



August 4, 2015

**VIA E-FILE**

**David P. Zambito**

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Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

**ANSWER OF FIRSTENERGY SOLUTIONS CORP. IN OPPOSITION TO THE MOTION  
TO COMPEL OF FES INDUSTRIAL & COMMERCIAL CUSTOMER COALITION**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission please find FirstEnergy Solutions Corp.'s Answer in Opposition to the Motion to Compel of FES Industrial & Commercial Customer Coalition in the above-referenced proceeding. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito  
Counsel for *FirstEnergy Solutions Corp.*

DPZ/kmg  
Enclosure  
cc: Per Certificate of Service

**CERTIFICATE OF SERVICE**  
**FES Industrial & Commercial Customer Coalition**  
**v.**  
**FirstEnergy Solutions Corp.**  
**Docket No. C-2014-2425989**

I hereby certify that I have this day served a true copy of FirstEnergy Solutions Corp.'s Answer to FES Industrial & Commercial Customer Coalition's Motion to Compel, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA ELECTRONIC AND FIRST CLASS MAIL:**

Honorable Katrina L. Dunderdale  
Pennsylvania Public Utility Commission  
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**Counsel for Office of Consumer  
Advocate**

DATED: August 4, 2015

  
\_\_\_\_\_  
David P. Zambito, Esquire  
Counsel for *FirstEnergy Solutions Corp.*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Administrative Law Judge  
Katrina L. Dunderdale

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

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**ANSWER OF FIRSTENERGY SOLUTIONS CORP.  
IN OPPOSITION TO THE MOTION TO COMPEL OF  
FES INDUSTRIAL & COMMERCIAL CUSTOMER COALITION**

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Pursuant to 52 Pa. Code § 5.342(g)(1), FirstEnergy Solutions Corp. (“FES”), by and through the undersigned counsel, hereby files this Answer in Opposition to the Motion to Compel filed by FES Industrial & Commercial Customer Coalition (“FES-ICCC”) in the above-referenced proceeding on July 30, 2015. For the reasons set forth below, FES-ICCC’s Motion to Compel should be denied in its entirety.

**I. INTRODUCTION**

On July 10, 2015, FES-ICCC propounded its First Set of Interrogatories on FES (“FES-ICCC Set I”). FES-ICCC Set I contained 12 questions, each with multiple subparts. On July 20, 2015, FES timely objected to five of those requests, Question Nos. 8, 9, 10, 11, and 12. A copy of FES-ICCC’s objections, which also lists the objectionable interrogatories, is attached as

**Appendix A.** On July 30, 2015, FES-ICCC filed the above-referenced Motion to Compel. FES files this Answer to that motion pursuant to 52 Pa. Code § 5.342(g)(1).

## **II. ARGUMENT**

### **A. FES-ICCC's Question No. 8 Seeks Irrelevant, Immaterial, Inadmissible Information, and Is Burdensome, and FES's Objections to the Question Should be Sustained.**

Through Question No. 8 and its subparts, FES-ICCC seeks five years' worth (from March 2009 to March 2014) of specific information regarding FES's past invocation of a "Pass-Through Event provision with respect to any customer who is not an FES ICC member." The request extends to all rate classes and all states in which FES serves customers. Such requests have nothing to do with the remaining matters before the Commission, as limited throughout the course of this proceeding, and should not be allowed. The instant complaint proceeding has been expressly limited by the Commission and the Presiding Officer to whether FES violated 66 Pa. C.S. § 2807(d)(2), 52 Pa. Code § 54.53(1), or *id.* § 54.43(f) in its dealings with individual FES-ICCC members, the actual complainants in this proceeding. That is, the issues are whether FES provided adequate and accurate information to individual FES-ICCC members regarding its services and whether FES engaged in fraudulent or deceptive billing conduct with individual FES-ICCC members. *See* Second Interim Order, pp. 4-5, Ordering Paragraph 2 (Dec. 18, 2014). The Commission has ruled that whether FES correctly used the pass-through clause in accordance with its contractual terms and conditions is not at issue in this proceeding. Question No. 8 makes no effort to address the actual issues by inquiring into how FES marketed to the complainants or how FES billed the complainants. Clearly the information sought in Question No. 8 is outside the narrow parameters of relevancy established by the Commission in this case.

