

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF EXELON GENERATION COMPANY, LLC TO THE
APRIL 16, 2013 PETITION OF FIRSTENERGY SOLUTIONS CORP.**

I. INTRODUCTION

Exelon Generation Company, LLC (“ExGen”) respectfully submits this Answer, pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) April 23, 2013 Letter regarding FirstEnergy Solutions Corp.’s (“FES”) April 16, 2013 Petition for Appeal from Staff Action (“FES Petition”) in the above-docketed proceedings. The FES Petition was filed in response to Commission Staff’s April 16, 2013 letter (“April 16th Letter”) to Metropolitan Edison Company and West Penn Power Company (“FE Utilities”) denying the FE Utilities’ February 28, 2013 letter (“Feb. 28th Request”) requesting approval of the assignment of Default Service Supplier Master Agreements (“SMAs”) for four tranches of residential default service supply obligations from BP Energy (“BP”) to FES.

While ExGen is the party to this proceeding providing this Answer to the Commission, the PJM Power Providers Group (“P3”)¹ has asked that ExGen indicate P3’s support for the contents herein. In addition, NextEra Energy Power Marketing, LLC and NextEra Energy Services Pennsylvania, LLC, and PPL EnergyPlus, LLC – some of which are also members of P3 – have all asked that ExGen specifically note their individual support for the contents of this pleading.

ExGen commends this Commission for its support of competitive wholesale and retail electricity markets, including its stewardship in developing, reviewing and approving default service rules and electric distribution companies’ (“EDCs”) default service plans in Pennsylvania. In this Answer, ExGen supports the rights of wholesale suppliers to assign their obligations under SMAs, consistent with such SMAs’ terms and conditions, where the assignee meets all of the EDC’s and SMAs’ collateral and other requirements. Orderly assignment of SMA rights and obligations will bolster a properly designed and well-functioning wholesale market, and promote the most reliable and reasonably-priced default service supply for the Commonwealth’s customers. ExGen, with support from P3 and the above-noted companies, specifically – as wholesale suppliers in Pennsylvania and the entire PJM footprint, and including current and potential future default service suppliers – urges the Commission to overturn Staff’s

¹ P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM region. Combined, P3’s member companies own over 87,000 megawatts of generation assets and over 51,000 miles of transmission lines in the PJM Interconnection, L.L.C. (PJM) region, serve nearly 12.2 million customers and employ over 55,000 people in the 13-state and District of Columbia PJM region. The comments contained herein represent the views of P3 as an organization, but not necessarily the views of any particular member with respect to any issue. For more information on P3, please visit www.p3powergroup.com.

decision in the April 16th Letter, reject the arbitrary standard for approval therein, and approve the proposed assignment.

II. ADDITIONAL BACKGROUND ON PROCEEDING

In the April 16th Letter, which would have become final Commission Action within 20 days if not for the FES Petition, Commission Staff rejects the SMA assignment on the basis that the “proposed assignment . . . is not in the public interest” because:

the reasons and/or circumstances involved in the current request do not appear to be a similar business event [to the circumstance where Conectiv Energy Supply, Inc. (“Conectiv”) was being divested and PECO Energy Company sought approval for assignment of its tranches to EDF Trading North America LLC], when compared to the reasons and/or circumstances involved in the Conectiv matter.”²

In response to Staff’s rejection of the assignment, the FES Petition argues that the April 16th Letter “arbitrarily crafts a new standard for approval of this assignment, on which lacks any basis in the Public Utility Code or Commission Regulations or Orders,” and “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.”³ In addition, the FES Petition points out that, in the event that the FE Utilities “were in fact required to affirmatively prove that the proposed transaction is in the public interest,” they would be able to make such a showing because: (1) “[t]he SMA . . . allows the assignment of tranches, without requiring a ‘major business event;’” (2) “[t]he proposed assignment would have no impact on the 50% default supply load cap”; (3) “[t]he ability to assign tranches is critical to making default supply procurements attractive to

² April 16th Letter at p.2.

³ FES Petition at ¶¶9-10.

participants, who need the assurance that if a business need arises, they have the ability to assign tranches”; and (4) “[t]his load needs to be served and FES is capable and willing to serve it.”⁴

III. ANSWER

ExGen supports the ability of SMA holders to assign the rights and obligations of SMA contracts to other wholesale suppliers, consistent with the terms of the SMA and Commission regulation. As FES points out, nowhere in the Commission’s decision approving assignment in the Conectiv matter does the Commission state that a party seeking assignment must show a “major business event” to support such an assignment. The ability to assign obligations under a SMA is an important and necessary provision that wholesale suppliers consider prior to making a decision to bid in a default service procurement and enter into a SMA. Wholesale suppliers must have assurance that they can step out of a SMA and assign those obligations to another supplier that meets the collateral and other requirements under that agreement, under the same price and terms of that agreement. If the Commission limited or hindered the ability to reasonably assign SMAs, wholesale suppliers would most likely include a risk premium to account for such limitations, which premium would lead to higher prices, to the detriment of consumers in the Commonwealth.

These types of assignments in the normal course of a wholesale supplier’s business do not harm the public interest, in this way; EDCs’ default service customers see no increase to their supply prices as a result of such assignments, because the underlying

⁴ FES Petition at ¶11.

prices of the assigned SMAs do not change. In fact, the public interest is served in that default service customers likely benefit from such assignments, as default service supply obligations under assigned SMAs will be met by wholesale suppliers more willing and able to meet those supply requirements. In instances of assignment where the assignee meets or exceeds all of the necessary collateral and other qualification requirements, and where the EDC has approved of such assignment, there should exist a presumption that the assignor has entered into the transaction due to a legitimate business interest in the normal course.

IV. CONCLUSION

For all the foregoing reasons, ExGen – with support from P3 and, specifically, the other suppliers noted above – urges the Commission to (1) support the ability of wholesale suppliers to assign rights and obligations of SMAs, consistent with the provisions of such SMAs, (2) overturn Staff’s decision in the April 16th Letter, (3) reject the arbitrary standard for approval therein, and (4) approve the proposed assignment.

Respectfully submitted,



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*On Behalf of
Exelon Generation Company, LLC*

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