

August 3, 2015

David P. Zambito, Esquire  
Cozen O'Connor  
17 North Second Street  
Suite 1410  
Harrisburg, PA 17101-1236  
717-703-5892  
(new address as of May 18, 2015)  
(Assistant: Keeley Grant @ 717-703-5894)

C-2014-2425989

**UPS FILING TO:**  
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120  
717-772-7777

**RECEIVED**

AUG 03 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Please accept the following original filing via overnight delivery:

1. FirstEnergy Solutions Corp.'s Motion to Compel FES Industrial & Commercial Customer Coalition to respond to Discovery Sets I and II; Docket No. C-2014-2425989

Should you have any questions, please contact us at the above-listed telephone numbers. Please return the stamped copy via First Class Mail in the attached postage, pre-paid envelopes. Thank you.



August 3, 2015

**VIA OVERNIGHT DELIVERY**

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

**David P. Zambito**

Direct Phone 717-703-5892  
Direct Fax 215-989-4216  
dzambito@cozen.com

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AUG 03 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

**FIRSTENERGY SOLUTIONS CORP. MOTION TO COMPEL**

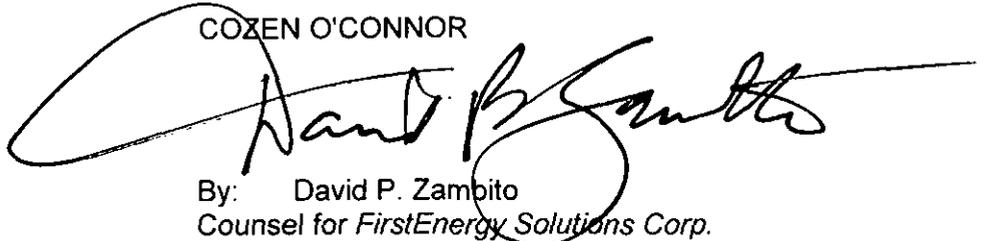
Dear Secretary Chiavetta:

Enclosed for filing with the Commission please find FirstEnergy Solutions Corp.'s Motion to Compel FES Industrial & Commercial Customer Coalition to respond to discovery Sets I and II 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

**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. :  
FirstEnergy Solutions Corp. :

Docket No. C-2014-2425989

**RECEIVED**

AUG 03 2015

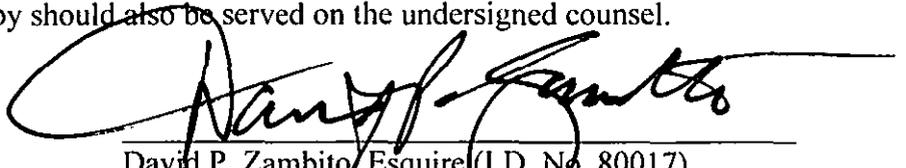
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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**NOTICE TO PLEAD**

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You are hereby advised that, pursuant to 52 Pa. Code § 5.342(g)(1), you may answer the enclosed Motion to Compel within five (5) days after the date of service. Your answer should be filed with the Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265. A copy should also be served on the undersigned counsel.



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David P. Zambito, Esquire (I.D. No. 80017)  
D. Troy Sellars, Esquire (I.D. No. 210302)  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
Telephone: (717) 703-5892  
Facsimile: (215) 989-4216  
E-mail: dzambito@cozen.com  
E-mail: tsellars@cozen.com  
Counsel for *FirstEnergy Solutions Corp.*

Dated August 3, 2015



propounded interrogatories and requests for production are properly within the scope of allowed discovery,<sup>1</sup> and because the objections are without merit and should be dismissed, FES is filing the instant motion to compel, pursuant to 52 Pa. Code § 5.342(g).<sup>2</sup> The individual objections will be address below.

## II. ARGUMENT

### Set I, Instruction Nos. 16 and 17

FES's Instruction No. 16 to Set I provides:

If, in connection with an interrogatory, the Responding Party contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorneys' work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

FES's Instruction No. 17 to Set I provides:

If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and, (c) the basis on which the privilege or other protection from disclosure is claimed.

FES-ICCC objected to these instruction with the same objection which posits:

By this instruction, FES seeks discovery of information that is patently privileged. A party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Pursuant to Section 5.361(a)(3), privileged information, or information related to privileged matters, is not properly subject to discovery. While

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<sup>1</sup> 52 Pa. Code § 5.321(c) provides "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

<sup>2</sup> 52 Pa. Code § 5.342(g) provides that "within 10 days of service of an objection to interrogatories, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection and compel that the interrogatory be answered."

FES has acknowledged that privileged documents are not subject to discovery, the above instruction would nonetheless require FES ICCC, its representatives or group members, as applicable, to furnish information related to privileged matters. Such a request is contrary to Section 5.361(a)(3) of the Commission's Regulations.

FES-ICCC's objections to these instructions are without merit and should be dismissed.

The instructions merely provide the parameters for the general identification of responsive material purportedly protected by a privilege. Without such a basic identification, FES will not have the opportunity to know of, much less challenge, if appropriate, FES-ICCC's assertion of a privilege as to any set of responsive documents. As the party asserting a privilege, FES-ICCC must identify the protected document or information and set forth facts showing that the privilege has been properly invoked. *See T. M. v. Elwyn, Inc.*, 950 A.2d 1050, 1062-63 (Pa. Super. 2008)(holding that it is impossible for a court to determine whether any privilege applies when the objection has failed to identify or describe any documents that may be protected because the party claiming a privilege "must initially set forth facts showing that the privilege has been properly invoked.")(internal quotations and citations omitted). These instructions do not seek privileged information, rather they seek the identification of any such information and they fully comport with the law. Accordingly, FES-ICCC's objections the above-referenced instructions should be dismissed.

**Set I, Request Nos. 5 and 6**

FES Set I, Request No. 5, provides:

Provide a copy of any solicitation letter or other communication(s) to potential FES-ICCC members intended to induce them to join FES-ICCC.

FES-ICCC objected to this request as follows:

FES's question is objectionable on multiple bases. First, a party may not ask interrogatories related to information that is not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). The scope of this

proceeding was defined in the Presiding Administrative Law Judge's Second Interim Order dated December 18, 2014, in Docket No. C-2014-2425989 ("December 18 Order"). According to the December 18 Order, the scope of this proceeding is limited to "whether FES violated Section 2807(d)(2) of the Code, 66 Pa. C.S.A. § 2807(d)(2), and Sections 54.43(1) and 54.43(f) of the Commission's Regulations, 52 Pa. Code § 54.31(1) and § 54.43(f)." See December 18 Order at Ordering Paragraph 2. This interrogatory requests information that is unrelated to FES's compliance with statutes or regulations applicable to Pennsylvania's competitive electricity suppliers and not likely to lead to the discovery of admissible evidence. Therefore, the requested information is not relevant to this proceeding.

In addition, a party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Pursuant to Section 5.361(a)(3), privileged information, or information related to privileged matters, is not properly subject to discovery. The communications between any potential FES ICCC member and legal counsel are protected under the attorney-client and work-product privileges. Therefore, the requested information is not properly subject to discovery.

For the foregoing reasons, FES ICCC objects to the instant interrogatory.

FES-ICCC's objection appears to argue two points, that the request is not reasonably calculated to lead to the discovery of admissible evidence (relevancy) and that it seeks privileged material. These objections will address below.

FES-ICCC's objection based upon relevancy is without merit and should be dismissed. When a party objects to a discovery request based upon a claim that the information sought is not relevant, that party must make an initial showing regarding "the non-discoverability" of the information; further this showing must be made against the backdrop that "[d]iscovery is [to be] liberally allowed and all doubts should be resolved in favor of permitting discovery." *Koken v. One Beacon Ins. Co.*, 911 A. 2d 1021, 1025 (Pa. Cmwlth. 2006). As noted below, not only has FES-ICCC failed to raise a colorable argument that the information sought in this request non-discoverable, but the facts and circumstances of the case clearly show that the information sought is likely to lead to the discovery of admissible evidence.

FES agrees with FES-ICCC that the instant action has been limited to whether FES provided adequate and accurate information to individual FES-ICCC members regarding its services or whether FES engaged in fraudulent or deceptive billing conduct with individual FES-ICCC members. The information sought is likely to lead to the discovery of admissible evidence and has a bearing on the issues remaining before the Commission. For example, the information may shed light on FES-ICCC members' process of evaluating and choosing electric supply from FES and on whether FES-ICCC members were being advised by counsel in connection with the choice of FES as a supplier, as well as establish whether the members of FES-ICCC did in fact receive adequate and accurate information or actually thought that they were not fraudulently billed in some manner at the beginning of the instant complaint, whether those concepts were suggested to the members through some form of solicitation which set forth a theory of the case against FES, or whether those concepts were ever raised in solicitations. Such information would be relevant to the claims raised by the FES-ICCC members and may be of use to impeach the future testimony of any testifying FES-ICCC member. The solicitation letter is also relevant to the level of sophistication of each individual FES-ICCC member with regard to energy procurement. As the request is tailored to the facts and circumstances giving rise to the instant case, and is reasonably calculated to lead to the discovery of admissible evidence, FES-ICCC's objection based upon relevancy should be dismissed.

Addressing FES-ICCC's objection as to privilege should also be dismissed. The request does not seek the production of privileged information. Rather, if there are any documents which are responsive to this request and which FES-ICCC believes are privileged, those documents should be identified on a privilege log in accord with instruction numbers 16 and 17. Further, FES posits that any such solicitation letter from FES-ICCC counsel is not subject to a colorable

argument of privilege. Any such a solicitation letter would be considered advertising pursuant to Rule 7.2 of the Pennsylvania Rules of Professional Conduct.<sup>3</sup> There was no attorney-client privilege at the time that the solicitation letter was sent to customers to FES. Moreover, the attorney-client privilege is waived if a communication is shared with third parties. It is likely that not all persons who received the solicitation letter joined FES-ICCC. Accordingly, FES-ICCC's objection to the request based upon the production of privileged information should be dismissed.

