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June 25, 2012

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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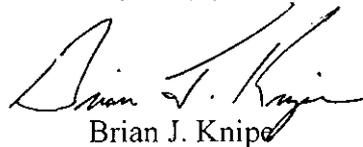
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Re: *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670*

Dear Secretary Chiavetta:

On behalf of FirstEnergy Solutions Corp., I have enclosed for filing an original and nine (9) copies of the *Exceptions of FirstEnergy Solutions Corp.* Copies 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.)
Cheryl Walker Davis, Director, Office of Special Assistants (via e-mail and hand delivery, w/encls. and Word copy on CD-Rom)
Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF
FIRSTENERGY SOLUTIONS CORP.**

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FirstEnergy Solutions Corp. ("FES"), by its attorneys, files the following Exceptions to the Recommended Decision ("R.D.") of Administrative Law Judge Elizabeth H. Barnes issued June 15, 2012.

I. INTRODUCTION

FES takes exception to four (4) conclusions of the R.D. FES's first two Exceptions relate to the R.D.'s conclusions that EGSs should bear the costs of the Opt-In Programs and Standard Offer Referral Programs. As explained below, the costs of these programs should be recovered from all Residential customers. The R.D. erred in giving undue weight to the guidance in the *IWP Order*¹ on this subject, and in disregarding substantial credible evidence that these programs will benefit all Residential customers.

FES's third Exception addresses the R.D.'s conclusion that the Companies' proposed Standard Offer Referral Programs should be deferred until after their one-time Opt-In Auctions have concluded. While the R.D. expresses concern with customer confusion arising from concurrent solicitations for these programs, the record evidence illustrates that there will be little overlap between the two programs.

In its fourth Exception, FES takes exception to the R.D.'s conclusions that CAP customers should be precluded from participating in the Opt-In Programs and Standard Offer Referral Programs. While these conclusions were based on the *IWP Order*, the guidelines do not exclude CAP customers from Opt-In Programs. Moreover, the Companies provided ample evidence demonstrating that CAP customer participation in the programs is appropriate and justified by good cause, and presents little risk of harm to CAP customers, who are free to leave

¹ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("*IWP Order*").

the programs and take service from another EGS or return to default service at any time, without penalty.

For reasons explained further below, FES respectfully requests that its Exceptions be granted and that the referenced portions of the R.D. be reversed and modified consistent with these Exceptions.

II. EXCEPTIONS

Exception No. 1: The R.D.'s Conclusion That EGSs Should Bear The Costs Of The Opt-In Programs Is Erroneous And Unsupported By Credible And Substantial Evidence. R.D. at 116.

FES, Dominion and RESA supported the Companies' proposal to recover the costs of their Opt-In Programs from all Residential customers. FES M.B. at 45-46; Dominion M.B. at 23; RESA M.B. at 76. The R.D. rejected this proposal, based upon the conclusion that the Companies did not present substantial evidence demonstrating good cause to deviate from the *IWP Order*, and the finding that EGSs will benefit from the Opt-In Programs. R.D. at 116. As explained below, these findings were based upon an error of law and contrary to the weight of the evidence, and should be reversed.

a. The *IWP Order's* Discussion of Opt-In Program Cost Recovery Does Not Amount To An *IWP Order* "Guideline."

The *IWP Order's* guidelines were not intended to replace formal litigated proceedings by predetermining the outcome of each and every term of retail market enhancement programs. Therefore, they permit deviations from the guidelines when justified by good cause shown, which includes showing operational constraints, or supported by evidence produced during an

EDC's default service proceeding and supported substantially by interested parties in the default service proceeding. *IWP Order* at 6-7.

FES submits that the *IWP Order*'s guidance on the appropriate method of recovering the costs of Opt-In Programs does not rise to the level of an *IWP Order* "guideline." Opt-In Auction cost recovery, which is included in a section of the *IWP Order* entitled "Other," was not vetted to the degree other issues were in the *IWP Order*. The only instance where the *Tentative IWP Order*² solicited comments on cost recovery was in connection with New/Moving Customer Referral Programs. *Tentative IWP Order* at 17. The Commission received relatively few comments on this issue, and even looked to an EDC's DSP filing. Indeed, the R.D. acknowledges that the *Final IWP Order* offered guidance on the appropriate method of recovering the costs of Opt-In Programs "after a cursory review of the cost recovery issue in the context of its retail markets investigation" R.D. at 116.

Consequently, the R.D. erred in requiring the Companies to demonstrate good cause for a deviation from the *IWP Order* on this subject. Nevertheless, the Companies and other parties did in fact provide evidence demonstrating good cause to allow recovery of the costs from all Residential customers, as explained further below.

b. The Evidence Of Record Shows That All Customers Will Benefit From The Proposed Opt-In Program And Should Bear The Costs.