In its Motion to Compel, FES-ICCC argues that “[e]ven assuming, *arguendo*, that the information produced by FES in response to Question No. 8 is ultimately determined to be not relevant for purposes of presentation into the evidentiary record, and, thus, inadmissible . . . [the discovery should be allowed because it is] reasonably calculated to lead to the discovery of admissible evidence.” Motion to Compel, ¶ 8. Question No. 8 cannot survive this standard because it is not reasonably calculated to lead to the discovery of admissible evidence. As stated above, the Commission has determined that the issues in this case are limited to whether FES violated Pennsylvania law by allegedly failing to provide adequate and accurate information to individual FES-ICCC members regarding its services and whether FES engaged in fraudulent or deceptive billing conduct with individual FES-ICCC members. How FES has used pass-through clauses since 2009 has no relationship to these issues. Whether or not FES previously invoked pass-through provisions in service agreements with customers who are not FES-ICCC members was based upon the terms, conditions, and circumstances of those individual contracts. Those instances are completely irrelevant to whether FES provided each individual FES-ICCC member adequate information regarding its services, when the complainants were choosing an electric generation supplier, or whether FES engaged in any type of fraudulent billing with each individual FES-ICCC member.

A prime example of the irrelevant nature of this question can be seen in respect to subpart (c), wherein FES-ICCC requests information regarding pass-through events in other states. FES’s activities in states other than Pennsylvania cannot possibly violate the Pennsylvania Public Utility Code. Clearly, any information regarding how FES invoked a pass-through provision in a contract under and subject to, for example, Illinois state law and oversight cannot be reasonably calculated to lead to the discovery of admissible information in this proceeding.

In addition to the apparent irrelevancy of Question No. 8, the amount of irrelevant data it seeks is burdensome. In its Complaint, FES-ICCC references a March 2014 notice that was sent to FES-ICCC members regarding the invocation of a pass-through clause in the members' contracts with FES. The instant request seeks information for five years prior to that notice or as far back as March 2009, for all of FES's non-FES-ICCC customers. Such a lengthy search period is clearly not reasonably calculated to lead to the discovery of admissible information.

As the courts of this Commonwealth have noted, discovery must be limited so that it does not become a "fishing expedition." *Koken v. One Beacon Ins. Co.*, 911 A. 2d 1021, 1025 (Pa. Cmwlth. 2006); *Pelzer v. Wrestle et al.*, 49 A.3d 926 (Pa. Cmwlth. 2012); *Sabol v. Allied Glove Corp. et al.*, 37 A.3d 1198 (Pa. Super 2011). As noted above, given the scope of the information requested, the instant request does not seek relevant material, is not reasonably calculated to lead to the discovery of admissible evidence, is overly burdensome, and amounts to a fishing expedition. Accordingly, FES's objection to Question No. 8 should be sustained and the interrogatory should not be allowed.

**B. FES-ICCC's Question Nos. 9-12 Seek Irrelevant, Immaterial, and Inadmissible Information and FES's Objections to these Questions Should be Sustained**

Questions Nos. 9-12 seek information based upon a May 2015 newspaper article. The article features improper, unprivileged comments by FES-ICCC counsel about this proceeding, in an inappropriate attempt to try the case in the court of public opinion. It also includes purported responses to FES-ICCC counsel's comments by an "FES spokeswoman" to defend against FES-ICCC counsel's assertions. The alleged spokeswoman's responses are not communications to any FES-ICCC member, nor any other customer, to inform their choice of electric generation supplier.

