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March 20, 2013

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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:

Enclosed for electronic filing please find the Retail Energy Supply Association's ("RESA's")
Answer to Petition to Amend with regard to the above-referenced matter. Copies to be served in
accordance with the attached Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "Deanne M. O'Dell".

Deanne M. O'Dell

DMO/lww
Enclosure

cc: Hon. Elizabeth H. Barnes w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Answer to Petition to Amend upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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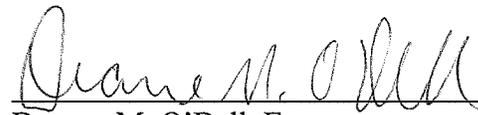
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Dated: March 20, 2013

* Indicates that I do not have a record of
receiving an Executed Protective Order
Agreement

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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
Petition to Amend the Commission's August 16, 2012 Order and the November 8, 2012 Secretarial Letter Approving Default Service Procurement Bidding Rules	:		P-2011-2273668
	:		P-2011-2273669
	:		P-2011-2273670

**THE RETAIL ENERGY SUPPLY ASSOCIATION'S
ANSWER IN OPPOSITION TO THE
PETITION OF FIRST ENERGY COMPANIES**

I. INTRODUCTION AND SUMMARY OF ANSWER

Pursuant to 52 Pa. Code § 5.61, the Retail Energy Supply Association (“RESA”)¹ submits this Answer in Opposition to the Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”)(collectively, the “Companies” or “FirstEnergy”) Petition to Amend the Commission’s August 16, 2012 Order (“August 15, 2012 Order”) and the November 8, 2012 Secretarial Letter (“November 8, 2012 Secretarial Letter”) Approving Default Service Procurement Bidding Rules filed on February 28, 2012 (“Petition to Amend”). In the Petition to Amend, FirstEnergy proposes, *inter alia*, to: (1) procure the necessary physical supply for default service industrial customers directly from PJM Interconnection, Inc. (“PJM”) for the period from

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA

June 1, 2013 to November 30, 2013; and, (2) conduct a second procurement auction for this customer class in September 2013 which would supply default service from December 1, 2013 through May 31, 2015. RESA opposes this proposal and recommends that a competitive auction be held as soon as possible so that default supply is attained from competitive suppliers to produce the most competitive prices and the greatest benefit to consumers.

While RESA recognizes that FirstEnergy has attempted, in good faith, to devise a fix to address the Commission's rejection of the results of the Companies' January 2013 auction, RESA disagrees with FirstEnergy that it is permitted under its contingency plan to acquire the default service supply itself on an interim basis until its next scheduled default service auction in September 2013. Rather, FirstEnergy's contingency plan requires it to rebid the product in a separate solicitation no later than 30 days before the original delivery start date. There is nothing in FirstEnergy's contingency plan that requires it to provide default service supply as a result of the Commission's rejection of a procurement auction. Just as important, pursuing a self-supply approach in the interim as FirstEnergy proposes here is arguably inconsistent with the Electricity Generation Customer Choice and Competition Act ("Competition Act") which requires that electric power used to serve default customers be procured through competitive procurement processes.² In addition, FirstEnergy's interim self-supply approach is a departure from both FirstEnergy and the Commission's expressed preference that Hourly-Priced Service ("HPS") be procured through competitive auctions.

RESA supports conducting the additional auction consistent with the processes already approved by the Commission. However, to the extent there is concern about the costs of such process, FirstEnergy should be directed to explore reasonable alternatives to minimize these

² 66 Pa.C.S. § 2807(e).

costs. Such options could include: (1) conducting a single round, sealed bid Request For Proposal (“RFP”) process to solicit offers from wholesale suppliers in lieu of the descending clock auction mechanism that FirstEnergy utilizes for its standard solicitations; (2) the use of an online process; or, (3) Commission supervision of the auction (rather than hiring a consultant). The benefits to industrial consumers of receiving default service supply through a competitive auction (which will help ensure the lowest prices and greatest economic value) would plainly justify the utilization of such alternative methods on a one-time basis to address the unique circumstances presented here.

