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December 20, 2012

**VIA E-FILING**

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

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 electronic filing the *Reply Comments 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 first class mail, w/encls.)  
Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF  
FIRSTENERGY SOLUTIONS CORP.**

**I. INTRODUCTION**

FirstEnergy Solutions Corp. ("FES"), by its counsel, hereby files its Reply Comments on the Revised Default Service Plan - Retail Market Enhancement Programs ("Revised RME Plan") filed by Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (collectively, the "Companies") on December 22, 2012 in the above-captioned proceedings. In these Reply Comments FES will address Comments filed by the Office of Small Business Advocate ("OSBA"), Washington Gas Energy Services, Inc. ("WGES") and the Retail Energy Supply Association ("RESA") concerning two components of the Companies' Revised RME Plan. Both components concern the Companies' proposed Opt-In Aggregation Program ("Opt-In Program").

The first issue that FES will address concerns OSBA's proposal that a bill insert announcing the Companies' Opt-In Programs be sent to all customers who are eligible to participate in the programs, including customers who are already shopping. The Commission addressed this issue in the Retail Markets Investigation ("RMI") Intermediate Work Plan Order

(“IWP Order”).<sup>1</sup> OSBA’s proposal is contrary to the Commission’s clear intent in the IWP Order that the Opt-In Program be targeted toward customers who are not shopping, and the Commission’s express determination in the IWP Order that marketing efforts for the Opt-In Program be limited to those customers. Therefore, OSBA’s proposal should be rejected.

The second issue that FES will address responds to Comments concerning the timing when eligible customers must be notified of participating EGSs’ 8-month pricing in the Opt-In Programs. FES agrees with the Companies and OCA that the 8-month price should be disclosed to customers before they have to decide whether or not to participate, and opposes the proposals by WGES and RESA that the disclosure be made at a later time, after the programs have begun. The WGES and RESA proposals are contrary to the Commission’s intent that customers should understand the terms of programs, including pricing, before being asked to sign up. FES therefore respectfully submits that the WGES and RESA proposals should be rejected.

## II. REPLY COMMENTS

### A. Response to Comments of OSBA

In its Comments, the OSBA takes to task other parties in the collaborative process for allegedly using the process to reopen issues that had been resolved by the Commission, and asserts that those issues are not proper subjects for this phase of the proceeding. FES agrees with OSBA’s sentiment, and with its expression of frustration that some parties during the collaborative process were insistent on again raising arguments that most parties thought had been settled by Commission orders following the many rounds of comments, briefs and exceptions in the RMI and in the subject proceedings. FES agrees with OSBA’s statement that

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<sup>1</sup> Investigation of Pennsylvania’s Retail Electricity Market, Docket No. I-2011-2237952 (Final Order entered March 2, 2012).

“the time has come to stop *designing* the RME programs and to start *implementing* them.” OSBA Comments at 6.

However, FES respectfully disagrees with one issue raised by OSBA. OSBA argues in favor of modifying the Companies’ proposed customer notification programs to include shopping Residential and Small C&I customers in the mailing of bill inserts announcing their Opt-In Programs. OSBA Comments at 6-7. FES strongly opposes this proposal, which is contrary to clear Commission decisions on this issue. OSBA is correct that the Commission previously determined shopping customers are eligible to participate in this program, but the Commission also explicitly determined that advertising for such programs should be targeted at default service (i.e. non-shopping) customers. In the IWP Order the Commission addressed this issue and stated as follows:

While the Commission agrees with those parties who state that the intent of a Retail Opt-in Auction is to encourage shopping by those customers who, for whatever reason, have shown an aversion to shopping, it disagrees with the parties who believe customers that are currently shopping should be deemed ineligible for such auctions. The Commission maintains its original position that Retail Opt-in Auctions should be open to both residential default service and residential shopping customers.<sup>2</sup> The Commission agrees with those parties that expressed discomfort in the possibility of EDCs rejecting shopping customer participation. The Commission believes that would cast a shadow over the auctions and appear to be discriminatory against those who have already entered into the retail electric market. Additionally, the Commission believes this will prevent shopping customers from returning to default service in order to participate, which may result in cancelled contracts and the imposition of early termination fees/penalties.