The discovery propounded regarding this newspaper article is irrelevant to the limited issues remaining before the Commission. As noted above, the only issues before the Commission in this proceeding are whether FES provided adequate and accurate information to individual FES-ICCC members regarding its services and whether FES engaged in fraudulent or deceptive billing conduct with individual FES-ICCC members. Contrary to Paragraph 12 of FES-ICCC's Motion to Compel, this is not a broad, generic investigation into "the potentially unlawful nature of FES's billing and marketing practices," nor FES's "duty to provide accurate and adequate information regarding its services to "customers." This is an investigation into what FES told the complainants in connection with their choice of FES as their electric generation supplier, and FES's bills to the complainants. What an FES spokesperson purportedly said generically about the imposition of the RTO Expense Surcharge in May 2015, in defense of FES in response to improper and unprivileged statements of FES-ICCC counsel, is irrelevant to whether FES provided the FES-ICCC members with accurate and adequate information regarding their contract with FES for retail electric generation supply or the manner in which FES billed the RTO Expense Surcharge in 2014. The issues in the case are defined by the actual pleadings and the Commission's prior rulings, not subsequent wars of words in newspaper articles. FES-ICCC counsel cannot expand the scope of the issues and proper discovery by baiting FES with improper and incorrect statements to the media that require FES to defend itself in the court of public opinion.

Moreover, any discovery based upon the May 2015 newspaper article is not reasonably calculated to lead to the discovery of admissible evidence. The absurdity of FES-ICCC's attempt to argue that the questions could lead to the discovery of admissible evidence is best highlighted by paragraph 24 of its Motion to Compel. In that paragraph, FES-ICCC opines that "[b]ecause the allegations in this proceeding focus on FES's potential fraudulent and deceptive billing and

marketing practices and provision of accurate and adequate customer information, full review of FES's representations as to these issues, including all avenues through which a customer may have received such information (*e.g.*, website, bill inserts, or spokeswoman) are relevant to these proceedings.” As the newspaper article at issue was written in May 2015, the statements purportedly attributed to an FES spokesperson could not have any bearing on whether FES provided the FES-ICCC members adequate and accurate information when they entered into contracts with FES for the provision of electric generation supply years before or on the billing sent to the FES-ICCC members in 2014 for the RTO Expense Surcharge. It is worth keeping in mind that the instant complaint was filed in June 2014, almost a full year before the article in question was written. Clearly, the discovery propounded by FES-ICCC is simply to an impermissible fishing expedition designed to harass FES.

FES-ICCC's Motion to Compel also incorrectly attempts to justify the questions by claiming that contract interpretation issues are at issue in this proceeding. The Commission's December 12, 2014 Order stated that “Commission jurisdiction does not extend to interpreting the terms and conditions of a contract between an EGS and a customer to determine whether a breach has occurred, or setting the rates an EGS can charge.”<sup>1</sup> FES-ICCC posits that the Order “reflects that the Commission must have considered that the Complaints' disposition will necessarily require the Commission review certain provisions of the contract between FES and FES-ICCC members” and that “inherent in the December 12 Order is the understanding that familiarity with certain contract provisions will be necessary to inform the PUC's decision-making process . . . .” Motion to Compel, ¶ 13. This is not what the Commission held, notwithstanding multiple

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<sup>1</sup> *FES Industrial & Commercial Customer Coalition v. FirstEnergy Solutions Corp.*, Docket No C-2014-2425989 (Order entered Dec. 12, 2014), p. 19-20.

opportunities to clarify the scope of these proceedings in its Orders. As a result, “information regarding FES’s understanding of the Pass-Through Event clause,” Motion to Compel at Paragraph 17, is irrelevant. FES-ICCC is, through discovery and its Motion to Compel, trying to attack collaterally the Commission’s holding that issues of contract interpretation are off-limits in this proceeding.

