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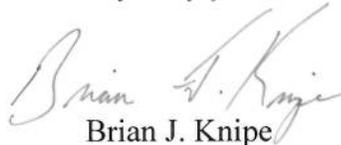
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952

Dear Secretary Chiavetta:

On behalf of FirstEnergy Solutions Corp., I have enclosed the *Comments of FirstEnergy Solutions Corp.* for filing in the above-captioned matter.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/kra

Enclosures

cc: ra-RMI@pa.gov (w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation of Pennsylvania's : Docket No. I-2011-2237952
Retail Electricity Market: :
End State of Default Service :

**COMMENTS OF
FIRSTENERGY SOLUTIONS CORP.**

I. INTRODUCTION

FirstEnergy Solutions Corp. (“FES”) respectfully submits these Comments on the Tentative Order entered on November 8, 2012 (“Tentative Order”) in the above-referenced proceeding (hereafter, the “Retail Markets Investigation” or “RMI”). In the Tentative Order, the Pennsylvania Public Utility Commission (“Commission”) tentatively adopted a proposal from the Commission’s Office of Competitive Market Oversight (“OCMO”) for an end state of default electric service model. The topics addressed in the Tentative Order include the following: a definition of the default service provider (“DSP”); the applicability of these changes to Electric Distribution Companies (“EDCs”); descriptions of the default service products to be offered to various retail electric rate classes; a timeline for the implementation of the new default service model; a discussion of applicable consumer protections; a discussion of the portability of customer assistance program benefits for low-income customers; a plan for the implementation of supplier consolidated billing (“SCB”); a plan for the implementation of accelerated switching; a discussion of the provision of metering services; a discussion of the provision of Energy Efficiency and Conservation (“EE&C”) programs; a discussion of logistics for long-term contracts, including those for Alternative Energy Credits (“AECs”); a plan for the implementation of a statewide consumer education campaign; and a discussion of regulatory costs and assessments. The Commission

invited interested parties to file comments on the above issues within thirty days of the entry date of the Tentative Order.

FES, a subsidiary of FirstEnergy Corp., provides wholesale and retail energy and related products to customers located throughout the Mid-Atlantic and Midwest regions. In addition to being a licensed Electric Generation Supplier (“EGS”)¹ authorized to serve all categories of retail customers throughout the Commonwealth, FES also participates in the default service supply procurements of many of the largest EDCs in Pennsylvania. FES has many years of experience serving the Pennsylvania retail and wholesale electricity markets, and offers a variety of products and services in those markets. FES has actively participated in all phases of the RMI by filing Comments, presenting testimony at the Commission’s three *en banc* hearings in this docket,² and by participating in working groups, sub-groups and technical conferences that address issues impacting the future design of the Pennsylvania retail electricity market and default service programs. In addition, FES has actively participated in currently ongoing EDC default service proceedings (“DSPs”) in which the design and implementation of retail market enhancement programs have been proposed for the Commission’s approval.³

As it has since the inception of the RMI,⁴ FES fully supports the Commission’s goals of ensuring a properly functioning and workably competitive retail market, including the appropriate design of end state default electric service in the Commonwealth. FES respectfully

¹ Docket No. A-110078 (1998).

² June 8, 2011, November 10, 2011 and March 21, 2012.

³ *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, P-2011-2273670; *Petition of PECO Energy Company For Approval of Its Default Service Program*, Docket No. P-2012-2283641; *Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015*, Docket No. P-2012-2301664; *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015*, Docket No. P-2012-2302074.

⁴ *Investigation of Pennsylvania’s Retail Electricity Market*, Docket No. I-2011-2237952 (Order entered April 29, 2011).

submits these Comments for the Commission's consideration when preparing the Final Order on End State Default Service. FES's Comments will not address all of the issues raised in the Tentative Order. For ease of reference, the section headings below correspond to those in the Tentative Order.

II. COMMENTS

A. Guiding Principles

Throughout the RMI, FES has maintained as its overarching principle the commitment to giving customers what they want, i.e. the lowest available pricing for their electric supply. Toward that end, FES has advocated in the RMI and in the aforementioned DSPs in favor of a robust consumer education program and in favor of retail market program designs that will encourage more customer participation in the Pennsylvania retail electric markets. FES strongly believes that a successful end state default service program is one in which the great majority of customers receive electric generation service from competitive suppliers, and few customers remain on default service. An end state default service model should encourage substantial retail supplier participation, which will lead to more competition and more varied alternatives for customers, including innovative products and services that offer value propositions in addition to price. FES commends the Commission for its continuing commitment to achieving that goal.