II. BACKGROUND

In the August 16, 2012 Order, the Commission approved the Companies’ proposal to secure default service power supply for the industrial class³ utilizing HPS which is not a fixed-price service, but an hourly service that is priced to the PJM real-time hourly energy market for each Company. The Commission approved FirstEnergy’s proposal to utilize a competitive procurement process for all four electric distribution companies (“EDCs”) for the default service supply for industrial customers effective June 1, 2013 and to hold one auction in January 2013 to acquire default service supply for the entire default service plan period of June 1, 2013 through May 31, 2015.⁴ Consistent with the Commission’s approval, customers on HPS will pay and winning suppliers will receive: (1) the applicable PJM zonal real-time hourly locational marginal price (“LMP”); and, (2) a fixed adder of \$5/MWh to cover the costs of other supply components,

³ For Met-Ed and Penelec, this customer class consists of customers that: (1) receive service at secondary voltage and have registered demands that equal or exceed 400 kW in two consecutive months; or (2) receive service at primary or transmission voltage. For Penn Power, customers in this class are those that receive service at primary or transmission voltage. For West Penn, this customer class consists generally of customers that: (1) receive service at secondary voltage and have billed demands that equal or exceed 500 kW; or (2) receive service at primary or transmission voltage. *See* Met-Ed/Penelec/Penn Power/West Penn Statement No. 2 at 6-7.

⁴ August 16, 2012 Order at 34-37.

including ancillary services, Alternative Energy Portfolio Standards (“AEPS”), and PJM administrative fees.⁵ FirstEnergy’s compliance filing was approved by the Commission’s November 8, 2012 Secretarial Letter.

Subsequently, on January 15, 2013, FirstEnergy conducted the one-time auction for the default service supply for the industrial class. The Commission, by Secretarial Letter dated January 16, 2013, rejected the January 2013 auction results only for the industrial class on the basis that the FirstEnergy bidding rules did not adequately state that suppliers would be paid the winning price established in the auction in addition to the real-time hourly LMP and the \$5 per megawatt-hour adder.

In response, the Companies filed their Petition to Amend on February 28, 2013 requesting that the Commission: (1) revise their bidding rules so it is clear that the price of the auction is to be included in the amount to be paid to winning suppliers; (2) establish that the Companies would procure the necessary physical supply for the default service supply acquired to serve industrial customers directly from PJM, as well as associated ancillary products, for the June 1, 2013 through November 30, 2013 default service period; and, (3) allow the Companies to conduct a second procurement for default service supply for industrial customers in September 2013 for the December 1, 2013 through May 31, 2015 delivery period. This second procurement would be conducted at the same time as the next scheduled solicitation for default service supply for residential and commercial customers. RESA’s opposition here is limited to opposing FirstEnergy’s proposal to self-supply the industrial customers between June 1, 2013 and November 30, 2013.

⁵ August 16, 2012 Order at 4.

RESA submits that FirstEnergy has not complied with the contingency plan provided in its bidding rules which govern the procedures to be used when procuring supply pursuant to the Companies' Default Service Supplier Master Agreement. The contingency plan requires the Companies to rebid for the industrial default service supply at the next scheduled auction, which was held on February 13, 2013. FirstEnergy declined to do so. The contingency plan also requires, as an intermediary step, that FirstEnergy conduct a separate solicitation prior to May 1, 2013, 30 days before the original delivery start date for the default service industrial customers. In its Petition to Amend, FirstEnergy requests Commission approval to skip this intermediary step and jump to the last step in its contingency plan. The final step, serving as a last resort, requires FirstEnergy to self supply directly from PJM. FirstEnergy's request to self supply default service industrial customers from June 1, 2013 to November 30, 2013, without a bona fide attempt at satisfying the intermediary step requiring a separate solicitation, departs considerably from the procedures established in its compliance plan. Moreover, implementation of FirstEnergy's request would directly conflict with the Commission's policy of encouraging the development of a competitive market.

