), by and through its attorneys, pursuant to 52 Pa. Code § 5.342(g)(1) and Ordering Paragraph 5(d) of the Scheduling Order dated December 29, 2011, hereby submits this Answer to the Retail Energy Supply Association's ("RESA's") Motion to Dismiss Objections and Compel Response ("Motion to Compel") against the Joint Petitioners, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company ("Joint Petitioners"),¹ stating as follows:

I. INTRODUCTION

RESA's Motion to Compel asks the Administrative Law Judge to compel the Joint Petitioners to answer RESA's Interrogatory Set III, No. 2, which requests highly sensitive bidder-specific information regarding load awarded to bidders in the Joint Petitioners' wholesale auctions. Specifically, Interrogatory Set III, No. 2 requests the name of each successful bidder in each wholesale auction held by each Joint Petitioner during the current default service plan period, and the percentage of available load that each supplier was awarded. Motion to Compel ¶ 4. According to RESA, this information is relevant in determining if load caps should continue

¹ As explained below, if RESA's Motion to Compel is granted or its compromise adopted, FES will be directly and substantially adversely impacted. Therefore, FES has a direct interest in submitting this Answer to the Motion to

to exist in the Joint Petitioners' next default service procurement plan and if so, at what level.

Motion to Compel ¶ 6.

FES was a successful bidder in the Joint Petitioners' past wholesale auctions. FES opposes the identification of percentages of available load awarded to successful bidders, which is irrelevant to the competitive procurement processes under consideration in this proceeding, and would violate the Joint Petitioners' Auction Process and Rules for the procurement of default service supply ("Auction Rules") and cause competitive injury to the bidders whose bidder-specific information is disclosed. Further, RESA's proposed "compromise" — that the Joint Petitioners produce the requested bidding information using generic codenames for every bidder except FES — will cause specific and irreversible competitive injury to FES in particular. Therefore, FES supports the Joint Petitioners' objection to this request.

II. ARGUMENT

A. RESA's Discovery Seeks Irrelevant Information

RESA's Interrogatory Set III, No. 2 seeks information which is irrelevant to the subject matter of this proceeding and will not lead to the discovery of admissible evidence. Individually identifiable information regarding the percentage of load awarded to specific bidders in past default service auctions, and special designations such as "affiliate supplier," have no bearing on whether there will be adequate wholesale supplier diversity and a sufficient number of wholesale bidders in the upcoming auctions under consideration.

While RESA purports to be interested in "the effect that load caps have had on the [Joint Petitioners'] default service procurement auctions," Motion to Compel at 1, it fails to demonstrate any connection between information regarding bidder-specific results of past competitive

procurements and the competitive procurements under consideration. RESA's argument that past history is relevant is nothing more than a conclusory statement, and contradicts RESA's subsequent argument that that load cap determinations "can be very fact and condition specific," see Motion to Compel ¶ 3. To the extent RESA is in fact trying to determine the effect of load caps on default service procurements, FES submits that one effect is obvious: load caps ensure multiple suppliers by limiting the percentage of load awarded to any one wholesale bidder. The imposition of load caps can also have the adverse effect of customers not getting the lowest possible price, if one supplier could serve the entire load at a lower price than multiple winning bidders. RESA does not need competitively sensitive information to deduce this.

In addition, RESA's stated legal grounds for its Motion to Compel are based on 66 Pa. C.S. § 2811(e), which references the "benefits of a properly functioning and workable competitive retail electricity market." Motion to Compel ¶ 1. The cited statute, however, relates to the Commission's approval of proposed mergers, consolidations, acquisitions or dispositions, and has no nexus with proposed default service programs, bidder-specific results of past default service procurements, or wholesale supplier load caps. Because RESA's interrogatory seeks irrelevant information, its Motion to Compel should be denied.

B. RESA Improperly Seeks Competitively Sensitive Information Regarding A Single Bidder

RESA's Interrogatory Set III, No. 2 would require the Joint Petitioners to produce competitively sensitive information which would harm successful wholesale bidders as well as the integrity of the Joint Petitioners' competitive procurement processes. Wholesale suppliers such as FES rely on the Joint Petitioners' Auction Rules to protect their competitively sensitive business information and encourage their participation in competitive procurement processes.