H. Supplier Consolidated Billing

Currently, shopping customers can choose between utility consolidated billing or dual billing. The Tentative Order posits that a third option should be available to customers by implementing SCB, in which the EGS bills the customer for both its EGS generation charges and the EDC's distribution charges. As the Commission correctly notes, the issue of SCB has been

discussed in Electronic Data Exchange Working Group (“EDEWG”) and OCMO meetings over the last several years. FES has participated in those groups’ discussions. The Commission also notes correctly that SCB presents numerous technical and legal challenges that must be addressed before SCB can be implemented. The difficulties are apparent in the fact that no consensus has been reached among or within the EDC and EGS communities despite years of discussion.

The Commission proposes that OCMO provide a recommendation to the Commission by July 1, 2013 as to how to proceed with making SCB available as a billing option for EGSs and third parties.⁵ If the Commission adopts this proposal in the final order issued herein, as it has participated in previous EDEWG and OCMO discussions on the issue, FES will participate in the OCMO process.

I. Accelerated Switching

The Tentative Order details the Commission’s extensive efforts to shorten the time it takes to change a customer’s electricity supplier, while maintaining important consumer protections. The Tentative Order describes the current 16- to 45-day timeframe for switching suppliers in accordance with Commission regulations, a timeframe necessitated in part by the 10-day waiting period required by 52 Pa. Code §§ 173-174.⁶ Recently, the Commission adopted Interim Guidelines which will take effect in January 2013 and will shorten the 10-day period to 5 days.⁷ The Commission’s Order adopting the Interim Guidelines discusses the need for additional improvements, and directs Staff to initiate formal rulemaking proceedings by

⁵ *Tentative Order* at 28.

⁶ *Id.* at 28-30.

⁷ *Interim Guidelines Regarding Standards for Changing a Customer’s Electricity Generation Supplier*, Docket No. M-2011-2270442 (Order entered October 25, 2012).

November 2013 to consider additional measures, including off-cycle switching and processes made possible by smart metering.

FES strongly supports the Commission's efforts, and urges the Commission to initiate its formal rulemaking to further shorten the 16- to 45-day (or 11- to 40-day) window as soon as possible. The Commission has heard from numerous commenters, as well as witnesses at the Commission's November 10, 2011 *en banc* hearing in the RMI, regarding the challenges that delays in switching pose to the success of retail competition. Delays in switching cost customers the benefits of shopping (i.e. lost savings by the day). In addition, the inordinate delay in switching contrasts with customers' experiences with nearly every other type of business. When a customer switches electric suppliers and nothing happens for several weeks, there is the potential for customer doubt, confusion and frustration, and a negative reflection on retail electric competition.

With regard to the additional steps the Commission might take in its rulemaking to shorten the switching timeframe, FES recommends elimination of the 5-day confirmation letter. Even if the Commission feels compelled to keep the 5-day confirmation letter — which is intended only to protect against slamming and not provide a contract rescission opportunity⁸ but nonetheless invites customers to revisit their decision to shop — the Commission should still eliminate the 5-day waiting period.

FES also recommends mid-cycle switching to allow customers to switch in the middle of their billing cycle, on a day other than their scheduled meter read date. This requires the Commission to amend 52 Pa. Code § 57.174, which currently requires the EDC to make the change at the beginning of the first feasible billing period following the 5-day waiting period. Requiring the EDC to wait for the next meter read date is the major factor in delaying switches

⁸ *Re Nor Am Energy Management, Inc.*, Docket No. P-00981625 (Order entered February 12, 1999).

which would otherwise be performed shortly after a scheduled meter read. FES encourages the Commission to allow mid-cycle switching using estimated meter reads, even while Pennsylvania awaits deployment of smart meter technology. Customer's meters are routinely estimated for a variety of reasons, and FES believes that EDCs have made strides in improving their estimates. Alternatively, at the customer's option the mid-cycle switch could be effectuated with a customer-supplied meter reading. The risk of a significant difference between estimated and actual usage is low, since customers without interval meters are typically smaller usage, residential and small commercial customers. While procedures would be needed to address the handling of differences between estimated and actual usage among the new and former generation suppliers and the EDC, this should not be allowed to delay the customer's switch, nor should they be an impediment to implementing mid-cycle switches.