The R.D.'s finding that EGSs should bear the costs of the Opt-In Programs because EGSs will benefit from the programs disregarded substantial evidence regarding the benefits of the programs to all Residential customers. The Companies presented testimony that recovering the costs from participating EGSs creates the risks that EGSs will choose not to participate, that

² *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Tentative Order entered December 16, 2011) ("*Tentative IWP Order*").

customers will choose not to participate because the prices achieved through the auction are unattractive, or that the EDCs' costs will not be recovered. Med-Ed/Penelec/Penn Power/West Penn St. No. 7-R at 39. Also, RESA presented evidence that all Residential customers will benefit from the Opt-In Program and stand to experience significant savings from a robust, competitive retail electricity market, which may include an increase in the number of EGSs and/or lower pricing offers. RESA St. No. 2-R at 9-10. Contentions that the programs will not benefit customers ignore the fact that the Commission expended tremendous time and resources in developing the Intermediate Work Plan for the very purpose of effectuating the policy of Pennsylvania that greater competition in the electricity generation market will benefit all customers. See 66 Pa. C.S. § 2802(7).

Further, the benefits of these programs will continue well beyond their expiration. In addition, non-participating EGSs will enjoy benefits in the future from the customer education resulting from the efforts of the EDCs and participating EGSs in publicizing the program. All non-shopping customers will be exposed to information about the programs, and even those customers who choose not to participate in the Opt-In Programs will be more likely to try retail service in the future as they learn more about it. While participating EGSs will avoid the customer acquisition costs they will otherwise incur obtaining customers outside the Opt-In Program, participating EGSs will be subsidizing other EGSs' customer acquisitions by paying to educate non-shopping customers about the benefits of retail service. Additionally, making EGSs solely responsible for the costs of the opt-in programs frustrates one of the objectives of the programs, i.e., to decrease customer acquisition costs. *IWP Order* at 33.

Therefore, the R.D.'s conclusion should be reversed, and costs associated with the Opt-In Programs should be recovered from all customers who are eligible to participate in the programs.

c. The Companies' Proposed Mechanism For Recovering Costs Of The Opt-In Program From EGSs, While Superior To A POR Discount, Will Result In Less Than Optimal EGS Participation.

As explained above, FES believes the costs of Opt-In Programs should be recovered from all Residential customers, and takes exception to the R.D.'s conclusion that EGSs should bear the costs. Based on that erroneous conclusion, the R.D. recommends adopting the Companies' alternative proposal to divide the costs of the auction equally among participating EGSs, with each EGS being required to pay the Companies their share before the beginning of the auction. Winning EGSs would then be responsible for all costs associated with the marketing and mailing of opt-in notices to the customers in the tranches that they win. R.D. at 117.

While FES commends the R.D. for rejecting extremely harmful proposals to recover the costs of the Opt-In Programs through a discount on EGSs' purchased receivables, R.D. at 117, the weight of the evidence still recommends against the Companies' alternative, which includes features that will discourage EGSs from participating in the Opt-In Programs. For instance, instead of allocating costs to EGSs based on the number of customers enrolled, with a cap on the amount charged per customer, the programs would divide costs equally among EGSs. EGSs would be obligated to pay a fixed cost in the program, not knowing the number of customers that will participate. Thus, the per customer acquisition cost in the program will be variable and will negatively influence supplier participation. Also, the Companies' alternative includes no methodology for a sharing of costs between EGSs and customers. A capped charge per enrolled customer, with any undercollection of costs recovered from all customers eligible to participate in the programs, would reflect the flow of benefits to stakeholders in a way the Companies' alternative does not.

For the foregoing reasons, the R.D.'s conclusion that costs of the Opt-In Programs should be recovered from EGSs should be reversed, and costs of the programs should be recovered from all Residential customers.

Exception No. 2: The R.D.'s Conclusion That EGSs Should Bear The Costs Of The Standard Offer Referral Programs Is Erroneous And Unsupported By Credible And Substantial Evidence. R.D. at 126.

As with the Opt-In Programs, FES, RESA and Dominion supported the Companies' proposal to recover costs of their Standard Offer Referral Programs from all Residential customers. FES M.B. at 54-56; RESA M.B. at 83-84; Dominion M.B. at 26-27. The R.D. rejected this proposal, finding that "[t]he Companies' plan deviates from the Commission's guidelines on this issue and I recommend denying this request and agreeing with OCA, OSBA and CAUSE-PA on this issue." R.D. at 126. As with the Opt-In Programs, this finding and recommendation was based upon an error of law and contrary to the weight of the evidence.

a. The *IWP Order's* Discussion of Recovery Of Costs Of Standard Offer Referral Programs Does Not Amount To An *IWP Order* "Guideline."