FES Set I, Request No. 6, provides:

Identify any person who worked to obtain members for FES-ICCC.

*FES-ICCC objected to this request as follows:*

FES's question is objectionable on multiple bases. First, a party may not ask interrogatories related to information that is not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). The scope of this proceeding was defined in the Presiding Administrative Law Judge's Second Interim Order dated December 18, 2014, in Docket No. C-2014-2425989 ("December 18 Order"). According to the December 18 Order, the scope of this proceeding is limited to "whether FES violated Section 2807(d)(2) of the Code, 66 Pa. C.S.A. § 2807(d)(2), and Sections 54.43(1) and 54.43(f) of the Commission's Regulations, 52 Pa. Code § 54.31(l) and § 54.43(f)." See December 18 Order at Ordering Paragraph 2. This interrogatory requests information that is unrelated to FES's compliance with statutes or regulations applicable to Pennsylvania's competitive electricity suppliers and not likely to lead to the discovery of admissible evidence. Therefore, the requested information is not relevant to this proceeding.

In addition, a party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Pursuant to Section 5.361(a)(3), privileged information, or information related to privileged matters, is not properly subject to discovery. The communications between any potential FES ICCC member and legal counsel are protected under the attorney-client and work-product privileges. Therefore, the requested information is not properly subject to discovery.

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<sup>3</sup> See 204 Pa. Code § 81.4

For the foregoing reasons, FES ICCC objects to the instant interrogatory. Notwithstanding this Objection, FES ICCC will respond to Question No. 6 as fully as reasonably possible consistent with this Objection.

To the extent FES-ICCC refuses to comply with the above-referenced interrogatory based upon this objection, the objection should be dismissed for the reasons set forth in FES's response to FES-ICCC's objection to Set 1, Request No. 5, which is incorporated herein by reference as if set forth at length. Additionally, this request may lead to the discovery of non-privileged admissible evidence regarding discussions between FES-ICCC members and other persons relative to whether each FES-ICCC member understood *that their contract for electric supply from FES did not include potential pass-through events*. As one of the issues still before the Commission in the instant proceeding is whether FES provided the FES-ICCC members with accurate and adequate information, this discovery is relevant and the objection should be dismissed.

Further, communications with potential FES-ICCC members may provide insight into the motivations of FES-ICCC members in bringing the instant complaint. Those motivations may be used during the course of this proceeding for impeachment purposes.

**Set II, Instruction Nos. 1 and 19**

FES's Instruction No. 1 to Set II provides:

The "Responding Party," "you," or "your" means the party to which these interrogatories and requests for production of documents are propounded and/or all agents, affiliates, employees, consultants, and representatives acting on behalf of the Responding Party

FES's Instruction No. 19 to Set II provides:

These interrogatories are directed to each individual member of FES-ICCC and each such member should provide separate responses. Include a verification for each member in accordance with 52 Pa. Code § 1.36.

FES-ICCC objected to these instruction with the same objection which posits:

FES ICCC generally objects to Instruction Nos. 1 and 19 with respect to FES Set II, Questions 1 through 27, inclusive, as imposing upon FES ICCC obligations inconsistent with the Pennsylvania Public Utility Commission's regulations regarding discovery. Discovery is not permitted if it would cause unreasonable annoyance, oppression, burden or expense. 52 Pa. Code § 5.361(a)(2). Responding to FES's Set II in accordance with Instruction Nos. 1 and 19 would cause unreasonable annoyance, oppression, burden and expense because FES is asking FES ICCC for a group response as well as each of FES ICCC's 14 members for individual responses and signed verifications to 27 discovery requests. Without waiving this objection, based upon a reasonable interpretation of each discovery request, FES ICCC will respond to certain requests as a collective group and the remaining requests will be answered by individual members as a demonstration of good faith. FES ICCC reserves the right to supplement its objections and responses to any discovery request within Set II at any time prior to hearings.

FES-ICCC's objections to the above-referenced instructions should dismissed and its attempt to limit its responses to certain responses as a group and certain responses by individual members should not be allowed. FES Set I was directed to the FES-ICCC as a group. However, FES Set II was, as noted in instruction no. 19, specifically directed to each individual FES-ICCC member. FES avers, upon information and belief, that FES-ICCC is not a legal entity, but rather an *ad hoc* group of FES customers. FES-ICCC is not an FES customer and has no contractual relationship with FES. FES-ICCC did not even exist when each member chose FES as its electric supplier, nor during the events of January 2014 which necessitated FES's imposition of the RTO Expense Surcharge. FES-ICCC has no claims against FES for the PUC to consider. It is each individual FES-ICCC who must pursue its alleged claims against FES.

Also, as noted above, the issues in the instant complaint have been limited to whether FES provided adequate and accurate information to each customer regarding its services or whether FES engaged in fraudulent or deceptive billing conduct with each individual FES-ICCC member. The focus of the Commission's inquiry is FES's representations to, and dealings with, each individual customer. Accordingly, discovery as to each FES-ICCC member is relevant and necessary to prepare a defense for the complaint.

This position is in accord with the position taken by Administrative Law Judge Elizabeth H. Barnes in the Gas-On-Gas Investigation matter. There, FES-ICCC's counsel represented what was believed to be another *ad hoc* group which was subject to discovery propounded as to the individual members. In dismissing the objections to individual discovery, ALJ Barnes held that such discovery was proper and noted that the *ad hoc* group only had standing from the individual members' interests. *Joint Petition for Generic Investigation or Rulemaking Regarding "Gas-On-Gas" Competition Between Jurisdictional Natural Gas Distribution Companies*, Docket No. P-2011-2277868 (Order September 5, 2013), p. 4.<sup>4</sup> The legal analysis of ALJ Barnes in the Gas-On Gas matter, is apropos to FES-ICCC. FES-ICCC does not have standing based upon its own legal status, rather any standing it has is the result of the standing of the individual members and the individual members should be subject to discovery.

The need for discovery as to each individual member is exasperated by the mechanism employed by FES-ICCC's counsel to add more members to the group. Specifically, FES-ICCC purports to have added members to the instant complaint via the amendment of Appendix A of the

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<sup>4</sup> It was later discovered that the group in the Gas-On-Gas matter was, in fact, a corporation and vested with its own standing. *Joint Petition for Generic Investigation or Rulemaking Regarding "Gas-On-Gas" Competition Between Jurisdictional Natural Gas Distribution Companies*, Docket No. P-2011-2277868 (Amended Order September 20, 2013). Despite the reversal because of the factual misunderstanding, the legal principal set forth in the Order of September 5, 2013 remains valid.

Complaint, which lists the members of FES-ICCC.<sup>5</sup> This mechanism has resulted in new members being added after FES filed its Answer and New Matter to the Complaint – raising serious due process concerns. For FES-ICCC to now argue that requiring each of its members to answer discovery regarding the specific facts and circumstances that each member experienced in relation to the instant Complaint is beyond the pale and wholly without merit.

This complaint case is about FES’s interactions with individual FES-ICCC members. FES is constitutionally guaranteed notice and an opportunity to be heard regarding the grievances filed against it. The denial of discovery from each individual FES-ICCC member would be a violation of due process guarantees. The individual FES-ICCC members should not be permitted to hide behind the veil of a loosely-affiliated *ad hoc* group (which is not a legal entity and which was assembled for the purpose of sharing litigation expense) to avoid discovery obligations.

**Set II, Instruction Nos. 16 and 17**

FES-ICCC’s objections to the above-referenced instructions should be dismissed for the reasons set forth in FES’s response to FES-ICCC’s objection to Set I, Instruction No. 16 and 17, which is incorporated herein by reference as if set forth at length.

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<sup>5</sup> At the time the Complaint was filed FES-ICCC had six members. On Friday, June 20, 2014, FES-ICCC filed the first of several updated Appendices A. This Amended Appendix A doubled the size of the FES-ICCC group to 12 members. On August 5, 2014, more than a month after FES filed its Answer and New Matter to the Complaint, FES-ICCC filed another Amended Appendix A, adding one more member. On March 25, 2015, more than 9 months after the Complaint was filed and more than eight 8 months after FES filed its Answer and New Matter, FES-ICCC once again filed an Amended Appendix A, adding one more member. In all, FES-ICCC has added 8 members or 57.14% of its membership either right before or after FES filed its Answer and New Matter to the Complaint.

**Set II, Request Nos. 1, 2, 7, 8, 9, 10, 11, 12, 16, 17, 18, 22, 23, 24, 25, 26, and 27**

FES Set II, Request No. 1, provides:

Explain your understanding of the pass-through event clauses of the other members of FES-ICCC at issue in the instant complaint proceeding.

FES Set II, Request No. 2, provides:

How, if at all, does your pass-through event clause at issue in the instant complaint proceeding differ from the pass-through event clauses of the other members of FES-ICCC at issue in the instant complaint proceeding?

FES Set II, Request No. 7, provides:

How long have you shopped for competitive retail electric generation supply?

FES Set II, Request No. 8, provides:

Explain the process by which you shop for competitive retail electric generation supply, including any due diligence that you conduct in the process.

FES Set II, Request No. 9 provides:

How many electric generation supply agreements have you entered into since the time that you first began to shop for competitive retail electric generation supply?