RESA supports the Commission's enforcement of the contingency plan by requiring the Companies to conduct a separate auction between now and May 1, 2013. RESA supports conducting the additional auction consistent with the processes already approved by the Commission. However, to the extent there is concern about the costs of such process, FirstEnergy should be directed to explore reasonable alternatives to minimize these costs. Such options could include: (1) conducting a single round, sealed bid RFP process to solicit offers from wholesale suppliers in lieu of the descending clock auction mechanism that FirstEnergy

utilizes for its standard solicitations; (2) the use of an online process; or, (3) Commission supervision of the auction (rather than hiring a consultant).

For all these reasons, RESA recommends that FirstEnergy's request to self supply industrial default service customers be denied and that FirstEnergy be directed to design the most cost effective method by which to conduct an interim auction as soon as possible.

A. FirstEnergy's Proposal Is Not Consistent With Its Contingency Plan

FirstEnergy's bidding rules include a contingency plan that establishes procedures that are to be followed in situations like this where a scheduled auction fails to procure the necessary supply. The contingency plan provides as follows:

In the event that an auction is not fully subscribed, the Companies will rebid the unfilled tranches from that auction provided a minimum of 30 calendar days exists prior to the start of the delivery period. The unfilled tranches will be rebid in the next scheduled auction where supply is sought with the same delivery start date. If there is no such scheduled auction, then the unfilled tranches will be rebid in a separate solicitation no later than 30 days before the original delivery start date. For any remaining unfilled tranches, the Companies will purchase the necessary physical supply through PJM administered markets and meet any AEPS compliance requirements through purchases at market prices.⁶

FirstEnergy's contingency plan clearly delineates the procedures to be followed in the event that a scheduled auction fails to procure the necessary supply. First, the Companies are required to rebid the unfilled tranches in the next scheduled auction. Next, the contingency plan requires that "[i]f there is no such scheduled auction, then the unfilled tranches will be rebid in a separate solicitation no later than 30 days before the original delivery start date." Only as a last

⁶ *Revised Default Service Plan Compliance Filing, Volume II, Exhibit D, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670, September 6, 2012 at 21.*

resort does the contingency plan obligate the Companies to purchase the necessary supply through PJM administered markets.

Although the next auction following the rejected January 2013 auction was scheduled for February 13, 2013, FirstEnergy did not rebid the default service supply for the industrial class in that auction.⁷ Instead of proposing to conduct an additional auction by May 1, 2013 (30 days prior to the June 1, 2013 delivery date) to secure default service supply from a competitive process for the interim period, FirstEnergy proposes to add an additional auction for default service supply for industrial customers in September 2013 which is its next scheduled default service procurement for residential and commercial customers. For the power that needs to be supplied in the interim prior to that auction, FirstEnergy proposes to procure the supply for default service industrial customers directly from PJM. FirstEnergy supports this proposal by claiming that an interim auction “is likely to fail” and a failed auction will only lead to unnecessary costs for industrial default service customers.⁸

However, pursuant to the contingency plan, self-supply is the option of last resort. The contingency plan does not provide options from which the Companies may choose from; it establishes procedures that are to be followed. As FirstEnergy’s contingency plan does not contemplate or permit it to utilize self-supply to acquire the default service load for the industrial customers, the Commission must reject FirstEnergy’s proposal and, instead, direct FirstEnergy to conduct a separate auction between now and May 1, 2013 (30 days before the original delivery start date).

⁷ *Revised Default Service Plan Compliance Filing, Volume I, Exhibit A*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670, September 6, 2012 at 1.

⁸ Petition to Amend at 6-7.

B. The Statute, Precedent and Commission Policy Compel FirstEnergy to Conduct an Auction Prior to May 1, 2013

Requiring FirstEnergy to conduct an interim competitive auction for the industrial class default service is the appropriate course for several reasons. First, FirstEnergy's interim proposal to purchase the necessary physical supply from PJM does not appear to satisfy the statutory standard that "the electric power acquired shall be procured through competitive procurement processes and shall include one or more of the following [auctions, requests for proposal, bilateral agreements]."⁹ Purchasing directly from the PJM real time market, other than to supplement some other purchase made via auction or RFP, would not seem to meet this standard. A competitive market process is important to prevent any incentive to the EDC to keep customers on default service as a result of receiving benefits from its direct procurement of power. Such benefits could occur, for example, if FirstEnergy seeks to recover any additional costs incurred to enable it to make these purchases or to continue to receive its share of financial benefits from the spot market purchases.