The Tentative Order also invited comments on "seamless moves" and "day one switching" or "instant connect."⁹ FES supports both measures as important steps to enabling retail electric competition. "Seamless moves" allow a supplier's customer to remain with their supplier when they move to a new address, without further action. Moving should not terminate customers' contracts with suppliers and place customers back on default service. EDCs' customer information systems must be improved to accommodate seamless moves as soon as possible. Until then, the results of successful, often extensive, consumer education, marketing and customer service efforts will be undone by the customer's act of moving.

FES likewise supports "day one switching" or "instant connect." Currently, customers who sign up for new electric service are automatically placed on utility default service until their first bill has been produced, generating their account number which is necessary to switch to an

⁹ *Tentative Order* at 31.

EGS. Supply service should start on day one of utility service, without the customer first having to go on default service. EDCs need to implement the technology to allow day one switching.

K. Provision of Energy Efficiency and Conservation Programs

The Tentative Order proposes that EDCs continue to provide EE&C services to retail customers in accordance with Act 129, because the EDCs provide distribution services to a large majority of retail electric customers in the Commonwealth. Given EGSs' varying business models, the Commission is concerned that removing this obligation from EDCs and encouraging EGSs to fulfill Act 129's requirements would result in a widespread loss of rebates and incentives to customers. Nevertheless, the Commission strongly encourages EGSs to provide energy efficiency services to customers as well.¹⁰

FES agrees with the Commission that the EDCs, as DSPs, are best suited to provide the energy efficiency programs required by Act 129. Even if there is an alternative DSP, EE&C obligations should remain with the EDC to ensure wider and more equitable distribution of energy efficiency measures and benefits to shopping and default service customers alike, as well as to all customer groups. FES also agrees with the Commission that EE&C programs offered by the EDC must be competitively neutral and must not affect customers' ability to enter the competitive market.

FES supports the Commission's encouragement of EGSs to voluntarily offer certain services encouraging energy conservation, such as dynamic pricing. As explained below in the following responses to the questions of Commissioner Pamela A. Witmer regarding EGSs' provision of EE&C products, FES believes most services qualifying as "energy efficiency and conservation measures" under Act 129 should continue to be provided by the EDCs.

¹⁰ *Id.* at 33-34.

1. Do any EGSs currently provide or plan to provide EE&C services as part of their competitive retail offerings in Pennsylvania?

Some EGSs offer time-of-use (“TOU”) products that enable customers to better understand their usage patterns and the underlying market. Other than TOU rates, however, FES is not aware of EGSs that are offering “energy efficiency and conservation measures” as defined in Act 129, such as home energy audits, insulation, and rebates on energy efficient appliances.¹¹ At this point in the development of competitive retail electric markets, FES believes the focus of competitive market efforts should be on migrating default service customers to the retail market.

While certain EGSs are registered as Conservation Service Providers providing consultation, design, administration, management or advisory services to EDCs in connection with the EDCs’ EE&C obligations, these activities are conducted in support of the EDCs’ EE&C programs and are not offered as a competitive retail product.

2. If such services are or will be offered, how do EDCs and EGSs see those services coordinating with existing EDC Act 129 EE&C program obligations?

FES believes that EDCs and EGSs should not be offering the same EE&C services. Thus, TOU products should be offered exclusively by EGSs. The other Act 129 EE&C services should be offered exclusively by the regulated EDCs, instead of competitive suppliers. If EGSs and EDCs (as well as manufacturers of energy efficiency measures) were to offer many of the same EE&C products or services, customers would likely be confused and even frustrated by competing messages. This would have the unfortunate effect of distorting a valuable public service message that FES believes is best communicated to the public by the EDC and manufacturers.

¹¹ 66 Pa. C.S. § 2806.1(m).

3. Are there enhancements we can make to the Commission’s end state proposal to encourage EGSs to develop and offer additional EE&C services, outside the scope of the Act 129 EE&C Programs?

FES believes that the Commission can encourage EGSs to develop additional TOU rate offerings by continuing to take steps to make default service a basic, plain vanilla product. The Commission’s approval of EDC proposals to bid out TOU service to EGSs is an excellent step in the right direction.¹² Additional steps to limit the end state default service product to a flat, fixed kWh rate will encourage EGSs’ product offerings further. This includes, to the extent necessary, eliminating from the default supply portfolio other pricing products such as blocking, seasonality, and on/off peak rates. Products such as these should be exclusively competitive offerings. EGSs could make these products available to customers as a bridge to products made available with the full deployment of smart meter technology. This would have the added benefit of increasing customer awareness and openness to “smart” products.