FES Set II, Request No. 10 provides:

Identify the persons responsible to procuring your electric generation supply and explain their qualifications for such duties.

FES Set II, Request No. 11 provides:

Did you enter into the FES contract at issue in this complaint proceeding with the assistance of counsel?

FES Set II, Request No. 12 provides:

Did you enter into the FES contract at issue in this complaint proceeding with the assistance of any person? If "yes," identify such person and their qualifications.

FES Set II, Request No. 16 provides:

Provide any communications between you and representatives of FES regarding the meaning of the pass-through event clause in your FES contract at issue in this complaint proceeding.

FES Set II, Request No. 17 provides:

Specify the exact nature of any deceptive marketing by FES that you are alleging or otherwise intend to assert in this complaint proceeding. Provide any documents supporting such allegations.

FES Set II, Request No. 18 provides:

Specify the exact nature of any fraudulent billing by FES that you are alleging or otherwise intend to assert in this complaint proceeding. Provide any documents supporting such allegations.

FES Set II, Request No. 22 provides:

With regard to the instant complaint, identify the specific provisions of the Pennsylvania Public Utility Code, Commission rule, or Commission order that you believe FES violated in its dealings with you.

FES Set II, Request No. 23 provides:

With regard to the instant complaint proceeding, on what basis do you believe that FES violated a specific provision of the Pennsylvania Public Utility Code, Commission rule, or Commission order with respect to any other member of FES-ICCC. What is your basis for that belief?

FES Set II, Request No. 24 provides:

Identify any non-privileged communications with other members of FES-ICCC regarding the instant complaint proceeding.

FES Set II, Request No. 25 provides:

Do you believe that the weather events of January 2014 were “extraordinary”? If not, how would you classify them and why?

FES Set II, Request No. 26 provides:

Identify the witnesses whom you intend to present at hearing in this complaint proceeding to satisfy your burden of proof that FES engaged in deceptive marketing or fraudulent billing with respect specifically to you.

FES Set II, Request No. 27 provides:

Provide any exhibits that you intend to present in this complaint proceeding to satisfy your burden of proof that FES engaged in deceptive marketing or fraudulent billing with respect specifically to you.

FES-ICCC responded to all these requests with one of two objections which posit:

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are *incorporated herein as if fully set forth*. Notwithstanding these objections, FES ICCC will respond to Question No. [Request Number] as fully as reasonably possible consistent with these objections.

or

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1 and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. [Request No.] as fully as reasonably possible consistent with these objections.

FES-ICCC's objections to these requests should be dismissed for the reasons set forth in FES's responses FES-ICCC's objections to Set II Instruction Nos. 1, 16, 17, and 19 which are incorporated herein by reference as if set forth at length. These interrogatories are directly relevant to the allegations that FES engaged in deceptive marketing or fraudulent billing with respect to each individual FES-ICCC member. These interrogatories, cannot be answered by the *ad hoc* group; they go to, *inter alia*, the specific understanding of each FES-ICCC member as to the nature of their contract with FES, the process employed to come to terms with FES for the supply of retail electric generation, the sophistication of each FES-ICCC member regarding the purchase of electric generation supply, and the details of each members complaint against FES. Such information is relevant to the issue of whether FES provided accurate and adequate information to each FES-ICCC member and is needed to allow FES to properly prepare a defense to the instant complaint.

If an individual FES-ICCC member cannot carry its own burden of proof by a preponderance of the evidence, it should be removed from this complaint proceeding. FES is

entitled to know any information that may be used against it at hearing. If an FES-ICCC member is unwilling to disclose information through discovery, it should be sanctioned by having its portion of the FES-ICCC complaint dismissed. The FES-ICCC members each voluntarily elected to participate in this complaint proceeding, they should not now be relieved of their discovery obligations. Their individual burdens cannot be carried by an *ad hoc* group that has no legal existence.

**Set II, Request Nos. 3, 4, 5, 6, and 13**

**FES Set II, Request No. 3 provides:**

- a. Have you had communication(s) with any other member(s) of FES-ICCC concerning the pass-through event language of your FES contract at issue in the instant complaint proceeding?
- b. If the response to 3.a. is anything other than “No”, provide full descriptions of verbal communication(s) and copies of written communication(s).

**FES Set II, Request No. 4 provides:**

- a. Have you had communication(s) with any other member of FES-ICCC concerning your intent to oppose the pass-through event?
- b. If the response to 4.a. is anything other than “No”, provide full descriptions of verbal communication(s) and copies of written communication(s).

**FES Set II, Request No. 5 provides:**

Describe in detail the communication(s) you received soliciting you to become a member of FES-ICCC.

FES Set II, Request No. 6 provides:

Provide any document or other communication that requested your becoming a member of FES-ICCC.

FES Set II, Request No. 13 provides:

If any person assisted you in entering into the FES contract at issue in this complaint proceeding, did you have any communication(s) with such person regarding the meaning of the pass-through event language at issue in this proceeding? If the response is anything other than "No", provide full descriptions of verbal communication(s) and copies of written communication(s).

FES-ICCC responded to all these requests with one of two objection which posit:

FES ICCC objects to this interrogatory. A party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Under Section 5.361(a)(3) of the Commission's regulations, privileged information, or information related to privileged matters, is not properly subject to discovery. FES has acknowledged that privileged documents are not subject to discovery, yet the above interrogatory would require FES ICCC, its representatives or group members, as applicable, to furnish information related to privileged matters, contrary to Section 5.361(a)(3) of the Commission's Regulations. Such a request is inconsistent with the Commission's regulations and not properly discoverable.

In addition, see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth.

or

FES's question is objectionable on multiple bases. First, a party may not ask interrogatories related to information that is not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). The scope of this proceeding was defined in the Presiding Administrative Law Judge's Second Interim Order dated December 18, 2014, in Docket No. C-2014-2425989 ("December 18 Order"). According to the December 18 Order, the scope of this proceeding is limited to "whether FES violated Section 2807(d)(2) of the Code, 66 Pa. C.S.A. § 2807(d)(2), and Sections 54.43(1) and 54.43(f) of the Commission's Regulations, 52 Pa. Code § 54.31(1) and § 54.43(f)." See December 18 Order at Ordering Paragraph 2. This interrogatory requests information that is unrelated to

FES's compliance with statutes or regulations applicable to Pennsylvania's competitive electricity suppliers and not likely to lead to the discovery of admissible evidence. Therefore, the requested information is not relevant to this proceeding.

Furthermore, a party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Under Section 5.361(a)(3) of the Commission's regulations, privileged information, or information related to privileged matters, is not properly subject to discovery. The requested information is protected under the attorney-client and work product privileges. Therefore, the requested information is not properly subject to discovery.

Finally, see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth.

To the extent the objection is based upon a FES-ICCC's claim that the information sought is not reasonably calculated to lead to the discovery of admissible evidence, the objection should be dismissed for the following reasons. First, FES-ICCC has failed to raise a colorable argument that the information sought in this request is not discoverable. Second, the facts and circumstances of the case clearly show that the information sought is likely to lead to the discovery of admissible evidence and has a bearing on the issues remaining before the Commission. FES avers, upon information and belief, that counsel for FES-ICCC may have sent unsolicited and unprivileged solicitations to various entities seeking the formation of FES-ICCC and setting forth a theory of the case. These unsolicited emails or other correspondence may establish whether the issues of *fraudulent billing or adequate and accurate information being presented to potential FES-ICCC* members were suggested to the potential members through some form of solicitation or whether those concepts were ever raised in solicitations. Such information would be relevant to the claims raised by the FES-ICCC members and may provide relevant information for impeachment purposes.

Further, the requests seek information regarding any discussions that each FES-ICCC member may have had regarding the pass-through provisions of its contract with FES. Such information would be relevant to whether FES provided accurate and adequate information to the FES-ICCC member. As the request is tailored to the facts and circumstances giving rise to the instant case, and is reasonably calculated to lead to the discovery of admissible evidence, FES-ICCC's objection based upon relevancy should be dismissed

To the extent FES-ICCC objects to the instant interrogatory based upon the allegation that it calls for the revelation of privileged information, the objection should be dismissed for the reasons set forth in FES's response to FES-ICCC's objection to Set I, Request No. 5, which is incorporated herein by reference as if set forth at length.

To the extent that the objection is based upon FES-ICCC's objections to Set II, Instruction Nos. 1, 16, 17, and 19, the objections should be dismissed for the reasons set forth in FES's response to those objections which are incorporated herein by reference as if set forth at length.

**Set II, Request No. 14**

FES Set II, Request No. 14 provides:

In negotiating your FES contract at issue in this complaint proceeding, did you or any other person ask FES to explain its intent in including the pass-through event clause?

FES-ICCC objected to this interrogatory as follows:

FES ICCC objects to this interrogatory. Discovery is not permitted if it would cause unreasonable annoyance, oppression, burden or expense. 52 Pa. Code § 5.361(a). Asking each member for individual responses and signed verifications would

impose unreasonable burden and expense, particularly when FES could conduct its own research into a member's discussions with FES personnel. Such a request is inconsistent with the Commission's regulations and not properly discoverable.

In addition, see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 14 as fully as reasonably possible consistent with these objections.

To the extent FES-ICCC objects to this interrogatory because of the allegation that it would be unreasonable to require the individual FES-ICCC members to respond to this interrogatory, the objection should be dismissed for the reasons set forth in FES's response to FES-ICCC's objection to Instruction Nos. 1 and 19, which are incorporated herein by reference as if set forth at length. As noted in that response, the need for discovery from each member of FES-ICCC is not only reasonable but necessary and required by constitutional guarantees of due process.

