

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Joint Petition of Metropolitan Edison Co.,
Pennsylvania Electric Co., Pennsylvania Power
Co., and West Penn Power Co. for Approval of
their Default Service Programs

Public Meeting held May 9, 2013
2273650-OSA
Docket Nos. P-2011-2273650; P-2011-2273668;
P-2011-2273669; P-2011-2273670

DISSENTING STATEMENT OF COMMISSIONER WAYNE E. GARDNER

On February 12, 2013, an auction was conducted whereby the First Energy electric distribution companies (EDCs) procured generation service for their default service customers for the period of June 1, 2013 to May 31, 2014. On February 28, 2013, Metropolitan Edison Company (Met Ed) and West Penn Power Company (West Penn) requested permission to assign the Supplier Master Agreements (SMA) and the associated tranches of residential default service, from a Winning Bidder to First Energy Solutions (FES), the First Energy EDCs' affiliate. By Secretarial Letter issued on April 16, 2013, the Commission denied FES's request to make the assignment stating that it did not appear to be in the public interest. FES' Appeal of Staff Action is now before the Commission for consideration.

While I agree that this type of assignment is permissible under the provisions of the Supplier Master Agreements entered into between the First Energy EDCs and the Winning Bidder, I cannot ignore that this particular assignment involves affiliated parties, Met Ed, West Penn, and FES. Going forward the Commission should more closely monitor SMAs to ensure that the assignment terms are more transparent to the Commission.

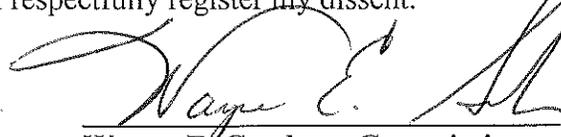
That being said, I do not believe that this assignment is permissible under the terms of the existing affiliated interest agreements between the First Energy EDCs and FES. In the First Energy EDCs' last default service case, the Commission granted a blanket approval for FES to participate in the First Energy EDCs' generation procurements subject to certain load caps. Because wholesale market bid offers are time sensitive and often require regulatory approval within 24 hours, when the Commission approved First Energy's default service case, we approved the use of the *pro forma* SMA's that FES would execute if it were a winning bidder in an auction, and deemed those SMAs to be affiliated interest agreements. However, our approval of the *pro forma* SMA/affiliated interest agreements was contingent upon FES being a "winning bidder in a procurement".¹ The SMA/affiliated interest agreement is not intended to cover affiliated interest transactions between the First Energy EDCs and FES where FES is not the "winning bidder" in a competitive procurement.

¹ See, Joint Petition of Metropolitan Edison Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of their Default Service Programs at 31.

I believe that this type of affiliated interest assignment could jeopardize the integrity of the competitive process. For this reason, I respectfully register my dissent.

May 9, 2013

Date

A handwritten signature in cursive script, appearing to read "Wayne E. Gardner", written over a horizontal line.

Wayne E. Gardner, Commissioner