4. Is there a broader role EGSs can or should play within legislatively mandated EDC EE&C programs?

While EDCs continue to offer TOU rates in compliance with their Act 129 EE&C obligations, EDCs can contract with EGSs to provide this service on the EDCs’ behalf. However, any legislative mandates should apply exclusively to EDCs and not to licensed EGSs.

M. Future Long-Term Alternative Energy Credits Contracts

The Tentative Order requests comments on whether an EDC or alternative DSP should include in its next default service filing a plan for procuring long-term Tier I, Tier II and Solar AECs contracts. The Commission also requests comments on whether it would be more

¹² E.g., *Petition of PECO Energy Company for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Opinion and Order entered September 26, 2012).

appropriate for long-term AEC contracts to be procured by an EDC (regardless of whether it has a default service obligation) or the entity providing default service. In addition, the Tentative Order requests comments on whether these procurements should include consistent mixes of contracts of various lengths, or be EDC territory fact-specific. The Tentative Order explains that having the EDC or DSP satisfy a portion of the service territory's alternative energy portfolio standard ("AEPS") requirements will help facilitate a successful capacity build-out of AEPS-qualified generation facilities by mitigating long-term cash flow risks for relevant generation owners or financiers.¹³

FES believes that the next default service filings by EDCs or alternative DSPs should not contain any additional long-term AEC contracts, and should be limited to proposals for managing existing long-term AEC contracts. Indeed, the procurement of long-term AEC contracts should be the responsibility of EGSs, not EDCs. EGSs are better suited for procuring alternative energy and making alternative energy offers to retail customers.

Further, removing EDCs from the function of procuring long-term AEC contracts will help protect against potential distortion and disruption of competitive markets. FES urges the Commission not to pursue legal authority to use the EDC or DSP to incent new construction of generation. Presently, the DSP has sole discretion to determine the generation source and fuel type for its long-term contracts.¹⁴ Removing this discretion and using the EDC or DSP to subsidize new generation potentially leads to a harmful scenario that has unfolded elsewhere, where regulators have the ability to direct an EDC to enter into long-term contracts at above market prices (subsidized by captive rate payers) in order to encourage new construction of generation. Supply added through such regulatory mandates would harm market prices, and

¹³ *Tentative Order* at 36-37.

¹⁴ 66 Pa. C.S. § 2807(e)(3.2)(iii).

returns to rate payers the risk that the Competition Act transferred to investors. It is contrary to the Competition Act, which states that the policy of Pennsylvania is that “[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity.”¹⁵

Once the Commission decides on an appropriate plan for reaching the percentage goals of the AEPS Act through competitive markets, FES supports the use of a consistent and uniform approach across the Commonwealth.

N. Statewide Consumer Education Campaign

In the Tentative Order the Commission proposes the development and implementation of a comprehensive statewide consumer education campaign aimed primarily at residential and small business customers. The primary focus of the campaign will be on the benefits of electric shopping and using PAPowerSwitch.com; “secondary” messages will educate consumers about other RMI actions including changes to default service, consumer protections and the portability of benefits for low-income customers who choose to shop. The proposed campaign is estimated to cost \$5 million a year for at least three years, starting in June 2014.¹⁶

The Commission proposes that 66.3 percent of the costs for this program would come from EGSs licensed in Pennsylvania. Comments are requested regarding an appropriate mechanism for collecting EGS contributions and the best way to group suppliers into tiers (e.g. by load, by customer count, etc.) to determine their level of contributions. EDCs would recover the balance of the costs from residential and small business consumers through an automatic

¹⁵ 66 Pa. C.S. § 2802(5).

¹⁶ *Tentative Order* at 38.

adjustment clause and using their existing riders. FES's comments on this section of the Tentative Order will focus on the EGS cost responsibility and recovery proposals.