FES-ICCC’s claim in Paragraph 12 of the Motion to Compel that “Question Nos. 9-12 focus on obtaining information concerning FES’s communication to customers regarding its products . . .”, is contradicted by the fact that these questions seek discovery regarding not only selectively-used words purportedly from the FES spokesperson, but also its own counsel’s quotes in the article as well as words and phrases used by the author of the article. For example, the article quotes FES-ICCC counsel as using the term “fixed price contract,” but nowhere in the article is the use of that term attributed to the FES spokesperson. Glossing over the fact that the FES spokesperson did not use the term, FES-ICCC Question 9(a) requests “[p]rovide FES’s definition of a fixed-price contract. Provide all supporting documents.” Review of the article illustrates that this is only one of several attempts to ask FES to explain words not even used by the purported FES spokeswoman.

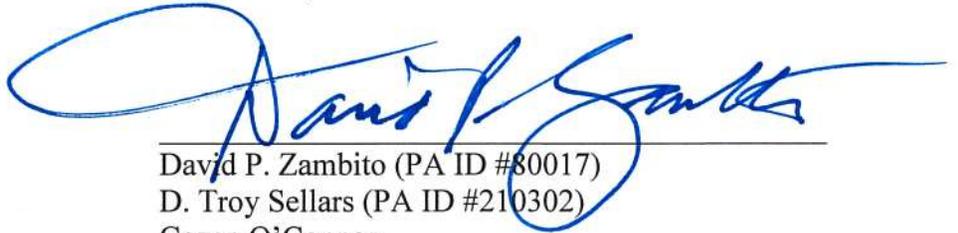
FES-ICCC’s position is an impermissible attempt to broaden the issues before the Commission to justify wide-ranging discovery including questions regarding *ex post facto* statements attributed to an FES spokesperson. This attempt should not be allowed and FES’s objections to the propounded interrogatories should be sustained.

### III. CONCLUSION

For the reasons set forth above, FES's objections to Question Nos. 8 – 12 of FES-ICCC's First Set of Interrogatories are well-founded and should be sustained. The questions propounded by FES-ICCC are overly burdensome, irrelevant, and not likely to lead to the discovery of admissible evidence.

WHEREFORE, FirstEnergy Solutions Corp. respectfully requests that the Honorable Administrative Law Judge Katrina L. Dunderdale issue an order sustaining the objections of FES and dismissing the objected-to interrogatories of FES-ICCC.

Respectfully submitted,



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Counsel for *FirstEnergy Solutions Corp.*

Dated: August 4, 2015

# **APPENDIX A**



July 20, 2015

**VIA ELECTRONIC MAIL AND FIRST CLASS MAIL**

**D. Troy Sellars**

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

**FIRSTENERGY SOLUTIONS CORP.'S OBJECTIONS TO FES INDUSTRIAL &  
COMMERCIAL CUSTOMER COALITION INTERROGATORIES, SET I, Nos. 8-12**

Dear Ms. Karandrikas:

Enclosed please find two (2) copies of FirstEnergy Solutions Corp.'s Objections to the above-referenced discovery requests. All active parties to this proceeding have been served in accordance with the enclosed Certificate of Service. If you have any questions, please feel free to contact me.

Sincerely,

COZEN O'CONNOR

By: D. Troy Sellars

Counsel for *FirstEnergy Solutions Corp.*

DTS/kmg  
Enclosures

cc: Rosemary Chiavetta, Secretary (*Letter and Certificate of Service only*)  
Per Certificate of Service

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**CERTIFICATE OF SERVICE**  
**FES Industrial & Commercial Customer Coalition**  
**v.**  
**FirstEnergy Solutions Corp.**  
**Docket No. C-2014-2425989**

I hereby certify that I have this day served a true copy of FirstEnergy Solutions Corp.'s Objections to FES Industrial & Commercial Customer Coalition Interrogatories, Set I (Nos. 8-12), upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA ELECTRONIC AND FIRST CLASS MAIL:**

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Charis Mincavage, Esquire  
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bpierce@paoca.org  
**Counsel for Office of Consumer  
Advocate**

DATED: July 20, 2015



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D. Troy Sellars, Esquire  
Counsel for *FirstEnergy Solutions Corp.*



extent that they seek documents that are privileged, or otherwise immune, or protected from disclosure. In addition, the inadvertent release of privileged information or documents shall not constitute a waiver of any privilege, and FES reserves the right to require the return and/or destruction of any privileged document that is inadvertently produced.