However, to ensure the focus of this competitive enhancement is on those customers who have not shopped, the Commission will

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<sup>2</sup> The Commission expanded the Companies’ Opt-In Programs to include Small C&I customers in its Opinion and Order entered August 16, 2012 in the subject proceedings (“August 16 Opinion and Order”) and confirmed that determination in its Opinion and Order entered September 27, 2012 (“September 27 Opinion and Order”). August 16 Opinion and Order at 101-104; September 27 Opinion and Order at 10-13.

also maintain its original position that all marketing, notifications and consumer education efforts for Retail Opt-in Auctions should be targeted to non-shopping, residential, default service customers. As such, although a shopping customer may become aware of the Retail Opt-in Auction and request participation, the auction materials themselves will be directed toward the non-shopping segment of the residential sector.

IWP Order at 42 (emphasis added). The Commission confirmed this approach in the August 16 Opinion and Order issued in these proceedings.<sup>3</sup>

Therefore, sending bill inserts encouraging participation in the Opt-In Programs to shopping customers, as OSBA advocates in its Comments, contravenes the Commission's clear directives in the IWP Order and in a previous order in these proceedings. Shopping customers are not prohibited from participating in the RME programs, but should not be included in the marketing. If a shopping customer becomes aware, through other means, of the Opt-In Programs and wants to participate, this will result in the cancellation of that customer's existing contract. The terms of that existing contract may include an early termination fee which may not be fully offset by the bonus payment and potential savings gained from the Opt-In Program offer. Marketing the Opt-In Programs to shopping customers may lead to unnecessary customer frustration and confusion. Furthermore, as stated in the IWP Order, the intent of the Opt-In Program is to encourage shopping by customers who have not previously shopped, a rationale which obviously does not apply to currently shopping customers. For these reasons, OSBA's proposal in paragraphs 6 and 7 of its Comments should be rejected.

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<sup>3</sup> August 16 Opinion and Order at 105-106.

## **B. Response to Comments of WGES and RESA**

The Companies' Opt-In Programs will consist of a 12-month product, with a \$50 bonus, a 4-month guaranteed five percent discount off of the PTC at the time of enrollment, and an EGS-provided fixed price product for the remaining 8 months.<sup>4</sup> The Companies propose to include in their customer solicitation materials all EGS marketing materials, including the 8-month pricing information, for the full 12-month term of the Opt-In Program, so that customers will be fully informed of the price they will be paying for the entire program term before the deadline for enrollment. WGES and RESA both argue that customers should not be informed of their assigned EGS's 8-month price until sometime during the introductory 4-month period, after they have agreed to participate in the programs and the programs have begun. WGES Comments at 3; RESA Comments at 14-15.

Both WGES and RESA choose to ignore the clear language of the Commission's decisions in these proceedings and in the RMI. When the Commission decided against the auction process outlined in the IWP Order and established the above-described product for the Companies' Opt-In Programs, the Commission stated as follows:

With these improvements, we believe this product offering will be attractive enough to garner EGS support and, more importantly, customer participation in the ROI.

August 16 Opinion and Order at 117-118 (emphasis added). The Commission stated in the August 16 Opinion and Order that "customers need sufficient pricing information to make an informed decision to participate in the ROI Aggregation Program." August 16 Opinion and Order at 108. The Commission stated in the September 27 Opinion and Order that "[w]e continue to believe that customers should be aware of the price they will be paying" in the Opt-In Program. September 27 Opinion and Order at 15.

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<sup>4</sup> August 16 Opinion and Order at 116-117; September 27 Opinion and Order at 14-15.