In the past, the Commission looked exclusively to EDCs to fund a Commission-sponsored statewide customer education campaign that was to include information regarding generation supply shopping:¹⁷

The statewide campaign would be funded by a \$5 million assessment collected from EDCs. Under Section 510(a) of the Public Utility Code, 66 Pa.C.S. § 510(a), the Commission is required before November 1 of each year to submit a budget request, containing an estimate of its costs to administer the Public Utility Code, to the Governor and the General Assembly. Subsections (b) and (c) of Section 510 establish the process by which utilities are assessed to pay their share of the operating costs of the Commission. 66 Pa.C.S. §§ 510(b), (c). Since the costs to conduct a statewide consumer education campaign would be costs incurred by the Commission to implement the Public Utility Code, these costs must be submitted for approval by the Governor and General Assembly as part of the Commission's budget request. In addition, to the extent that the consumer education costs are authorized as part of the Commission's budget, these costs must be assessed to electric utilities under the process set forth in § 510(b) and (c). The Commission will comply with these procedures in implementing a statewide consumer education campaign.¹⁸

The 2007 Final Order did not propose that EGSs bear any costs of the campaign, even though as stated above it was proposed to include customer education about shopping.¹⁹ As described in the 2007 Final Order, the costs were "incurred by the Commission to implement the Public Utility Code." FES respectfully submits that the Commission should again look to recover costs through EDCs with regard to the campaign proposed in the Tentative Order, a campaign that once again would be undertaken by the Commission with costs incurred to implement the Public Utility Code ("Code").

¹⁷ *Policies to Mitigate Potential Electricity Price Increases*, Docket No. M-00061957 (Final Order entered May 17, 2007) ("2007 Final Order").

¹⁸ *2007 Final Order* at 10-11.

¹⁹ *Id.* at 9-10.

FES recognizes that the Tentative Order indicates the Commission's determination to place the majority of costs for this stage of RMI consumer education on EGSs. However, the Commission's clear determination to assure that retail electric competition succeeds requires that these costs be recovered from residential and small commercial customers through EDC automatic adjustment charges or existing riders, or as the Commission otherwise directs or approves. As the Commission noted in the 2007 Final Order, EDCs would recover these costs "in the same manner as they recover other costs assessed by the Commission."²⁰

Like the education program the Commission proposes in the Tentative Order, marketers already advertise the benefits of shopping and PAPowerSwitch.com at their own expense, but PAPowerSwitch.com is just one of many resources and tools available to customers who are looking at shopping for their generation supply. Marketers each have their strengths and choose where and how to invest their resources. By requiring EGSs to contribute to one statewide tool as an added cost of doing business in Pennsylvania, the overall supplier differentiation will become minimal and provide less opportunity for suppliers to build a solid customer relationship. Suppliers also make decisions on what type of marketing materials work best for them, based on their own experience. Marketing and consumer education aimed at particular customer classes or at customers in individual EDC service territories should be left to the discretion of, and funded by, individual suppliers as part of their competitive strategies.

Indeed, FES respectfully suggests that the Commission may lack the necessary statutory authority to impose these costs on EGSs, and thus legislative change may be needed before this cost-sharing mechanism can be implemented. It is well-settled that administrative agencies, such as the Commission, are creatures of legislation and can only exercise the powers that are

²⁰ 2007 *Final Order* at 11.

specifically conferred upon them by statute.²¹ EGSs are specifically carved out of the definition of “public utilities” in the Code, except for the limited purposes described in Sections 2809 and 2810.²² For this reason, the Pennsylvania Supreme Court held that EGSs are not subject to the Commission’s assessment authority under Section 510 of the Code.²³ The *Delmarva* court explained that any assessment of costs upon EGSs by the Commission must be “related to reliability of service or standards and billing practices for residential services of EGSs.”²⁴ No section of the Code authorizes the type of assessment for Commission-sponsored consumer education programs that the Commission proposes in the Tentative Order. Thus, FES respectfully requests that any order imposing the costs of consumer education on EGSs explain the statutory authority for imposing these costs on EGSs, or identify the revisions to the Code which are necessary for that purpose.

Assuming, *arguendo*, that EGSs are legally required to pay for any portion of the costs of the proposed customer education program, FES offers the following suggestions on the appropriate allocation methodology among EGSs for those costs. Initially, it must be recognized that supplier participation in any EDC’s service territory is voluntary. Any cost allocation method must recognize this and be designed to prevent a supplier’s avoiding liability for costs by leaving a territory at an opportune time, or waiting until an assessment payment period is over before entering the territory; in other words, supplier assessments should be pro-rated during a given time period, i.e. a calendar year, so suppliers cannot avoid their cost responsibility. Similarly, EGSs that begin doing business in the Commonwealth during or after the

²¹ *Small v. Horn*, 554 Pa. 600, 609, 772 A.2d 664, 669 (1998); *Grimaud v. Pennsylvania Insurance Department*, 995 A.2d 391, 405 (Pa. Cmwlth. Ct. 2010); see *Feingold v. Bell*, 477 Pa. 1, 8, 383 A.2d 791, 795 (1977) (“Since the PUC is a creature of statute, it has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication.”).