3. FES objects to the Interrogatories to the extent that they seek information that is irrelevant or not reasonably calculated to lead to the discovery of admissible evidence.

4. FES objects to the Interrogatories to the extent that they are unduly burdensome, overly broad, vague, and/or ambiguous.

5. FES generally objects to the each Interrogatory purporting to require that it identify or produce each document or all documents relating to its allegations, contentions, and/or positions as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

6. FES objects to the Interrogatories to the extent that they seek information and/or documents pertaining to, or in the possession and/or control of, any, any entity other than FES or are readily obtainable by FES-ICCC from a source other than FES in a more convenient, less burdensome and/or less expensive manner.

7. FES objects to the Interrogatories to the extent that they are duplicative.

8. FES objects to the Interrogatories to the extent that they seek confidential and proprietary business information which is not relevant or reasonably calculated to lead to the discovery of admissible evidence.

9. Any failure by FES to assert a particular objection to any of the following requests shall not constitute a waiver of said objection.

10. FES reserves the right to modify, supplement or amend these responses and objections.

11. FES hereby incorporates by reference, as if fully set forth therein, each of the foregoing General Objections in each of its responses to each of the individual Interrogatories.

**FES-ICCC to FES Set I, Question No. 8**

Q8. In the five years prior to the March Notice Letter, did FES invoke the Pass-Through Event provision with respect to any FES customer who is not an FES ICCC member? If yes, provide the following:

- a) The number of FES customers affected;
- b) The class of each customer;
- c) The state in which these customers were located;
- d) The date the Pass-Through Event provision was invoked by FES;
- e) The basis for invoking the Pass-Through Event provision;
- f) A description of how the FES customer was notified that FES was invoking the Pass-Through Event provision;
- g) The term(s) in the customer's Electricity Supply Agreement affected by the triggering of the Pass-Through Event provision, including any price impact; and
- h) All documents supporting FES's responses.

**Objection**

The interrogatory is unduly burdensome, overly broad, irrelevant, and not likely to lead to the discovery of relevant admissible evidence. For the reasons set forth in more detail below, the interrogatory should be disallowed.

Discovery is not permitted if it would cause unreasonable annoyance, oppression, burden, or expense or would require the unreasonable investigation by the deponent, a party, or witness. 52 Pa. Code § 5.361(a)(regarding "Limitation of scope of discovery"). The instant interrogatory specifically seeks information regarding "any FES customer who is not an FES ICCC member." This complaint proceeding has been limited by the Commission and the Presiding Officer to the issue of whether FES violated 66 Pa. C.S. § 2807(d)(2), 52 Pa. Code § 54.53(1), or *id.* § 54.43(f) in its dealings with individual-ICCC members. Therefore, any discovery relating to "any FES customer who is not an FES-ICCC member" is patently irrelevant and unreasonable and should not be allowed.

**FES-ICCC to FES Set I, Question No. 9**

Q9. Reference the newspaper article entitled, "Case against FirstEnergy Solutions disputes cold weather fee for fixed price customers (May 19, 2015) at <http://powersource.post-gazette.com/powersource/consumers-powersource/2015/05/19/Case-against-FirstEnergy-Solutions-disputes-utility-cold-weather-fee-for-fixed-price-energy-customers/stories/201505190005>. The article quotes Ms. Diane Francis, FES spokeswoman, as describing a fixed-rate contract as "more of a shared risk" between the supplier and customer.

- a) Provide FES's definition of a fixed-priced contract. Provide all supporting documents.
- b) Provide all documents and materials given to FES ICCC members addressing FES's fixed-price contract.
- c) Provide FES's definition of "shared risk." Provide all supporting documents.

- d) Provide all documents and materials given to FES ICCC members, including in advance of contract execution, addressing the "shared risk" under a fixed rate contract with FES.

### **Objection**

This interrogatory is overly broad, ambiguous, irrelevant, and not likely to lead to the discovery of relevant admissible evidence. For the reasons set forth in more detail below, the interrogatory is improper and should be withdrawn or disallowed.

Discovery is not permitted if it would cause unreasonable annoyance, oppression, burden, or expense or would require the unreasonable investigation by the deponent, a party, or witness. 52 Pa. Code § 5.361(a)(regarding "Limitation of scope of discovery"). The instant interrogatory is based solely upon a newspaper article which was published more than a year after the events which gave rise to FES-ICCC's Complaint. The article also purports to quote an FES spokesperson responding to inappropriate and unprotected comments to the press by FES-ICCC counsel, regarding what the author of the article termed the "fixed-rate contract" and FES-ICCC's counsel termed a "fixed price contract." The article constitutes hearsay and lacks sufficient indicia of reliability.

The context in which the author purportedly quotes the FES spokesperson is unclear at best. As an example of the contextual ambiguity, only 54 words of the entire article are designated as direct quotes by the FES spokesperson and several of those purported quotes are surrounded by the author's presentation of his story. It is patently unreasonable to allow discovery regarding hearsay and the selected use of purported quotes. Likewise, requests to

parse and interpret nearly every word of selected non-contextual quotes are harassing and cause an unreasonable annoyance.

The purported comments of the FES spokesperson occurred well over a year after the events giving rise to the FES-ICCC complaint. The comments were necessary to refute public statements, made outside of the context of litigation, by FES-ICCC's counsel regarding issues of contract interpretation. The comments by FES's spokesperson were not legal in nature and were intended only to protect the public reputation of FES against the overly-broad and generic comments of FES-ICCC's counsel. It is unreasonable for FES-ICCC to expect FES to assign legal precision to comments that were made outside of the legal realm.

Because this complaint proceeding has been limited by the Commission and the Presiding Officer to the issue of whether FES violated 66 Pa. C.S. § 2807(d)(2), 52 Pa. Code § 54.53(1), or *id.* § 54.43(f) in its dealings with individual FES-ICCC members, *ex post facto* statements by an FES spokesperson are entirely irrelevant to this proceeding. Specifically, the Commission has made clear that contractual interpretation is not at issue in the instant proceeding. *See* the Commission's December 12, 2014 Order in the instant matter at 19-20 ("It is a basic tenet of Public Utility Law that the Commission only has those powers that are enumerated to it. *Feingold v. Bell Tel. Co. of Pa.*, 477 Pa. 1, 383 A.2d 791 (1977). A review of the Code, 66 Pa. C. S. §§ 2807, 2809, and related case law makes it clear that Commission jurisdiction does not extend to interpreting the terms and conditions of a contract between an EGS and a customer to determine whether a breach has occurred, or setting the rates an EGS can charge"). The statements in the article are not reasonably related to the issue of whether FES engaged in fraudulent or deceptive conduct with individual FES-ICCC members

that allegedly occurred more than a year prior. The statements instead relate the issue of contract interpretation, over which the Commission lacks jurisdiction. As such, this interrogatory is improper and should be withdrawn or disallowed.

Moreover, the instant interrogatory is redundant. FES-ICCC's Interrogatories Set I, Nos. 1 through 7, already demand substantial information and documentation regarding each FES-ICCC member's contract with FES. To extent such information is requested again, it is duplicative and it is unreasonable to have FES once again provide the same information.

