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July 21, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

RE: FES Industrial & Commercial Customer Coalition v. FirstEnergy Solutions Corp.;
Docket No. C-2014-2425989

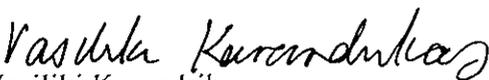
Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") is the FES Industrial and Commercial Customer Coalition's ("FES ICCC") Reply to New Matter of FirstEnergy Solutions Corporation ("FES") in the above-referenced proceeding. Please note that both a Confidential and Public Version of the Reply to New Matter are being filed. FES ICCC reserves all rights with respect to the appropriateness of confidential treatment of the redacted language and the need for a protective order.

Please date stamp a copy of the transmittal letter, as well as a copy of the Confidential and Public Versions of the Reply to New Matter. As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of the Public Version of FES ICCC's Reply to New Matter. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Vasiliki Karandrikas

Counsel to FES Industrial & Commercial
Customer Coalition

VK/emp
Enclosures

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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FES Industrial & Commercial Customer
Coalition,
Petitioner,

v.

FirstEnergy Solutions Corporation,
Respondent.

Docket No. C-2014-2425989

**REPLY OF THE FES INDUSTRIAL & COMMERCIAL CUSTOMER COALITION
TO NEW MATTER OF FIRSTENERGY SOLUTIONS CORPORATION**

On June 9, 2014, the FES Industrial & Commercial Customer Coalition ("FES ICC") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Complaint against FirstEnergy Solutions Corporation ("FES") in the above-captioned proceeding. On July 1, 2014, FES filed an Answer and New Matter to FES ICC's Complaint. Pursuant to 52 Pa. Code Section 5.63, FES ICC hereby replies to the new matter raised in FES's Answer and New Matter. *See* 52 Pa. Code § 5.63. For the reasons stated herein, FES ICC respectfully requests that the Commission consider this reply, reject the new matter filed by FES, and grant the relief requested in FES ICC's Complaint. By and in support hereof, FES ICC states as follows:

1. Paragraph 42 incorporates by reference Paragraphs 1 through 41 of FES's Answer to the FES ICC Complaint.

2. The averments in Paragraph 43 are conclusions of law to which no response is needed. By way of further response, FES ICC incorporates by reference Paragraphs 9-19 of its Answer to the Preliminary Objections of FES ("FES ICC Answer"), which was filed with the Commission on July 11, 2014.

3. The averments in Paragraph 44, including subsections (a) and (b), are denied. By way of further response:

a. The Pass-Through Event provision appears under the section heading of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL].¹ Although FES expounds upon the extreme weather in January 2014 and the impact of such weather upon PJM Interconnection L.L.C.'s ("PJM") system and "ancillary costs," FES fails to identify under which category of the Pass-Through Event provision the claimed "ancillary costs" fall.² Moreover, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL], nor have the components that comprise the price of wholesale power (which includes ancillary costs) changed from 2013 or 2014.³ Thus, contrary to FES's assertions, the use of the Pass-Through Event clause is not applicable under the circumstances of this case.

b. FES contends that the "extraordinary and unforeseeable PJM charges" stemming from the extreme weather in January "fit the criteria of a Pass-Through Event" under the contract. FES's contention appears to be an attempt to invoke the theory of price majeure as a basis to justify its deceptive and potentially fraudulent billing practices against FES ICCC members. As demonstrated above, however, the fixed-price agreement does not identify "extraordinary and unforeseeable" circumstances – such as extreme weather events, changed system conditions, or swings in the underlying economics of the contract – as bases for triggering a Pass-Through Event. Furthermore, the language in the FES fixed-price agreement is clear: [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]. In fact, some FES ICCC members have maintained fixed-price contracts with FES for three or more years. Thus, FES's suggestion

¹ [BEGIN CONFIDENTIAL] [END CONFIDENTIAL].

² FES appears to use the terms "ancillary service charges" and "PJM's ancillary charges" and "PJM charges" interchangeably with "ancillary costs." For the Commission's convenience, we will use the term "ancillary costs."

³ Notably, "ancillary costs" are variable costs and, thus, fluctuate over time. Under a fixed-price arrangement, FES benefits when "ancillary costs" are less than projected at the time it entered into a fixed-price contract.

that price majeure supports its efforts to impose the RTO Expense Surcharge upon FES ICCC members as a Pass-Through Event must be rejected. Simply put, "price majeure" does not satisfy the conditions of a "Pass-Through Event" [BEGIN CONFIDENTIAL] [END CONFIDENTIAL].

4. The averments in Paragraph 45 are denied. By way of further answer, the Pass-Through Event provision is not applicable to the facts of this case. FES's billing practices raise legitimate questions about FES's compliance with the Public Utility Code and Commission regulations applicable to electric generation suppliers ("EGSs") licensed by the Commission.

5. The averments in Paragraph 46 are denied. By way of further answer, the Pass-Through Event provision is not applicable to the facts of this case. FES's efforts to recover "ancillary costs" from FES ICCC members raise legitimate questions about the lawful nature of FES's billing practices.

6. The averments in Paragraph 47 are denied. By way of further answer, to the extent the averments in Paragraph 47 refer to writings cited in the Complaint, such as PJM's Analysis of Operational Events and Market Impacts During the January 2014 Cold Weather Events, these writings speak for themselves and no response is required. By way of further answer, FES ICCC demands strict proof of the allegation that the Complaint "makes several serious and material factual errors in describing both the nature of the PJM charges and the alternatives FES supposedly had that...would have resulted in its avoiding the RTO Expense Surcharge."