To the extent the objection is based upon FES-ICCC's objections to Set II, Instruction Nos. 1, 16, 17, and 19, the objections should be dismissed for the reasons set forth in FES's response to those objections which are incorporated herein by reference as if set forth at length.

### **Set II, Request No. 15**

#### **FES Set II, Request No. 15 provides**

Identify any Commission electric utility default service proceeding in which you or a group of which you were a member argued that responsibility for PJM non-market based charges should not be the responsibility of the electric utility and the bases for such arguments.

FES-ICCC objected to this interrogatory as follows:

FES ICCC objects to this interrogatory. A party may not ask interrogatories related to information that is not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). Through the assessment of the RTO Expense Surcharge at issue in this proceeding, FES sought to recover costs primarily related to the higher than customary PJM uplift (operating reserves) charges during the 2014 Cold Weather Events. See Analysis of Operational Events and Market Impact During the January 2014 Cold Weather Events, at 22, 32, 35, 44-47, and 51 (May 8, 2014) available at <https://www.pjm.com/media/documents/reports/20140509-analysis-of-operational-events-and-market-impacts-during-thejan-2014-cold-weather-events.ashx>; Energy and Ancillary Services Uplift in PJM, at 10 (Sept. 8, 2014) available at <http://www.ferc.gov/CalendarFiles/20140905085408-PJM%20%20Whitepaper.pdf>. In a recent Commission proceeding, FES indicated that uplift charges are not among the non-market based charges for which an electric utility should be responsible. See FES to FES-ICCC, Set II, Question No. 15 Attachment at page 8. In other words, uplift charges are not properly classified as non-market based charges. FES's interrogatory request seeks information about non-market based charges that is unrelated to the charges at issue in this proceeding and is not likely to lead to the discovery of admissible evidence. Therefore, the requested information is not relevant to this proceeding.

FES-ICCC's objection this interrogatory should be dismissed. Not only has FES-ICCC failed to raise a colorable argument that the information sought in this request non-discoverable, but the facts and circumstances of the case clearly show that the information sought is likely to lead to the discovery of admissible evidence and has a bearing on the issues remaining before the Commission. The instant interrogatory requests the identification of any proceedings where the FES-ICCC members took a specific position and the basis for that position. For example, several FES-ICCC members including, at least, Knouse Food Cooperative, Inc., Carpenter Technology Corporation – Latrobe Specialty Metals, Ervin Industries, Mersen USA, St. Marys-PA Corp., Indiana Regional Medical Center, Appvion, Inc., Pittsburgh Glass Works, LLC, Sheetz, Inc., and The Plastek Group, Inc., have participated in *ad hoc* groups represented by FES-ICCC Counsel. *See, e.g., Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Default Service*

*Program for the Period Commencing June 1, 2015 Through May 31, 2017*, Docket No. P-2013-2391368, P-2013-2391372, P-2013-2391375, and P-2013-2391378 (Joint Petition to Intervene and Answer in Objection of the Met-Ed Industrial Users Group, The PennElec Industrial Customer Alliance, The Penn Power Users Group, and The West Penn Power Industrial Intervenors Dec. 2, 2013). To the extent that the FES-ICCC members participated in such proceedings and took the position noted above, that information is relevant to the sophistication level of the FES-ICCC member in dealing with electric generation supply contract negotiations and the pass-through provisions in such contracts. The level of sophistication is relevant to whether an FES-ICCC member was deceived by FES, as is being alleged. Certainly, sophisticated purchasers of electric generation supply are less likely to be deceived.

**Set II, Request Nos. 19, 20, and 21**

**FES Set II, Request No. 19 provides:**

Provide any non-privileged communications, including but not limited to internal reports to your organization, regarding the subject matter of the instant complaint.

**FES Set II, Request No. 20 provides:**

With regard to the FES contract at issue in the instant proceeding, identify any analyses you performed that informed your decision to enter into the FES contract instead of a contract with another generation supplier

**FES Set II, Request No. 21 provides:**

With regard to the FES contract at issue in the instant proceeding, provide any internal communications concerning your decision to enter into said FES contract.

FES-ICCC responded to all these requests with one of two objection which posit:

*FES ICCC objects to Interrogatory No. [Request No.] on the basis that it seeks information that is commercially sensitive which could be used for anti-competitive purposes. FES ICCC members are energy-intensive users of electricity and, thus, electricity costs represent a significant portion of members' operating costs. The disclosure of internal reports regarding the subject matter of this complaint may provide a competitive advantage to FES ICCC members' competitors. In addition, the disclosure of such information may provide FES with a competitive advantage vis-à-vis other competitive suppliers seeking to do business with FES ICCC members. Finally, there is no Protective Order in effect which would restrict inclusion of commercially sensitive information in the public record or to ensure that the FES representatives seeking this information are not involved in the company's competitive generation supply activities.*

In addition, see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth.

To the extent the objection is based upon a claim that the material is protected as confidential business record, the objection should be dismissed. It should be noted that the parties are working on a proposed protective order in the instant matter. While FES maintains its position that the requests are proper and that the requested information must be provided, it will, without waiving any rights to pursue a response to the requests, agree to delay the response to these requests until the above-referenced protective order is in place -- provided that FES-ICCC reciprocates with regard to proprietary information being requested of FES

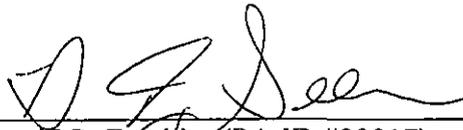
To the extent the objection is based upon FES-ICCC's objections to Set II, Instruction Nos. 1, 16, 17, and 19, the objections should be dismissed for the reasons set forth in FES's response to those objections which are incorporated herein by reference as if set forth at length.

### III. CONCLUSION

As shown above, the objections raised by FES-ICCC to FES's Interrogatories Sets I and II are without merit and should be dismissed.

**WHEREFORE**, FES respectfully requests that the Honorable Administrative Law Judge Katrina L. Dunderdale issue an order dismissing FES-ICCC's objections to FES Interrogatories Sets I and II, and compelling FES-ICCC to respond fully to the FES interrogatories.

Respectfully submitted,



---

David P. Zambito (PA ID #80017)  
D. Troy Sellars (PA ID #210302)  
Cozen O'Connor  
17 North Second St., Suite 1410  
Harrisburg, PA 17101  
Telephone: (717) 703-5892  
Facsimile: (215) 989-4216  
E-mail: dzambito@cozen.com  
tsellars@cozen.com

Brian J. Knipe, Esquire (PA ID #82854)  
FirstEnergy Solutions Corp.  
76 S. Main Street  
Akron, OH 44308  
Telephone: (330) 384-5795  
E-mail: bknipe@firstenergycorp.com

Counsel for *FirstEnergy Solutions Corp.*

Dated: August 3, 2015

**RECEIVED**

AUG 03 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**APPENDIX A**



July 14, 2015

**VIA ELECTRONIC AND FIRST CLASS MAIL**

**David P. Zambito**

Direct Phone 717-703-5892

Direct Fax 215-989-4216

dzambito@cozen.com

Charis Mincavage, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street  
PO Box 1166  
Harrisburg, PA 17108-1166

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

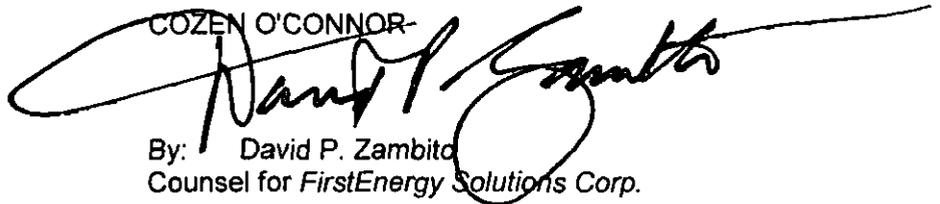
**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED BY FIRSTENERGY SOLUTIONS CORP. ON FES INDUSTRIAL &  
COMMERCIAL CUSTOMER COALITION (SET I, Nos. 1-10)**

Dear Ms. Mincavage:

Enclosed please find two (2) copies of the above-reference 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 contact me.

Sincerely,

COZEN O'CONNOR



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

DPZ/kmg  
Enclosure

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

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

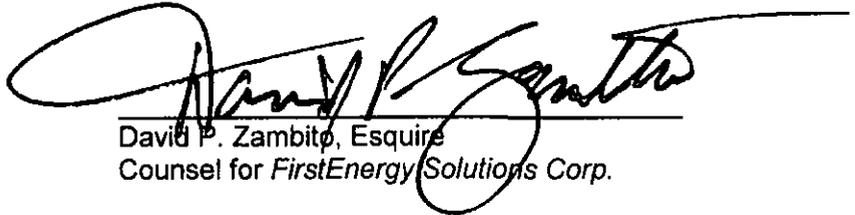
I hereby certify that I have this day served a true copy of FirstEnergy Solutions Corp.'s Interrogatories and Requests for Production of Documents to FES Industrial & Commercial Customer Coalition, Set I (Nos. 1-10), upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA ELECTRONIC AND FIRST CLASS MAIL:**

Susan E. Bruce, Esquire  
Charis Mincavage, Esquire  
Vasiliki Karandrikas, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street, P.O. Box 1166  
Harrisburg, PA 17108-1166  
sbruce@mwn.com  
cmincavage@mwn.com  
vkarandrikas@mwn.com  
**Counsel for FES Industrial & Commercial  
Customer Coalition**

Candis A. Tunilo, Esquire  
Brandon J. Pierce, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923  
ctunilo@paoca.org  
bpierce@paoca.org  
**Counsel for Office of Consumer  
Advocate**

DATED: July 14, 2015

  
David P. Zambito, Esquire  
Counsel for FirstEnergy Solutions Corp.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

Administrative Law Judge  
Katrina L. Dunderdale

---

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

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**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED BY FIRSTENERGY SOLUTIONS CORP.  
ON FES INDUSTRIAL & COMMERCIAL CUSTOMER COALITION (SET I)**

---

Pursuant to 66 Pa. C.S. § 333 and 52 Pa. Code § 5.341 *et seq.*, FirstEnergy Solutions Corp. (“FES”) hereby propounds the following Interrogatories and Requests for Production of Documents on FES Industrial & Commercial Customer Coalition (“FES ICC”) – Set I.