Accordingly, for all of the reasons set forth above, this Interrogatory should be disallowed. FES-ICCC's questions are overlybroad and do not reasonably relate to the specific interactions between FES and individual FES-ICCC members.

**FES ICCC to FES Set I, Question No. 10**

Q10. Reference the newspaper article entitled, "Case against FirstEnergy Solutions disputes cold weather fee for fixed price customers (May 19, 2015) at <http://powersource.post-gazette.com/powersource/consumers-powersource/2015/05/19/Case-against-FirstEnergy-Solutions-disputes-utility-cold-weather-fee-for-fixed-price-energy-customers/stories/201505190005>. According to the article, Ms. Francis explained FES "offered customers a lower fixed rate than other competitive suppliers...so it could include a "pass-through" clause.

- a) Identify the "customers" referenced by Ms. Francis.
- b) Identify the "other suppliers" referenced by Ms. Francis.
- c) Provide documentation supporting the assertion that FES's fixed rate was lower than the fixed rate offered by other suppliers due to the pass-through clause.
- d) Define the "pass-through clause" referenced by Ms. Francis.

- e) Provide all documents and materials used to explain the relationship between the "fixed rate" offered by FES and the inclusion of a "pass-through clause" to FES customers.

**Objection**

Please see the objection set forth in response to Question No. 9 above, which is incorporated by reference as if set forth herein at length.

**FES-ICCC to FES Set I, Question No. 11**

Q11. Reference the newspaper article entitled, "Case against FirstEnergy Solutions disputes cold weather fee for fixed price customers (May 19, 2015) at <http://powersource.post-gazette.com/powersource/consumers-powersource/2015/05/19/Case-against-FirstEnergy-Solutions-disputes-utility-cold-weather-fee-for-fixed-price-energy-customers/stories/201505190005>. The article quotes Ms. Diane Francis as follows: "Other suppliers were including that risk premium in that price, so actually [our] customers received a lower price."

- a) Identify the "other suppliers" referenced by Ms. Francis;
- b) Describe the "risk premium" referenced by Ms. Francis;
- c) Identify the "price" referenced by Ms. Francis;
- d) Describe the "lower price" referenced by Ms. Francis;
- e) State the number of customers who "received a lower price" according to Ms. Francis; and
- f) Provide all supporting documents.

**Objection**

Please see the objection set forth in response to Question No. 9, which is incorporated by reference as if set forth herein at length.

**FES-ICCC to FES Set I, Question No. 12**

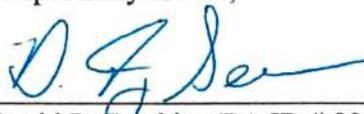
Q12. Reference the newspaper article entitled, "Case against FirstEnergy Solutions disputes cold weather fee for fixed price customers (May 19, 2015) at <http://powersource.post-gazette.com/powersource/consumers-powersource/2015/05/19/Case-against-FirstEnergy-Solutions-disputes-utility-cold-weather-fee-for-fixed-price-energy-customers/stories/201505190005>. The article quotes Ms. Diane Francis, FES spokeswoman, as follows: "This unprecedented event occurred, and we had to pass it through. But customers paid this charge to other suppliers."

- a) Identify the "unprecedented event" referenced by Ms. Francis.
- b) Identify the "we" referenced by Ms. Francis.
- c) Define "it" as used by Ms. Francis.
- d) Identify the "customers" referenced by Ms. Francis.
- e) Identify the "charge" referenced by Ms. Francis.
- f) Identify the "other suppliers" referenced by Ms. Francis.
- g) Explain the basis for FES's position that "we had to pass it through."
- h) Explain the basis for FES's position that "customers paid this charge to other suppliers."

**Objection**

Please see the objection set forth in response to Question No. 9, which is incorporated by reference as if set forth herein at length.

Respectfully served,



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David P. Zambito (PA ID # 80017)

D. Troy Sellars (PA ID #210302)

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