The mention in the R.D. of "the Commission's guidelines" alludes to the *IWP Order*, where the Commission suggested the bulk of the costs should be the responsibility of the participating EGSs. *IWP Order* at 32. Again, FES submits that the Commission's determination on this subject does not even rise to the level of an *IWP Order* "guideline" on Standard Offer Referral Programs. The appropriate method of recovering the costs of these programs was not vetted to the degree other issues were in the *IWP Order*. The *Tentative IWP Order* did not request comments on this issue, and the Commission heard from only a couple participants on

this subject. *IWP Order* at 26. Therefore, the R.D. erred in requiring evidence supporting the Companies' proposal to recover costs from all customers as a "deviation" from the *IWP Order* guidelines. Notwithstanding this error, the preponderance of the evidence of record weighs in favor of recovering the costs of these programs from all Residential customers.

b. The Evidence Of Record Shows That All Customers Will Benefit From The Proposed Standard Offer Referral Program And Should Bear The Costs.

As in the case of the Opt-In Programs, the R.D.'s finding that EGSs should bear the costs of the Standard Offer Referral Programs disregarded substantial evidence that the programs will benefit all Residential customers. RESA explained that the Referral Program is intended to contribute to a retail market design that benefits all customers. RESA St. No. 2-S at 27-28. All customers stand to experience significant savings from a robust, competitive retail electricity market. The Referral Program will benefit more customers than those that participate, and the benefits will last after the Referral Program has ended. These programs were designed in recognition that it is the policy of Pennsylvania that greater electric competition will benefit all customers. 66 Pa. C.S. § 2802(7).

The Companies raised a valid concern that EGSs may be discouraged from participating in the Referral Program if required to bear the costs. Met-Ed/Penelec/Penn Power/West Penn St. No. 7-R at 46. Dominion's witness Butler also testified that responsibility for referral program costs may make the program not worthwhile for an EGS from a cost/benefit perspective. Dominion St. No. 1-R at 7. Similarly, RESA cautions that EGSs may choose not to participate in the Referral Program if the costs are relatively high and there is no way of gauging the extent of customer participation. RESA St. No. 2-R at 25. RESA further described the possible "free

rider" problem, in which a program designed to recover costs from participating EGSs actually encourages EGSs to stay out of the program until other participating EGSs have paid the program's up-front costs. RESA St. No. 2-R at 25-26.

Accordingly, this formal proceeding explored the ramifications of the method of cost recovery to a degree the Retail Markets Investigation could not. The preponderance of the evidence supports the Companies' proposal to recover costs from all customers. The R.D.'s conclusion should be reversed, and costs associated with the Standard Offer Referral Programs should be recovered from all customers eligible to participate in the programs.

c. The Companies' Proposed Mechanism For Recovering Costs Of The Standard Offer Referral Program From EGSs, While Superior To A POR Discount, Will Result In Less Than Optimal EGS Participation. R.D. 127-28.

Again, FES believes the costs of the Standard Offer Referral Programs should be recovered from all Residential customers, and takes exception to the R.D.'s conclusion that EGSs should bear the costs. Based on that erroneous conclusion, the R.D. recommends adopting the Companies' alternative proposal that each participating EGS, not less than six months before the programs start, make an upfront payment of \$100,000 to fund start-up, and contribute to continuing monthly costs which will be divided by the number of participating EGSs. The Companies also proposed that the Referral Program only be commenced if a minimum of five EGSs make the initial payment. R.D. at 127-128.

Again, FES commends the R.D. for rejecting harmful recommendations that costs of the Referral Programs should be recovered from participating EGSs through a discount off the price of purchased receivables. R.D. at 128. However, FES's recognition that the Companies' alternative proposal is better than a discount on purchased receivables should not be construed as

an endorsement of the alternative. Again, the Companies alternative includes features that will discourage EGS participation in the programs. Instead of capping the level of charges allocated to EGSs, to recover ongoing costs through a per customer fee based on actual enrollments, the alternative requires a \$100,000 upfront payment. This will limit supplier participation and compromise the viability of the programs, since the record includes no estimates of supplier participation or customer enrollment levels. Also, the alternative does not recover any undercollection from all customers eligible to participate. At the very least, the R.D.'s recommendation must be modified to include a sharing mechanism reflecting the Commission's suggestion that the bulk (not the entirety) of costs should be the responsibility of the participating EGSs. *IWP Order* at 32.