INSTRUCTIONS

1. The “Responding Party,” “you,” or “your” means the party to which these interrogatories and requests for production of documents are propounded and/or all agents, affiliates, employees, consultants, and representatives acting on behalf of the Responding Party.
2. “Commission” means the Pennsylvania Public Utility Commission.
3. To “identify” a natural person means to state that person’s full name, title or position, employer, last known address, and last known telephone number.

4. To “identify” a business entity means to state the full name of such business, the form of the business, and its location or address.

5. To “identify” a “document” means to provide all of the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- a. The title or other means of identification of each such document;
- b. The date of each such document;
- c. The author, preparer or signer of each such document; and
- d. A description of the subject matter of such document sufficient to permit an understanding of its contents and importance to the testimony or position being examined and the present or last known location of the document. The specific nature of the document should also be stated (*e.g.*, letter, business record, memorandum, computer print-out, etc.).

In lieu of “identifying” any document, it shall be deemed a sufficient compliance with these interrogatories to attach a copy of each such document to the answers hereto and reference said document to the particular interrogatory to which the document is responsive.

6. “Document” means the original and all drafts of all written and graphic matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof which are different in any way from the original (whether by interlineation, date-stamp, notarization, indication of copies sent or received, or otherwise), including without limitation, any paper, book, account, photograph, blueprint, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcript, hearing, meeting, study, notation, working paper, summary, intra-office communication, diary, chart, minutes,

index sheet, computer software, computer-generated records or files, however stored, check, check stub, delivery ticket, bill of lading, invoice, record or recording or summary of any telephone or other conversation, or of any interview or of any conference, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter of which the Responding Party has or has had possession, custody or control, or of which the Responding Party has knowledge.

7. "Communication" means any manner or form of information or message transmission, however produced or reproduced, whether as a document as herein defined, or orally or otherwise, which is made, distributed, or circulated between or among persons, or data storage or processing units.

8. "Date" means the exact day, month, and year, if ascertainable, or if not, the best approximation thereof.

9. "Person" refers to, without limiting the generality of its meaning, every natural person, agent, broker, consultant, corporation, partnership, association (whether formally organized or ad hoc), joint venture, unit operation, cooperative, municipality, commission, governmental body or agency, or any other group or organization.

10. Items referred to in the singular include those in the plural, and items referred to in the plural include those in the singular.

11. Items referred to in the masculine include those in the feminine, and items referred to in the feminine include those in the masculine.

12. The answers provided should first restate the question asked and identify the person(s) supplying the information.

13. In answering these interrogatories, the Responding Party is requested to furnish all information that is available to the Responding Party, including information in the possession

of the Responding Party's attorneys, agents, consultants, or investigators, and not merely such information of the Responding Party's own knowledge. If any of the interrogatories cannot be answered in full after exercising due diligence to secure the requested information, please so state and answer to the extent possible, specifying the Responding Party's inability to answer the remainder, and stating whatever information the Responding Party has concerning the unanswered portions. If the Responding Party's answer is qualified in any particular, please set forth the details of such qualification.

14. If the Responding Party objects to providing any document requested on any ground, identify such document by describing it as set forth in Instruction 5 and state the basis of the objection.

15. If the Responding Party objects to part of an interrogatory and refuses to answer that part, state the Responding Party's objection and answer the remaining portion of that interrogatory. If the Responding Party objects to the scope or time period of an interrogatory and refuses to answer for that scope or time period, state the Responding Party's objection and answer the interrogatory for the scope or time period that the Responding Party believes is appropriate.

16. If, in connection with an interrogatory, the Responding Party contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorneys' work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

17. If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject

matter of the information; and, (c) the basis on which the privilege or other protection from disclosure is claimed.

18. These interrogatories are continuing and the Responding Party is obliged to change, supplement and correct all answers given to conform to new or changing information.

**FIRSTENERGY SOLUTIONS CORP.  
INTERROGATORIES – SET I  
TO FES INDUSTRIAL & COMMERCIAL CUSTOMER COALITION**

**DOCKET NO. C-2014-2425989**

1. Is FES-ICCC a corporation?
2. If FES-ICCC is a corporation, provide a copy of its certificate of incorporation, certificate of good standing, and corporate bylaws.
3. If FES-ICCC is not a corporation, identify the exact nature of its legal existence.
4. Identify the leadership of FES-ICCC.
5. Provide a copy of any solicitation letter or other communication(s) to potential FES-ICCC members intended to induce them to join FES-ICCC.
6. Identify any person who worked to obtain members for FES-ICCC.
7. Provide a listing of any person to whom a solicitation letter or other communication was sent with the intent of having them join FES-ICCC.
8. Identify any person solicited to join FES-ICCC that affirmatively declined to join and state the reasons that each declined. Provide any correspondence from such people as to why they declined to join FES-ICCC.
9. Identify any witnesses that FES-ICCC intends to present at hearing in this complaint proceeding.
10. Identify any exhibits that FES-ICCC intends to present at hearing in this complaint proceeding.



July 14, 2015

**VIA ELECTRONIC AND FIRST CLASS MAIL**

**David P. Zambito**

Direct Phone 717-703-5892

Direct Fax 215-989-4216

dzambito@cozen.com

Charis Mincavage, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street  
PO Box 1166  
Harrisburg, PA 17108-1166

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

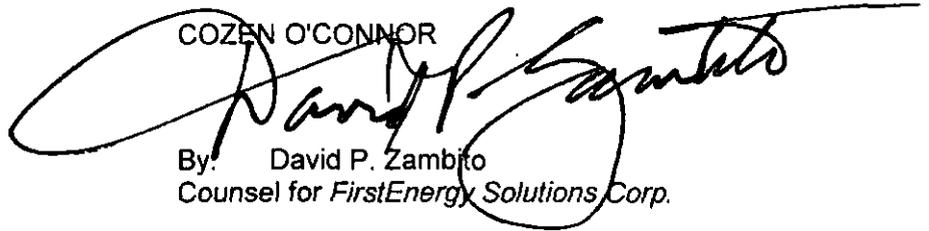
**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED BY FIRSTENERGY SOLUTIONS CORP. ON FES INDUSTRIAL &  
COMMERCIAL CUSTOMER COALITION (SET II, Nos. 1-27)**

Dear Ms. Mincavage:

Enclosed please find two (2) copies of 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 contact me.

Sincerely,

COZEN O'CONNOR



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

DPZ/kmg  
Enclosure

cc: Rosemary Chiavetta, Secretary (*Letter and Certificate of Service only*)  
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 Interrogatories and Requests for Production of Documents to FES Industrial & Commercial Customer Coalition, Set II (Nos. 1-27), 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:**

Susan E. Bruce, Esquire  
Charis Mincavage, Esquire  
Vasiliki Karandrikas, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street, P.O. Box 1166  
Harrisburg, PA 17108-1166  
sbruce@mwn.com  
cmincavage@mwn.com  
vkarandrikas@mwn.com  
**Counsel for FES Industrial & Commercial  
Customer Coalition**

Candis A. Tunilo, Esquire  
Brandon J. Pierce, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923  
ctunilo@paoca.org  
bpierce@paoca.org  
**Counsel for Office of Consumer  
Advocate**

DATED: July 14, 2015



David P. Zambito, Esquire  
Counsel for FirstEnergy Solutions Corp.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

Administrative Law Judge  
Katrina L. Dunderdale

---

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

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**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED BY FIRSTENERGY SOLUTIONS CORP.  
ON FES INDUSTRIAL & COMMERCIAL CUSTOMER COALITION (SET II)  
(DIRECTED TO INDIVIDUAL MEMBERS OF FES-ICCC)**

---

Pursuant to 66 Pa. C.S. § 333 and 52 Pa. Code § 5.341 *et seq.*, FirstEnergy Solutions Corp. (“FES”) hereby propounds the following Interrogatories and Requests for Production of Documents on FES Industrial & Commercial Customer Coalition (“FES-ICCC”) – Set II.

INSTRUCTIONS

1. The “Responding Party,” “you,” or “your” means the party to which these interrogatories and requests for production of documents are propounded and/or all agents, affiliates, employees, consultants, and representatives acting on behalf of the Responding Party.
2. “Commission” means the Pennsylvania Public Utility Commission.

3. To “identify” a natural person means to state that person’s full name, title or position, employer, last known address, and last known telephone number.

4. To “identify” a business entity means to state the full name of such business, the form of the business, and its location or address.

5. To “identify” a “document” means to provide all of the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- a. The title or other means of identification of each such document;
- b. The date of each such document;
- c. The author, preparer or signer of each such document; and
- d. A description of the subject matter of such document sufficient to permit an understanding of its contents and importance to the testimony or position being examined and the present or last known location of the document. The specific nature of the document should also be stated (*e.g.*, letter, business record, memorandum, computer print-out, etc.).