7. The averments in Paragraph 48 are admitted. By way of further response, FES ICCC is an *ad hoc* coalition of Large Commercial and Industrial ("C&I") customers receiving electric generation supply service from FES under fixed-price contracts.

8. The averment in Paragraph 49 is admitted.

9. The averments in Paragraph 50 are denied. By way of further response, FES ICCC members are generally sophisticated *retail* customers of electricity. Given the importance of energy cost management to their respective businesses, FES ICCC members typically invest substantial time and effort to remain informed about the structure and functioning of the retail energy market. Such knowledge is critical to FES ICCC members' ability to evaluate and compare the different products offered by competitive retail suppliers (*i.e.*, EGSs) when FES ICCC members are seeking to procure electricity for their Pennsylvania facilities. FES ICCC members also maintain a fundamental understanding of the wholesale power markets, which enhances members' ability to assess EGS offers during the procurement process. FES ICCC members, however, do not follow wholesale power markets on an hourly or even daily basis, as EGSs likely do. Whereas EGSs are in the energy market business, FES ICCC members' primary focus is their commercial or industrial business; involvement in the retail energy market is simply necessary to support their business operations. Thus, while FES ICCC members are sophisticated retail customers with an understanding of the wholesale power markets, they do not possess the same level of knowledge or sophistication regarding the wholesale market as an EGS.

10. In response to Paragraph 51, FES ICCC submits that Paragraph 35 of the Complaint speaks for itself and no response is required. By way of further answer, FES ICCC incorporates by reference its response in Paragraph 9.

11. The averments in Paragraph 52 are admitted in part. By way of further answer, FES ICCC admits that seven of its members participated in the FirstEnergy electric distribution companies' default service proceeding at Docket Nos. P-2013-2391368 *et al.* (*i.e.*, "FE DSP

Proceeding"). In response to the remaining averments in Paragraph 52, FES ICCC submits that the Complaint and the Recommended Decision issued May 6, 2014 in Docket Nos. P-2013-2391368 speak for themselves and no response is required.

12. In response to Paragraph 53, FES ICCC submits that the Main Brief in the FE DSP Proceeding speaks for itself and no further response is required. By way of further response, the FE DSP Proceeding focused on the potential shifting of retail transmission rate collection from EGSs to electric distribution companies for retail shopping customers. By contrast, this proceeding centers on FES's efforts to recover purported increased "ancillary costs" in a manner that is deceptive, if not fraudulent, and in violation of statutory and regulatory requirements applicable to EGSs as well as the conditions of FES's EGS license. Thus, the issues in this proceeding are completely different from, and unrelated to, those raised in the FE DSP Proceeding. By way of further response, FES ICCC incorporates by reference its response in Paragraph 9.

13. In response to Paragraph 54, FES ICCC submits that the Reply Brief in the FE DSP Proceeding speaks for itself and no further response is required. By way of further response, FES ICCC members participate in the negotiation of their retail supply agreements in an attempt to craft terms and conditions that comport with their companies' business policies and objectives, such as price certainty and reasonable risk allocation.

14. In response to Paragraph 55, to the extent FES references a writing, the writing speaks for itself and no response is required. By way of further response, FES ICCC incorporates by reference its response in Paragraph 9.

15. The averments in Paragraph 56 are denied. By way of further response, FES's obligation to comport with Pennsylvania law and Commission regulations is not dependent upon

its customers' sophistication level. 66 Pa. C.S. § 2802(14). Moreover, FES ICC members are large end-users of electricity who are involved in the type of commercial and industrial business enterprises the Electricity Generation Customer Choice and Competition Act ("Competition Act") intended to preserve and promote by ensuring reasonable electricity costs. 66 Pa. C.S. §§ 2802(6) & 2802(9). The Commission should dismiss FES's effort to distract it from the central issue of the Complaint, namely, the alleged deceptive and potentially fraudulent billing practices of a licensed EGS. To do so is necessary to carry out the Commission's duty under, and consistent with the policy objectives of, the Competition Act.

WHEREFORE, the FES Industrial and Commercial Customer Coalition respectfully requests that the Commission consider this reply, reject the new matter filed by FES, and grant the relief requested in the Complaint filed in the above-captioned proceeding.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

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Counsel to the FES Industrial and Commercial
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Dated: July 21, 2014

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AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA:

: ss:

COUNTY OF DAUPHIN :

Vasiliki Karandrikas, being duly sworn according to law, deposes and says that she is counsel to the FES Industrial & Commercial Customer Coalition, that in this capacity she is authorized to and does make this affidavit for them, and that the facts set forth in the foregoing Reply to New Matter are true and correct to the best of her knowledge, information, and belief.

Vasiliki Karandrikas
Vasiliki Karandrikas

SWORN TO and subscribed

before me this 21st day of July, 2014.

Ellen M. Palmer
Notary Public

(SEAL)

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Ellen M. Palmer, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires Aug. 1, 2014

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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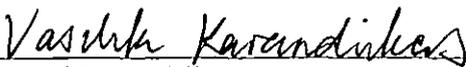
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Counsel to the FES Industrial and Commercial
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Dated this 21st day of July, 2014 at Harrisburg, Pennsylvania.