²² 66 Pa. C.S. §§ 102(2)(vi), 2809, 2810.

²³ *Delmarva Power & Light Company v. Commonwealth of Pennsylvania and Pennsylvania Public Utility Commission*, 582 Pa. 338, 870 A.2d 901 (2005).

²⁴ *Id.*, 870 A.2d at 908.

Commission-sponsored program will reap the benefits of the program without paying for all or part of those benefits; any EGS cost responsibility plan should recognize this possibility, and be designed in such a way that late-arriving EGSs would contribute to these costs, with refunds made to EGSs that have contributed previously on a pro-rata basis. Second, cost allocations should not be based on historical load or customer count, which obviously have no relation to the Commission-sponsored education program or future switching opportunities. Rather, costs should be allocated equally among Pennsylvania licensed suppliers that serve residential and small commercial customers, since every supplier has an equal opportunity to acquire future customers from this campaign, and costs should be allocated accordingly.

FES recommends that any plan developed by the Commission's Office of Communications and OCMO should contain detailed information on what will be included in each year of the estimated \$5 million annual budget. If the proposal set out in the Tentative Order is adopted, FES would like to participate on the Steering Committee to provide input related to the campaign.

O. Regulatory Costs and Assessments

1. Annual Electric Generation Supplier Licensing Fee

The Commission proposes to establish an annual licensing fee which will cover costs associated with review of reports filed by EGSs as well as the oversight for regulatory compliance issues and EGS bonding requirements.²⁵ Comments have been requested on the feasibility of an annual EGS licensing fee and how to structure that fee. Options discussed in the Order include a flat fee, such as \$1,000, that would be the same for all EGSs or a fee structured using a percentage of an EGS's gross revenues, subject to a maximum cap.

²⁵ *Tentative Order* at 40.

In FES's opinion, the Commission's institution of an annual fee on EGSs would require a revision to the Code. As the Commission notes, Section 317(a) of the Code²⁶ permits it to charge fees for certain services. However, the subsection cited in the Tentative Order, Section 317(a)(4), appears not to permit the assessment of annual fees upon EGSs merely for holding licenses. Rather, that subsection states:

The commission shall by rule establish on a reasonable cost basis the fees to be charged and collected for the following services:...(4) Filing of...each application for a...license.²⁷

The statute on its face limits the Commission's authority for charging fees for its services connected with the "filing of each...application for...a license." As discussed in Section N. above, the Commission can only exercise the powers that are specifically conferred upon it by statute, and Section 317 of the Code does not confer such assessment power.

If such statutory authority is obtained, on the issue of the appropriate design of such a fee, FES believes that the basis for the annual fee should be the amount the Commission determines is necessary to cover its administrative costs, i.e. the Section 317 "reasonable cost" basis, rather than a percentage of EGS gross intrastate revenues. This amount, as determined by the Commission to be needed to cover its costs of EGS regulatory oversight, would then be recovered through an assessment equally shared by all licensed EGSs in the Commonwealth. This methodology would avoid the unfairness of different assessments for brokers and marketers from those assigned to EGSs due solely to the latter group's liability for gross receipts tax.

²⁶ 66 Pa. C.S. § 317(a).

²⁷ 66 Pa. C.S. § 317(a)(4) (emphasis added).

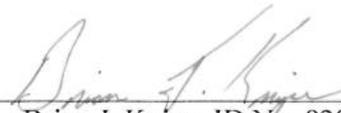
III. CONCLUSION

FES commends the efforts that have taken place by all the parties throughout this investigation. There are many stakeholders in the success of retail competition in the Commonwealth, and all have an interest in how default service, and any related changes, affect the competitive environment. FES appreciates the opportunity to submit these Comments, thanks the Commission for its efforts and support for robust retail electric competition, and looks forward to continuing to engage with the Commission, Staff and other stakeholders as we transition to the next phase of default service in the Commonwealth.

Respectfully submitted,

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Dated: December 10, 2012

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