In lieu of “identifying” any document, it shall be deemed a sufficient compliance with these interrogatories to attach a copy of each such document to the answers hereto and reference said document to the particular interrogatory to which the document is responsive.

6. “Document” means the original and all drafts of all written and graphic matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof which are different in any way from the original (whether by interlineation, date-stamp, notarization, indication of copies sent or received, or otherwise), including without limitation, any paper, book, account, photograph, blueprint, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence,

letter, telegram, telex, object, report, opinion, investigation, record, transcript, hearing, meeting, study, notation, working paper, summary, intra-office communication, diary, chart, minutes, index sheet, computer software, computer-generated records or files, however stored, check, check stub, delivery ticket, bill of lading, invoice, record or recording or summary of any telephone or other conversation, or of any interview or of any conference, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter of which the Responding Party has or has had possession, custody or control, or of which the Responding Party has knowledge.

7. "Communication" means any manner or form of information or message transmission, however produced or reproduced, whether as a document as herein defined, or orally or otherwise, which is made, distributed, or circulated between or among persons, or data storage or processing units.

8. "Date" means the exact day, month, and year, if ascertainable, or if not, the best approximation thereof.

9. "Person" refers to, without limiting the generality of its meaning, every natural person, agent, broker, consultant, corporation, partnership, association (whether formally organized or ad hoc), joint venture, unit operation, cooperative, municipality, commission, governmental body or agency, or any other group or organization.

10. Items referred to in the singular include those in the plural, and items referred to in the plural include those in the singular.

11. Items referred to in the masculine include those in the feminine, and items referred to in the feminine include those in the masculine.

12. The answers provided should first restate the question asked and identify the person(s) supplying the information.

13. In answering these interrogatories, the Responding Party is requested to furnish all information that is available to the Responding Party, including information in the possession of the Responding Party's attorneys, agents, consultants, or investigators, and not merely such information of the Responding Party's own knowledge. If any of the interrogatories cannot be answered in full after exercising due diligence to secure the requested information, please so state and answer to the extent possible, specifying the Responding Party's inability to answer the remainder, and stating whatever information the Responding Party has concerning the unanswered portions. If the Responding Party's answer is qualified in any particular, please set forth the details of such qualification.

14. If the Responding Party objects to providing any document requested on any ground, identify such document by describing it as set forth in Instruction 5 and state the basis of the objection.

15. If the Responding Party objects to part of an interrogatory and refuses to answer that part, state the Responding Party's objection and answer the remaining portion of that interrogatory. If the Responding Party objects to the scope or time period of an interrogatory and refuses to answer for that scope or time period, state the Responding Party's objection and answer the interrogatory for the scope or time period that the Responding Party believes is appropriate.

16. If, in connection with an interrogatory, the Responding Party contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorneys' work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

17. If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and, (c) the basis on which the privilege or other protection from disclosure is claimed.

18. These interrogatories are continuing and the Responding Party is obliged to change, supplement and correct all answers given to conform to new or changing information.

19. These interrogatories are directed to each individual member of FES-ICCC and each such member should provide separate responses. Include a verification for each member in accordance with 52 Pa. Code § 1.36.

**FIRSTENERGY SOLUTIONS CORP.  
INTERROGATORIES – SET II  
TO FES INDUSTRIAL & COMMERCIAL CUSTOMER COALITION  
(DIRECTED TO INDIVIDUAL MEMBERS OF FES-ICCC)  
(NOTE INSTRUCTION NO. 19 ABOVE)**

**DOCKET NO. C-2014-2425989**

1. Explain your understanding of the pass-through event clauses of the other members of FES-ICCC at issue in the instant complaint proceeding.
2. How, if at all, does your pass-through event clause at issue in the instant complaint proceeding differ from the pass-through event clauses of the other members of FES-ICCC at issue in the instant complaint proceeding?
3.
  - a. Have you had communication(s) with any other member(s) of FES-ICCC concerning the pass-through event language of your FES contract at issue in the instant complaint proceeding?
  - b. If the response to 3.a. is anything other than “No”, provide full descriptions of verbal communication(s) and copies of written communication(s).
4.
  - a. Have you had communication(s) with any other member of FES-ICCC concerning your intent to oppose the pass-through event?
  - b. If the response to 4.a. is anything other than “No”, provide full descriptions of verbal communication(s) and copies of written communication(s).
5. Describe in detail the communication(s) you received soliciting you to become a member of FES-ICCC.
6. Provide any document or other communication that requested your becoming a member of FES-ICCC.
7. How long have you shopped for competitive retail electric generation supply?
8. Explain the process by which you shop for competitive retail electric generation supply, including any due diligence that you conduct in the process.
9. How many electric generation supply agreements have you entered into since the time that you first began to shop for competitive retail electric generation supply?
10. Identify the persons responsible to procuring your electric generation supply and explain their qualifications for such duties.
11. Did you enter into the FES contract at issue in this complaint proceeding with the assistance of counsel?

12. Did you enter into the FES contract at issue in this complaint proceeding with the assistance of any person? If “yes,” identify such person and their qualifications.

13. If any person assisted you in entering into the FES contract at issue in this complaint proceeding, did you have any communication(s) with such person regarding the meaning of the pass-through event language at issue in this proceeding? If the response is anything other than “No”, provide full descriptions of verbal communication(s) and copies of written communication(s).

14. In negotiating your FES contract at issue in this complaint proceeding, did you or any other person ask FES to explain its intent in including the pass-through event clause?

15. Identify any Commission electric utility default service proceeding in which you or a group of which you were a member argued that responsibility for PJM non-market based charges should not be the responsibility of the electric utility and the bases for such arguments.

16. Provide any communications between you and representatives of FES regarding the meaning of the pass-through event clause in your FES contract at issue in this complaint proceeding.

17. Specify the exact nature of any deceptive marketing by FES that you are alleging or otherwise intend to assert in this complaint proceeding. Provide any documents supporting such allegations.

18. Specify the exact nature of any fraudulent billing by FES that you are alleging or otherwise intend to assert in this complaint proceeding. Provide any documents supporting such allegations.

19. Provide any non-privileged communications, including but not limited to internal reports to your organization, regarding the subject matter of the instant complaint.

20. With regard to the FES contract at issue in the instant proceeding, identify any analyses you performed that informed your decision to enter into the FES contract instead of a contract with another generation supplier.

21. With regard to the FES contract at issue in the instant proceeding, provide any internal communications concerning your decision to enter into said FES contract.

22. With regard to the instant complaint, identify the specific provisions of the Pennsylvania Public Utility Code, Commission rule, or Commission order that you believe FES violated in its dealings with you.

23. With regard to the instant complaint proceeding, on what basis do you believe that FES violated a specific provision of the Pennsylvania Public Utility Code, Commission rule, or Commission order with respect to any other member of FES-ICCC. What is your basis for that belief?

24. Identify any non-privileged communications with other members of FES-ICCC regarding the instant complaint proceeding.

25. Do you believe that the weather events of January 2014 were “extraordinary”? If not, how would you classify them and why?

26. Identify the witnesses whom you intend to present at hearing in this complaint proceeding to satisfy your burden of proof that FES engaged in deceptive marketing or fraudulent billing with respect specifically to you.

27. Provide any exhibits that you intend to present in this complaint proceeding to satisfy your burden of proof that FES engaged in deceptive marketing or fraudulent billing with respect specifically to you.

**RECEIVED**

AUG 03 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

# **APPENDIX B**



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166  
Tel: 717.232.8000 • Fax: 717.237.5300

Vasiliki Karandrikas  
Direct Dial: 717.237.5274  
vkarandrikas@mwn.com

July 24, 2015

David P. Zambito  
Cozen O'Connor  
17 North Second Street  
Suite 1410  
Harrisburg, PA 17101

**VIA E-MAIL AND FIRST CLASS MAIL**

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

Dear Mr. Zambito:

Enclosed please find the FES Industrial and Commercial Customer Coalition Objections to FirstEnergy Solutions Corp. Interrogatories, Set I.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with copies of these documents. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By *Vasiliki Karandrikas*  
Vasiliki Karandrikas

Counsel to the FES Industrial and Commercial Customer Coalition

c: Rosemary Chiavetta, Secretary (Letter and Certificate only – via electronic filing)  
Certificate of Service

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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).

**VIA EMAIL AND FIRST-CLASS MAIL**

Brian J. Knipe, Esq.  
FirstEnergy Service Company  
76 S. Main Street  
Akron, OH 44308  
[bknipe@firstenergycorp.com](mailto:bknipe@firstenergycorp.com)

David P. Zambito, Esq.  
D. Troy Sellars, Esq.  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
[dzambito@cozen.com](mailto:dzambito@cozen.com)  
[tsellars@cozen.com](mailto:tsellars@cozen.com)

Candis A. Tunilo, Esq.  
Brandon J. Pierce, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place - 5th Floor  
Harrisburg, PA 17101-1921  
[ctunilo@paoca.org](mailto:ctunilo@paoca.org)  
[bpierce@paoca.org](mailto:bpierce@paoca.org)

  
\_\_\_\_\_  
Vasiliki Karandrikas

Counsel to the FES Industrial and Commercial  
Customer Coalition

Dated this 24<sup>th</sup> day of July, 2015 at Harrisburg, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

**FES Industrial & Commercial Customer Coalition  
Objections to  
FirstEnergy Solutions Corp.  
Interrogatories, Set I**

---

Pursuant to 52 Pa. Code §§ 5.342(c) and (e), the FES Industrial & Commercial Customer Coalition ("FES-ICCC") hereby objects to the Interrogatories, Set I served by FirstEnergy Solutions Corp. ("FES") on July 14, 2015 ("FES to FES-ICCC, Set I") as follows:

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set I  
FES Industrial & Commercial Customer Coalition**

---

**FES to FES-ICCC, Set I, Instructions No. 16**

If, in connection with an interrogatory, the Responding Party contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorney's work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

**Objection**

By this instruction, FES seeks discovery of information that is patently privileged. A party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Pursuant to Section 5.361(a)(3), privileged information, or information related to privileged matters, is not properly subject to discovery. While FES has acknowledged that privileged documents are not subject to discovery, the above instruction would nonetheless require FES ICCC, its representatives or group members, as applicable, to furnish information related to privileged matters. Such a request is contrary to Section 5.361(a)(3) of the Commission's Regulations.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set I  
FES Industrial & Commercial Customer Coalition**

---

**FES to FES-ICCC, Set I, Instructions No. 17**

If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and, (c) the basis on which the privilege or other protection from disclosure is claimed.