Second, relying on a competitive procurement process in this situation is consistent with FirstEnergy's advocacy in this case, which was ultimately approved by the Commission, and the Commission's more recent pronouncement that "it prefers the model under which these [hourly-priced] services are auctioned to wholesale suppliers."¹⁰ Here, FirstEnergy specifically sought Commission approval to restructure the process currently used by West Penn whereby "West Penn acquires the HPS product itself and, therefore, acts as the purchaser of HPS (managing and administering the acquisition of energy, capacity and ancillary services) which, in its role as

⁹ 66 Pa. C.S. § 2807(e)(3.1).

¹⁰ *Investigation of Pennsylvania's Retail Electricity Market: End State Default Service*, Docket No. I-2011-2237952, Final Order entered February 15, 2013 at 30.

default service provider, it sells to Industrial Class default customers.”¹¹ In response to opposition from the industrial intervenors, FirstEnergy explained that:

there is no basis in the record to support the Industrials’ contention that third-party competitive procurement would cost materially more than continuing West Penn’s current approach of being both buyer and seller of the product it offers to Industrial Customers.

...

if [the Companies] had the opportunity to respond on the record to the Industrials’ factual averments, they would have presented testimony explaining that third-party competitive procurement permits them to specifically identify the procurement and administrative costs of providing this service, rather than relying on an allocation of total procurement and administrative costs, as West Penn does. In that way, default service can be more appropriately priced, and meaningful comparisons with alternative, competitive products are facilitated.¹²

As FirstEnergy recognizes, a competitive procurement process is transparent because all of the costs are clearly identified and can be directly passed on through default service rates. Allowing FirstEnergy to self supply may not be similarly transparent as administrative or other costs may not be included in the default service costs passed on to customers. A failure to accurately and fully reflect all costs in the default service rate would likely lead to the recovery of those costs from all distribution rate payers, resulting in an artificially lower default service rate. Since an EGS has no customer class to recover similar costs from, a self supply process would produce a competitive disadvantage for the EGS. Allowing FirstEnergy to procure its own supply for industrial customers creates a barrier to competitive market entry for suppliers.

¹¹ Reply Brief Of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company And West Penn Power Company dated May 16, 2012 at 19.

¹² *Id.* at 19-20 (emphasis added).

Third, the Commission recently rejected the concern raised by FirstEnergy about the potential imposition of unnecessary costs on customers resulting from a failed auction. In its default service case, PECO Energy Company (“PECO”) proposed to procure all default service supply for industrial customers directly from PJM and asserted that this procurement method would eliminate the risk of additional costs associated with conducting an RFP that could potentially be unsuccessful due to insufficient supplier participation.¹³ In dismissing PECO’s assertion, the Commission stated the following:

However, PECO failed to quantify that cost. Further, PECO did not present any comparison of that cost to any new administrative expenses it would incur to procure default service supply from the PJM market for these Large C&I customers. We must conclude that, since the record does not support PECO’s contention that the costs of a failed RFP would be greater than any incremental costs incurred to administer its proposed procurement methodology, PECO did not carry its burden of proof on this issue.¹⁴

Like PECO, FirstEnergy has not shown that: (1) an interim auction would likely fail; or, (2) that any such failed auction would lead to unnecessary costs for industrial default service customers. While FirstEnergy references the percentage of industrial customers (by load and number of customers) in each of its service territories that is being served by an EGS as of January 1, 2013 in support of its claim that an interim auction is likely to fail, such claim is speculative and FirstEnergy offers nothing to substantiate its viewpoint.¹⁵ On the other hand, the most recent shopping statistics show that 49.3% of FirstEnergy’s industrial customers continue

¹³ *Petition of PECO Energy Company for Approval of Its Default Service Program II*, Docket No. P-2012-2283641, Opinion and Order entered October 12, 2012 at 24.

¹⁴ *Id.* at 27.

¹⁵ *Petition to Amend* at 7, n.4.

to be served by default service as of March 13, 2013.¹⁶ Thus, there is no question that a competitive process would benefit a reasonable number of FirstEnergy's industrial customers continuing to receive default service.

In sum, a competitive procurement process for the industrial customer class is consistent with the statute, the advocacy of FirstEnergy in this proceeding, the Commission's decision in the PECO default service case and the Commission's recently stated preference for competitive auctions. As all of these endorsements show, a competitive process is preferable because it produces the most competitive prices, the lowest administrative charges, and the greatest economic value for customers and there is no reason to depart from this process even in the situation presented in this case.

C. RESA's Recommendation

RESA recommends that the Commission direct FirstEnergy to conduct a competitive auction between now and May 1, 2013. Such result is consistent with FirstEnergy's approved contingency plan, the statute, precedent and Commission policy. It will also enable FirstEnergy to attain the most competitive prices, achieving the best value and results for the default service industrial customers.

RESA supports conducting the additional auction consistent with the processes already approved by the Commission. However, to the extent there is concern about the costs of such process, FirstEnergy should be directed to explore reasonable alternatives to minimize these

¹⁶

The total amount in all four service territories is the combination of the amount of industrial customers being served by default service supply in each territory, In Met-Ed's territory, 16.1% of industrial customers are being served by default service supply. In Penelec's territory, 20.1% of industrial customers are being served by default service supply. In Penn Power's territory, 2% of industrial customers are being served by default service supply. In West Penn Power's territory, 11.1% of industrial customers are being served by default service supply. See *Weekly PAPowerSwitch: Update of Customers Switching To An Electric Generation Supplier*, dated march 13, 2013 and available at <http://extranet.papowerswitch.com/stats/PAPowerSwitch-Stats.pdf?/download/PAPowerSwitch-Stats.pdf>.

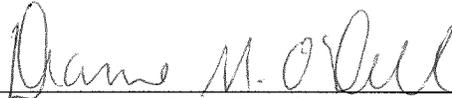
costs. One reasonable way to potentially minimize the costs of conducting a separate solicitation for the HPS service would be for FirstEnergy to conduct a single round, sealed bid RFP to solicit offers from wholesale suppliers. This would be in place of the descending clock auction mechanism that First Energy utilizes for its standard solicitations. The RFP approach is likely to be less costly because it would not require use of the independent evaluator's auction software and real-time monitoring of the bidding process. Another option that could be considered is for FirstEnergy to conduct an auction using an online administrator which would reduce costs associated with holding a separate auction. Finally, since the Commission is already involved in this proceeding, having rejected the results of the January 2013 auction, another approach that could be considered is for the Commission to supervise the auction which would eliminate the need and expense of an independent evaluator.

Requiring FirstEnergy to conduct an additional auction would encourage transparency and yield the best results for customers. FirstEnergy has not demonstrated sufficient justification for why a departure from its contingency plan, the statute, precedent and the Commission's expressed preference is necessary in this case and, therefore, its proposal to self-supply for an interim period should be rejected.

III. CONCLUSION

For the reasons set forth above, RESA respectfully requests that the Commission deny FirstEnergy's request in its Petition to Amend to self supply default service the industrial class for an interim period and instead direct FirstEnergy to: (1) conduct an additional auction prior to May 1, 2013 to procure supply for the delivery period of June 1, 2013 through May 31, 2015; (2) design the most cost effective method by which to conduct this auction; and, (3) grant any other relief deemed to be reasonable and appropriate under the circumstances.

Respectfully submitted,



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Attorneys for Retail Energy Supply Association

Dated: March 20, 2013

VERIFICATION

I, Robert J. Barkanic state that I am the State Vice Chairperson for the Retail Energy Supply Association and that as such I am authorized to make this verification on its behalf. I hereby state that the facts contained herein are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

3/20/13

Dated



Robert J. Barkanic
State Vice Chairperson
Retail Energy Supply Association