In the RMI's IWP Order, the Commission discussed a situation analogous to the current issue, whether Opt-In Program customer enrollment should occur before the EGS auction which would determine the product specifications. In deciding against the EGSs (not including FES) which had argued for that proposal, the Commission stated that:

We are cognizant of the concerns raised by some EGSs about uncertainty that may be manifested from this sequence: however, we believe that the proposal to hold enrollments before the product specifications are known will create customer confusion. One of the underlying goals of the Retail Opt-in Auctions is to assist uncertain customers in their shopping endeavors. As such, mitigating customer confusion is important to the Commission.

IWP Order at 55. Throughout the RMI and these proceedings, FES has supported the proposition that customers need to be fully informed of all the terms and conditions, including pricing, of the RME programs before they must decide whether to participate. Transparency will be key to customers' positive perception of the RME Programs.

The schedule proposed by the Companies for their Opt-In Programs will clearly benefit customers most, since they will know all the applicable terms and conditions when they consider whether or not to participate. Not so with the RESA-WGES proposals.<sup>5</sup> The RESA-WGES proposals will primarily benefit suppliers to the detriment of customers and would threaten the

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<sup>5</sup> RESA recommends that EGS price offers for the final 8 months of the Opt-In Program should be filed by August 2013 to be effective October 1, 2013. RESA claims that pricing offers at that time would coincide with the Companies' filing of the PTCs to be effective at the start of the 8-month period. RESA Comments at 15. RESA's proposal ignores the Commission's requirement that customers receive two notices before a change in price can be effected. *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service*, Docket No. M-2010-2195286 (Order entered September 23, 2010) ("Interim Guidelines"). The second of these Interim Guidelines customer notices, the Options Notice, is required 45 days before the new price's effective date. The Options Notice must include the new 8-month pricing information, which must have already been reviewed by the Commission. Therefore, in order to allow for sufficient time for the Options Notice, the 8-month EGS price offers would have to be filed with the Commission no later than 45 days before the Options Notice is sent to customers. This means that the 8-month EGS price offers must be filed with the Commission at least 90 days before October 1. Thus, contrary to RESA's assertion in its comments, there is no way EGSs can prepare their 8-month price offers coincident with the Companies' October 2013 PTC filings and still comply with Commission-required customer notifications. FES also points out that the Interim Guidelines notices will not be required under the Companies' proposal, since customers will know the full terms and conditions, including price, for the entire 12-month term of the Opt-In Program.

success of the programs. Retail suppliers are sophisticated market participants who know, or should know, how to calculate risk associated with unknown factors so they can prepare their 8-month pricing in time for the required Commission review and participation in the Companies' programs. EGSs will be able to decide whether the Opt-In Program is an attractive proposition based on their business models. If not, as the Commission noted, EGS participation in the program is voluntary. September 27 Opinion and Order at 18.

Expecting residential customers to enroll in the Opt-In Programs without knowing exactly what they are signing up for makes no sense, particularly since the program is aimed at customers who have already shown disinterest in participating in the retail electric market. Determining the proper timetable for establishing the Opt-In Programs' 8-month pricing really comes down to the question of which stakeholders in the Opt-In Program should assume risk, and which need and deserve the most consideration. The RESA-WGES proposal puts suppliers' interests before customers' needs. The timetable proposed by the Companies, and supported by OCA and FES, puts customers first not suppliers.

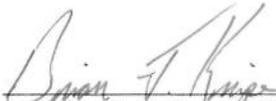
The Companies' proposal is in the best interest of customers, and would result in a more positive perception of the Commission-sponsored Opt-In Programs than would a program design in which customers are expected to sign up for an offer without knowing a very important component of that offer (pricing for two-thirds of the term of the program). Therefore, FES respectfully submits that the RESA and WGES proposals should be rejected.

### III. CONCLUSION

FES appreciates the opportunity to submit these Reply Comments, and respectfully requests that the Commission consider the matters discussed above as it makes its final determinations in these proceedings.

Respectfully submitted,

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Dated: December 20, 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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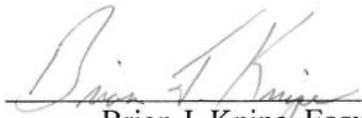
Dated this 20th day of December, 2012.

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