RESA dismisses the Auction Rules, arguing that they "were never intended to prevent the disclosure of information and data in subsequent proceedings before the Commission." Motion to Compel ¶ 7. This contention that the Auction Rules were not intended to prevent subsequent disclosure of bidders' data is incredible, and FES cannot comprehend what else the intent behind the Auction Rules' confidentiality requirements could have been. The Auction Rules' confidentiality protections do not terminate with the conclusion of the competitive procurement process.

RESA also argues that its Interrogatory Set III, No. 2 is not requesting any bidding information, but merely "aggregate data" on winning bidders. Motion to Compel ¶ 7. This mischaracterization of the interrogatory contradicts its plain language, which expressly requests "the names of each successful wholesale auction bidders and the percentage of the available load that each supplier was awarded." Motion to Compel ¶ 4 (quoting RESA Interrogatory Set III, No. 2).

RESA's Motion to Compel offers that, as a compromise, RESA is willing to accept the requested information with the names of successful wholesale auction bidders redacted and replaced with "codenames," such as "Supplier 1," "Supplier 2," etc., provided that any affiliated supplier is singled out with a different codename, e.g., "Affiliated Supplier 1." Motion to Compel ¶ 5. RESA argues that with this proposal, disclosure of bidders' information would not harm the competitive interests of the winning wholesale suppliers. Motion to Compel ¶ 8. RESA's assertion is not credible, and its purported "compromise" reveals its true intent. Contrary to RESA's assertion, RESA's proposed compromise would in fact severely harm the competitive interests of a specific supplier. The codename "affiliate supplier" will single out FES for identification among all winning wholesale suppliers. While RESA's proposal would

use non-specific codenames to protect the identity of every other successful wholesale auction bidder, it would specifically identify FES and the percentages of available load it was awarded. Accordingly, the RESA compromise would unfairly disadvantage FES relative to its competitors in wholesale auctions.

RESA seeks to use Commission proceedings to obtain highly sensitive competitive procurement information, which is not otherwise made available in competitive procurement processes. Contrary to RESA's suggestion, affiliate status has nothing to do with the determination of whether there should be load caps, and if so, the appropriate level of the caps. RESA's proposal to specifically identify the percentage of available load awarded in wholesale auctions to FES, but no one else, does nothing to support RESA's arguments for load caps and is merely intended to harass FES. Accordingly, RESA's Motion to Compel should be denied.

C. Greater Protections Than Those Provided In The Protective Order Are Needed

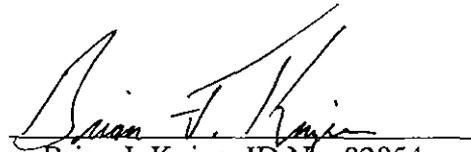
Further, FES disagrees with RESA's contention that the Protective Order implements all the necessary protections against disclosure of these documents. Motion to Compel ¶ 9. This argument ignores Paragraph 10 of the Protective Order, which recognizes that additional protections may be needed, beyond those provided in the Protective Order. FES submits that this may include outright prohibition of disclosure, which is necessary in this instance.

III. CONCLUSION

For the foregoing reasons, FirstEnergy Solutions Corp. respectfully requests that the Motion to Dismiss Objections and Compel Response of the Retail Energy Supply Association be denied.

Respectfully submitted,

By:



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Dated: March 1, 2012

Attorneys for FirstEnergy Solutions Corp.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison Company, : P-2011-2273650
Pennsylvania Electric Company, Pennsylvania : P-2011-2273668
Power Company and West Penn Power Company : P-2011-2273669
For Approval of Their Default Service Programs : P-2011-2273670

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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Dated this 1st day of March, 2012.

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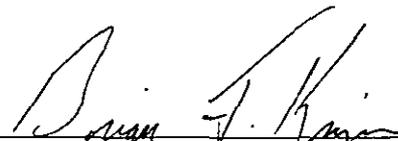
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