Notwithstanding these necessary modifications, FES continues to believe that the Companies' proposal to recover costs of the Standard Offer Referral Programs from all Residential customers is the most equitable manner of recovering the costs of the programs. For the foregoing reasons, the R.D.'s conclusion that costs of the programs should be recovered from EGSs should be reversed.

Exception No. 3: The R.D.'s Conclusion That The Standard Offer Referral Programs Should Be Deferred Is Unsupported By Credible And Substantial Evidence. R.D. at 6 (FOF 23), 130-31, 144 (COL 7).

The R.D. concludes that the Companies should delay the Standard Offer Referral Programs until after the one-time Opt-In Auction has concluded. The R.D. recommends the delay in order to avoid unnecessary customer confusion, given the perceived similarities of the programs which have very different outcomes. R.D. at 130. As FES reads the R.D., this would delay the Referral Programs until after the Opt-In Program terms have concluded. FES takes

exception to this recommendation, which is contrary to the preponderance of the evidence. The record shows that non-shopping customers will have been solicited for the Opt-In Programs in the second quarter of 2013, Met-Ed/Penelec/Penn Power/West Penn St. No. 7 at 26, St. No. 7-R at 26, and participants will be enrolled in the one-time Opt-In Programs by June 1, 2013. Only after that will the Standard Offer Referral Programs, which are on-going programs, commence with incoming customer calls. Thus, the timelines of each program provide for very little overlap, and there is no credible evidence that they are likely to cause customer confusion. FES submits that comparing prices and terms of service in the two programs is no different than comparing any two limited time offers available in the competitive retail market.

While FES supports a well-coordinated approach, a 12-month delay of the Standard Offer Referral Program is unnecessary. Accordingly, the R.D.'s recommendation to delay the Standard Offer Referral Program is unsupported by credible and substantial evidence, and should be reversed.

Exception No. 4: The R.D.'s Conclusion That CAP Customers Should Be Precluded From Participating In The Retail Market Enhancement Programs Is Inconsistent With Good Policy And Unsupported By Credible And Substantial Evidence. R.D. at 121, 137, 143 (COL 6).

FES believes all customers should be allowed to participate in retail market enhancement programs. Therefore, FES takes exception to the R.D.'s conclusions that CAP customers should not be eligible to participate in the Opt-In Program or the Standard Offer Referral Program. R.D. at 121, 137, 143 (COL 6). The R.D. bases these conclusions on the *IWP Order*, which states that CAP customers should be excluded from the Standard Offer Customer Referral Program pending Commission action on the recommendations of the Retail Markets Investigation's Universal

Service subgroup. *IWP Order* at 31. However, the *IWP Order* guidelines do not preclude CAP customers from participating in the Opt-In Programs and left this issue to be determined in each default service proceeding, based on the record evidence. *IWP Order* at 43. Consequently, there was no need for the Companies to justify a deviation from the *IWP Order* guidelines to include CAP customers in the Opt-In Programs.

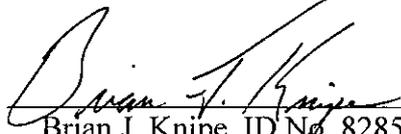
Nevertheless, the Companies presented ample evidence that CAP customer participation in each program is appropriate. In the Companies' service territories, CAP customers are permitted to shop, and their benefits are portable and cannot be reduced if they switch to an EGS. Met-Ed/Penelec/Penn Power/West Penn St. No. 7-R at 42-43. FES respectfully disagrees with the R.D.'s finding that there is a lack of guaranteed affordable payments for CAP customers participating in the retail market. To the contrary, the Companies' proposed programs assure that the customer will receive a price lower than the default service PTC, and if the EGS price becomes higher than the PTC during the term of the program the customer can shop elsewhere or return to default service without penalty. Met-Ed/Penelec/Penn Power/West Penn M.B. at 136. Accordingly, there is no credible evidence of record to support a finding that CAP customers will suffer harm if they participate in the Companies' retail market enhancement programs. For these reasons, these conclusions of the R.D. should be reversed, and CAP customers should be allowed to participate in the Opt-In Programs and Standard Offer Referral Programs.

III. CONCLUSION

For the reasons set forth above, FirstEnergy Solutions Corp. respectfully requests that the Pennsylvania Public Utility Commission modify the Recommended Decision as requested in these Exceptions.

Respectfully submitted,

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**BEFORE THE
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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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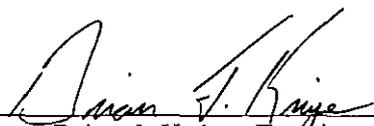
Dated this 25th day of June, 2012.

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