**Objection**

By this instruction, FES seeks discovery of information that is patently privileged. A party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Pursuant to Section 5.361(a)(3), privileged information, or information related to privileged matters, is not properly subject to discovery. While FES has acknowledged that privileged documents are not subject to discovery, the above instruction would nonetheless require FES ICCC, its representatives or group members, as applicable, to furnish information related to privileged matters. Such a request is contrary to Section 5.361(a)(3) of the Commission's Regulations.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set I  
FES Industrial & Commercial Customer Coalition**

---

**FES to FES-ICCC, Set I, Question No. 5**

Provide a copy of any solicitation letter or other communication(s) to potential FES-ICCC members intended to induce them to join FES-ICCC.

**Objection**

FES's question is objectionable on multiple bases. First, a party may not ask interrogatories related to information that is not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). The scope of this proceeding was defined in the Presiding Administrative Law Judge's Second Interim Order dated December 18, 2014, in Docket No. C-2014-2425989 ("December 18 Order"). According to the December 18 Order, the scope of this proceeding is limited to "whether FES violated Section 2807(d)(2) of the Code, 66 Pa. C.S.A. § 2807(d)(2), and Sections 54.43(l) and 54.43(f) of the Commission's Regulations, 52 Pa. Code § 54.31(l) and § 54.43(f)." See December 18 Order at Ordering Paragraph 2. This interrogatory requests information that is unrelated to FES's compliance with statutes or regulations applicable to Pennsylvania's competitive electricity suppliers and not likely to lead to the discovery of admissible evidence. Therefore, the requested information is not relevant to this proceeding.

In addition, a party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Pursuant to Section 5.361(a)(3), privileged information, or information related to privileged matters, is not properly subject to discovery. The communications between any potential FES ICCC member and legal counsel are protected under the attorney-client and work-product privileges. Therefore, the requested information is not properly subject to discovery.

For the foregoing reasons, FES ICCC objects to the instant interrogatory.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set I  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set I, Question No. 6**

Identify any person who worked to obtain members for FES-ICCC.

**Objection**

FES's question is objectionable on multiple bases. First, a party may not ask interrogatories related to information that is not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). The scope of this proceeding was defined in the Presiding Administrative Law Judge's Second Interim Order dated December 18, 2014, in Docket No. C-2014-2425989 ("December 18 Order"). According to the December 18 Order, the scope of this proceeding is limited to "whether FES violated Section 2807(d)(2) of the Code, 66 Pa. C.S.A. § 2807(d)(2), and Sections 54.43(l) and 54.43(f) of the Commission's Regulations, 52 Pa. Code § 54.31(l) and § 54.43(f)." See December 18 Order at Ordering Paragraph 2. This interrogatory requests information that is unrelated to FES's compliance with statutes or regulations applicable to Pennsylvania's competitive electricity suppliers and not likely to lead to the discovery of admissible evidence. Therefore, the requested information is not relevant to this proceeding.

In addition, a party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Pursuant to Section 5.361(a)(3), privileged information, or information related to privileged matters, is not properly subject to discovery. The requested information is protected under the work-product privilege. Therefore, the requested information is not properly subject to discovery.

For the foregoing reasons, FES ICCC objects to the instant interrogatory. Notwithstanding this Objection, FES ICCC will respond to Question No. 6 as fully as reasonably possible consistent with this Objection.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set I  
FES Industrial & Commercial Customer Coalition**

---

**FES to FES-ICCC, Set I, Question No. 7**

Provide a listing of any person to whom a solicitation letter or other communication was sent with the intent of having them join FES-ICCC.

**Objection**

FES's question is objectionable on multiple bases. First, a party may not ask interrogatories related to information that is not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). The scope of this proceeding was defined in the Presiding Administrative Law Judge's Second Interim Order dated December 18, 2014, in Docket No. C-2014-2425989 ("December 18 Order"). According to the December 18 Order, the scope of this proceeding is limited to "whether FES violated Section 2807(d)(2) of the Code, 66 Pa. C.S.A. § 2807(d)(2), and Sections 54.43(l) and 54.43(f) of the Commission's Regulations, 52 Pa. Code § 54.31(l) and § 54.43(f)." See December 18 Order at Ordering Paragraph 2. This interrogatory requests information that is unrelated to FES's compliance with statutes or regulations applicable to Pennsylvania's competitive electricity suppliers and not likely to lead to the discovery of admissible evidence. Therefore, the requested information is not relevant to this proceeding.

Moreover, a party may not propound discovery that would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party. 52 Pa. Code § 5.361(a)(2). The instant interrogatory seeks public disclosure of persons who elected not to participate in this proceeding. As a result, this discovery request would cause unreasonable annoyance or embarrassment to such persons. This discovery request would also cause oppression because such persons would be deterred from obtaining further information about future proceedings for fear of unreasonable annoyance or embarrassment in the course of discovery, even as non-parties.

Finally, a party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Pursuant to Section 5.361(a)(3), privileged information, or information related to privileged matters, is not properly subject to discovery. The requested information is protected under the work-product privilege. Therefore, the requested information is not properly subject to discovery.

For the foregoing reasons, FES ICCC objects to the instant interrogatory.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set I  
FES Industrial & Commercial Customer Coalition**

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

Identify any person solicited to join FES-ICCC that affirmatively declined to join and state the reasons that each declined. Provide any correspondence from such people as to why they declined to join FES-ICCC.

**Objection**

*FES's question is objectionable on multiple bases. First, a party may not ask interrogatories related to information that is not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). The scope of this proceeding was defined in the Presiding Administrative Law Judge's Second Interim Order dated December 18, 2014, in Docket No. C-2014-2425989 ("December 18 Order"). According to the December 18 Order, the scope of this proceeding is limited to "whether FES violated Section 2807(d)(2) of the Code, 66 Pa. C.S.A. § 2807(d)(2), and Sections 54.43(l) and 54.43(f) of the Commission's Regulations, 52 Pa. Code § 54.31(l) and § 54.43(f)." See December 18 Order at Ordering Paragraph 2. This interrogatory requests information that is unrelated to FES's compliance with statutes or regulations applicable to Pennsylvania's competitive electricity suppliers and not likely to lead to the discovery of admissible evidence. Therefore, the requested information is not relevant to this proceeding.*

Moreover, a party may not propound discovery that would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party. 52 Pa. Code § 5.361(a)(2). The instant interrogatory seeks public disclosure of persons who elected not to participate in this proceeding and their reasons for such an election. As a result, this discovery request would cause unreasonable annoyance or embarrassment to such persons. This discovery request would also cause oppression because such persons would be deterred from obtaining further information about future proceedings for fear of unreasonable annoyance or embarrassment in the course of discovery, even as non-parties.

Finally, a party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Pursuant to Section 5.361(a)(3), privileged information, or information related to privileged matters, is not properly subject to discovery. The requested information is protected under the work-product privilege. Therefore, the requested information is not properly subject to discovery.

For the foregoing reasons, FES ICCC objects to the instant interrogatory.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set I  
FES Industrial & Commercial Customer Coalition**

---

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By   
Susan E. Bruce (I.D. No. 80146)  
Charis Mincavage (I.D. No. 82039)  
Vasiliki Karandrikas (I.D. No. 89711)  
McNEES WALLACE & NURICK LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
Phone: (717) 232-8000  
Fax: (717) 237-5300  
[sbruce@mwn.com](mailto:sbruce@mwn.com)  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[vkandrikas@mwn.com](mailto:vkandrikas@mwn.com)

Counsel to the FES Industrial and Commercial  
Customer Coalition

July 24, 2015



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166  
Tel: 717.232.8000 • Fax: 717.237.5300

Vasiliki Karandrikas  
Direct Dial: 717.237.5274  
vkarandrikas@mwn.com

July 24, 2015

David P. Zambito  
Cozen O'Connor  
17 North Second Street  
Suite 1410  
Harrisburg, PA 17101

**VIA E-MAIL AND FIRST CLASS MAIL**

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

Dear Mr. Zambito:

Enclosed please find the FES Industrial and Commercial Customer Coalition Objections to FirstEnergy Solutions Corp. Interrogatories, Set II.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with copies of these documents. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By   
Vasiliki Karandrikas

Counsel to the FES Industrial and Commercial Customer Coalition

c: Rosemary Chiavetta, Secretary (Letter and Certificate only – via electronic filing)  
Certificate of Service

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**CERTIFICATE OF SERVICE**

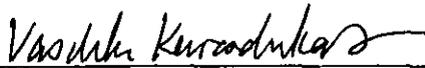
I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA EMAIL AND FIRST-CLASS MAIL**

Brian J. Knipe, Esq.  
FirstEnergy Service Company  
76 S. Main Street  
Akron, OH 44308  
[bknipe@firstenergycorp.com](mailto:bknipe@firstenergycorp.com)

David P. Zambito, Esq.  
D. Troy Sellars, Esq.  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
[dzambito@cozen.com](mailto:dzambito@cozen.com)  
[tsellars@cozen.com](mailto:tsellars@cozen.com)

Candis A. Tunilo, Esq.  
Brandon J. Pierce, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place - 5th Floor  
Harrisburg, PA 17101-1921  
[ctunilo@paoca.org](mailto:ctunilo@paoca.org)  
[bpierce@paoca.org](mailto:bpierce@paoca.org)

  
\_\_\_\_\_  
Vasiliki Karandrikas

Counsel to the FES Industrial and Commercial  
Customer Coalition

Dated this 24<sup>th</sup> day of July, 2015 at Harrisburg, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

**FES Industrial & Commercial Customer Coalition  
Objections to  
FirstEnergy Solutions Corp.  
Interrogatories, Set II**

---

Pursuant to 52 Pa. Code §§ 5.342(c) and (e), the FES Industrial & Commercial Customer Coalition ("FES-ICCC") hereby objects to the Interrogatories, Set II served by FirstEnergy Solutions Corp. ("FES") on July 14, 2015 ("FES to FES-ICCC, Set II") as follows:

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

---

**FES to FES-ICCC, Set II, Instructions Nos. 1 and 19**

1. The "Responding Party," "you," or "your" means the party to which these interrogatories and requests for production of documents are propounded and/or all agents, affiliates, employees, consultants, and representatives acting on behalf of the Responding Party.
  
19. These interrogatories are directed to each individual member of FES-ICCC and each such member should provide separate responses. Include a verification for each member in accordance with 52 Pa. Code § 1.36.

**Objection**

FES ICCC generally objects to Instruction Nos. 1 and 19 with respect to FES Set II, Questions 1 through 27, inclusive, as imposing upon FES ICCC obligations inconsistent with the Pennsylvania Public Utility Commission's regulations regarding discovery. Discovery is not permitted if it would cause unreasonable annoyance, oppression, burden or expense. 52 Pa. Code § 5.361(a)(2). Responding to FES's Set II in accordance with Instruction Nos. 1 and 19 would cause unreasonable annoyance, oppression, burden and expense because FES is asking FES ICCC for a group response as well as each of FES ICCC's 14 members for individual responses and signed verifications to 27 discovery requests. Without waiving this objection, based upon a reasonable interpretation of each discovery request, FES ICCC will respond to certain requests as a collective group and the remaining requests will be answered by individual members as a demonstration of good faith. FES ICCC reserves the right to supplement its objections and responses to any discovery request within Set II at any time prior to hearings.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

---

**FES to FES-ICCC, Set II, Instructions No. 16**

If, in connection with an interrogatory, the Responding Party contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorney's work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

**Objection**

FES ICCC objects to this instruction. A party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Under Section 5.361(a)(3) of the Commission's regulations, privileged information, or information related to privileged matters, is not properly subject to discovery. FES has acknowledged that privileged documents are not subject to discovery, yet the above instruction would require FES ICCC, its representatives or group members, as applicable, to furnish information related to privileged matters, contrary to Section 5.361(a)(3) of the Commission's Regulations. Such a request is inconsistent with the Commission's regulations and not properly discoverable.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

---

**FES to FES-ICCC, Set II, Instructions No. 17**

If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and, (c) the basis on which the privilege or other protection from disclosure is claimed.

**Objection**

FES ICCC objects to this instruction. A party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Under Section 5.361(a)(3) of the Commission's regulations, privileged information, or information related to privileged matters, is not properly subject to discovery. FES has acknowledged that privileged documents are not subject to discovery, yet the above instruction would require FES ICCC, its representatives or group members, as applicable, to furnish information related to privileged matters, contrary to Section 5.361(a)(3) of the Commission's Regulations. Such a request is inconsistent with the Commission's regulations and not properly discoverable.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

---

**FES to FES-ICCC, Set II, Question No. 1**

Explain your understanding of the pass-through event clauses of the other members of FES-ICCC at issue in the instant complaint proceeding.

**Objection**

*Please see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 1 as fully as reasonably possible consistent with these objections.*

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

---

**FES to FES-ICCC, Set II, Question No. 2**

How, if at all, does your pass-through event clause at issue in the instant complaint proceeding differ from the pass-through event clauses of the other members of FES-ICCC at issue in the instant complaint proceeding?

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 2 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

---

**FES to FES-ICCC, Set II, Question No. 3**

- a. Have you had communication(s) with any other member(s) of FES-ICCC concerning the pass-through event language of your FES contract at issue in the instant complaint proceeding?
- b. If the response to 3.a. is anything other than "No", provide full descriptions of verbal communication(s) and copies of written communication(s).

**Objection**

FES ICCC objects to this interrogatory. A party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Under Section 5.361(a)(3) of the Commission's regulations, privileged information, or information related to privileged matters, is not properly subject to discovery. FES has acknowledged that privileged documents are not subject to discovery, yet the above interrogatory would require FES ICCC, its representatives or group members, as applicable, to furnish information related to privileged matters, contrary to Section 5.361(a)(3) of the Commission's Regulations. Such a request is inconsistent with the Commission's regulations and not properly discoverable.

In addition, see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 4**

- a. Have you had communication(s) with any other member of FES-ICCC concerning your *intent to oppose the pass-through event*?
- b. If the response to 4.a. is anything other than “No”, provide full descriptions of verbal communication(s) and copies of written communication(s).

**Objection**

FES ICCC objects to this interrogatory. A party may not ask an interrogatory which “relates to matter which is privileged.” 52 Pa. Code § 5.361(a)(3). Under Section 5.361(a)(3) of the Commission's regulations, privileged information, or information related to privileged matters, is not properly subject to discovery. FES has acknowledged that privileged documents are not subject to discovery, yet the above interrogatory would require FES ICCC, its representatives or group members, as applicable, to furnish information related to privileged matters, contrary to Section 5.361(a)(3) of the Commission's Regulations. Such a request is inconsistent with the Commission's regulations and not properly discoverable.

In addition, see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 5**

Describe in detail the communication(s) you received soliciting you to become a member of FES-ICCC.

**Objection**

FES's question is objectionable on multiple bases. First, a party may not ask interrogatories related to information that is not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). The scope of this proceeding was defined in the Presiding Administrative Law Judge's Second Interim Order dated December 18, 2014, in Docket No. C-2014-2425989 ("December 18 Order"). According to the December 18 Order, the scope of this proceeding is limited to "whether FES violated Section 2807(d)(2) of the Code, 66 Pa. C.S.A. § 2807(d)(2), and Sections 54.43(l) and 54.43(f) of the Commission's Regulations, 52 Pa. Code § 54.31(l) and § 54.43(f)." See December 18 Order at Ordering Paragraph 2. This interrogatory requests information that is unrelated to FES's compliance with statutes or regulations applicable to Pennsylvania's competitive electricity suppliers and not likely to lead to the discovery of admissible evidence. Therefore, the requested information is not relevant to this proceeding.

Furthermore, a party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Under Section 5.361(a)(3) of the Commission's regulations, privileged information, or information related to privileged matters, is not properly subject to discovery. The requested information is protected under the attorney-client and work product privileges. Therefore, the requested information is not properly subject to discovery.

Finally, see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 6**

Provide any document or other communication that requested your becoming a member of FES-ICCC.

**Objection**

FES's question is objectionable on multiple bases. First, a party may not ask interrogatories related to information that is not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). The scope of this proceeding was defined in the Presiding Administrative Law Judge's Second Interim Order dated December 18, 2014, in Docket No. C-2014-2425989 ("December 18 Order"). According to the December 18 Order, the scope of this proceeding is limited to "whether FES violated Section 2807(d)(2) of the Code, 66 Pa. C.S.A. § 2807(d)(2), and Sections 54.43(l) and 54.43(f) of the Commission's Regulations, 52 Pa. Code § 54.31(l) and § 54.43(f)." See December 18 Order at Ordering Paragraph 2. This interrogatory requests information that is unrelated to FES's compliance with statutes or regulations applicable to Pennsylvania's competitive electricity suppliers and not likely to lead to the discovery of admissible evidence. Therefore, the requested information is not relevant to this proceeding.

Furthermore, a party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Under Section 5.361(a)(3) of the Commission's regulations, privileged information, or information related to privileged matters, is not properly subject to discovery. The requested information is protected under the attorney-client and work product privileges. Therefore, the requested information is not properly subject to discovery.

Finally, see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 7**

How long have you shopped for competitive retail electric generation supply?

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1 and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 7 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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

Explain the process by which you shop for competitive retail electric generation supply, including any due diligence that you conduct in the process.

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 8 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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

*How many electric generation supply agreements have you entered into since the time that you first began to shop for competitive retail electric generation supply?*

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 9 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 10**

Identify the persons responsible to procuring your electric generation supply and explain their qualifications for such duties.

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 10 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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

Did you enter into the FES contract at issue in this complaint proceeding with the assistance of counsel?

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 11 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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

Did you enter into the FES contract at issue in this complaint proceeding with the assistance of any person? If "yes," identify such person and their qualifications.

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 12 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 13**

If any person assisted you in entering into the FES contract at issue in this complaint proceeding, did you have any communication(s) with such person regarding the meaning of the pass-through event language at issue in this proceeding? If the response is anything other than "No", provide full descriptions of verbal communication(s) and copies of written communication(s).

**Objection**

FES ICCC objects to this interrogatory. A party may not ask an interrogatory which "relates to matter which is privileged." 52 Pa. Code § 5.361(a)(3). