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April 16, 2013

VIA E-FILING

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

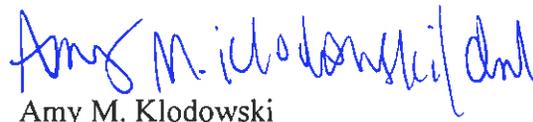
**Re: *Petition of FirstEnergy Solutions Corp. for Appeal from Action of Staff,*
Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670**

Dear Secretary Chiavetta:

Enclosed for filing, on behalf of FirstEnergy Solutions Corp. ("FES") is the *Petition of FirstEnergy Solutions Corp. for Appeal from Action of Staff*, which appeals a Secretarial Letter issued this morning at the above referenced Dockets. FES respectfully requests expedited treatment of the *Petition*, and that the Commission consider the *Petition* at its next Public Meeting which is scheduled for this **Thursday, April 18, 2013**.

Thank you for your consideration.

Very truly yours,


Amy M. Klodowski

AMK:dml

Enclosure

cc: Paul T. Diskin, Director – Bureau of Technical Utility Services
Marissa Boyle, Bureau of Technical Utility Services
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Assignment of Default Service Program	:	Docket Nos.	P-2011-2273650
Supply Master Agreements Between a	:		P-2011-2273668
Default Service Supplier and the	:		P-2011-2273669
FirstEnergy companies Metropolitan Edison	:		P-2011-2273670
Company and West Penn Power Company	:		

**PETITION OF FIRSTENERGY SOLUTIONS CORP.
FOR APPEAL FROM ACTION OF STAFF**

FirstEnergy Solutions Corp. ("FES"), pursuant to 52 Pa. Code § 5.44, petitions the Pennsylvania Public Utility Commission ("Commission") to reverse the Secretarial Letter entered today ("April 16 Secretarial Letter"), which declines to approve BP's assignment of Default Service Supplier Master Agreements ("SMAs") with Metropolitan Edison Company ("Met Ed") and West Penn Power Company ("West Penn") to FES. As explained below, Staff's improper determination should be reversed because it lacks any basis in law or fact, arbitrarily contradicts Commission precedent, and creates barriers to participation in future default supply procurements which will result in increased clearing prices. FES respectfully requests expedited treatment of this appeal, so that the Commission may consider it at its Public Meeting scheduled for this Thursday, April 18, 2013.

APPEAL FROM ACTION OF STAFF

1. FES and BP are successful bidders in default supply procurements conducted by Met Ed and West Penn in accordance with the Commission's Orders entered at these Dockets.
2. BP manages a broad portfolio of power contracts across markets in the United States, which requires BP to assume and manage a diverse array of risks.

3. In an effort to manage these risks effectively and in relation to its overall portfolio, BP determined to assign SMAs with Met Ed and West Penn, as well as the associated four tranches of Residential default supply obligations, to FES.

4. Section 16.3 of the SMAs permits BP to assign the SMA, provided that necessary regulatory approvals are secured, and that Met Ed and West Penn have given their prior written approval of the assignment. Met Ed and West Penn provided the necessary written approvals.

5. On February 28, 2013, Met Ed and West Penn submitted a letter ("February 28 Letter") requesting Commission approval of BP's assignment in accordance with Section 16.3.

6. The April 16 Secretarial Letter declines to approve the assignment on the grounds that (1) it did not involve reasons similar to a "major business event" which gave rise to another assignment approved by the Commission in a 2010 Secretarial Letter (which made no reference to any such major event in explaining the grounds for approval), at the request of PECO Energy Company ("PECO"), and (2) Met Ed and West Penn did not establish that the proposed assignment is in the public interest.

Staff Improperly Crafted a New Standard for Approval of This Assignment

7. The April 16 Secretarial Letter notes the Commission's 2010 approval of a request for assignment of an SMA with PECO, from Conectiv Energy Supply, Inc. ("Conectiv") to EDF Trading North America LLC.

8. The Commission's 2010 Secretarial Letter approving the Conectiv assignment explained that the assignment was approved because it was consistent with: (1) the provisions of the SMA; and (2) the Joint Petition for Settlement the Commission had approved in the underlying default service proceeding:

Based upon Commission review of PECO's request for approval of the proposed assignment by Conectiv of its SMA to EDF, it appears that such assignment is consistent with the relevant provisions of the SMA and the Joint Petition for Settlement approved in PECO's DSP proceeding at Docket No. P-2008-2062739. Therefore, further investigation is not warranted at this time, and, accordingly, PECO is authorized to proceed with the proposed assignment by Conectiv of its SMA to EDF.

The proposed assignment from BP to FES satisfies these standards.

9. The April 16 Secretarial Letter, however, rewrites these standards and arbitrarily crafts a new standard for approval of this assignment, one which lacks any basis in the Public Utility Code or Commission Regulations or Orders. According to the April 16 Secretarial Letter, the Conectiv assignment was approved because PECO's need for the assignment was "a major business event involving a complete divestiture of wholesale generation." The April 16 Secretarial Letter explains that Met Ed and West Penn have not raised "a similar business event," and therefore did not establish that the proposed assignment of the SMAs and tranches "is in the public interest."

10. Staff's arbitrary requirement of "a major business event" as a condition of assignment lacks any basis in the earlier Secretarial Letter approving the Conectiv assignment, as well as any basis in Section 16.3 of the SMA, and is patently unreasonable. There are innumerable legitimate business reasons for companies to assign contracts, short of the assignor's complete divestiture of wholesale generation. Likewise, the requirement that Met Ed and West Penn affirmatively establish that the proposed assignment of the tranches "is in the public interest" lacks any legal basis.

11. Even if Met Ed and West Penn were in fact required to affirmatively prove that the proposed transaction is in the public interest, this transaction is in fact in the public interest.

As Staff is aware:

- a. The SMA approved in the Commission's August 16 Order allows the assignment of tranches, without requiring a "major business event;"
- b. The proposed assignment would have no impact on the 50% default supply load cap the Commission established in the August 16 Order;
- c. The ability to assign tranches is critical to making default supply procurements attractive to participants, who need the assurance that if a business need arises, they have the ability to assign tranches to other willing suppliers; and
- d. This load needs to be served and FES is capable and willing to serve it.

The April 16 Secretarial Letter overlooks all of these considerations, invokes nonexistent legal standards, and must be reversed.

**Staff's Determination Creates a Substantial Barrier to Supplier Participation
in Future Default Supply Procurements**

12. Staff's refusal to approve an assignment of an SMA, even when consistent with the SMA provisions and underlying Commission Orders, will have broader negative impacts on Pennsylvania default supply markets. The SMA assignment provision gives suppliers the assurance that they can bid on default load and, if a business need arises, they can assign the obligation.

13. Without this assurance, suppliers may be reluctant to participate in the default supply procurements of Pennsylvania electric distribution companies ("EDCs"). If participants are unable to assign tranches, there may be fewer participants in default supply procurements and future auction clearing prices may rise.

14. Accordingly, Staff's legally and factually unsupportable rejection of the proposed assignment creates a barrier to wholesale supplier participation in the default supply markets of Pennsylvania EDCs. This runs contrary to the Commission's goal of promoting a healthy level of supplier diversity in default supply procurements. August 16 Order at 33.

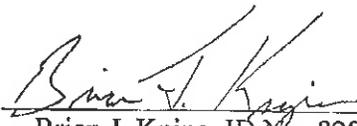
15. FES and BP are aggrieved by Staff's decision not to approve the assignment of BP's SMAs to FES, and FES respectfully requests that the Commission reverse Staff's decision and approve the assignment.

CONCLUSION

For the foregoing reasons, FirstEnergy Solutions Corp. respectfully requests that the Commission reverse Staff's decision not to approve the proposed assignment, approve the assignment, and grant any other relief that is just and reasonable under the circumstances.

Respectfully submitted,

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Dated: April 16, 2013

Attorneys for FirstEnergy Solutions Corp.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of FirstEnergy Solutions Corp. for Appeal	:	P-2011-2273650
from Action of Staff	:	P-2011-2273668
	:	P-2011-2273669
	:	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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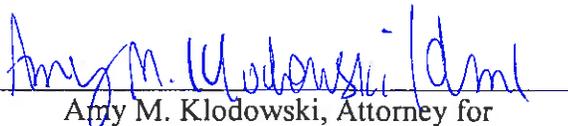
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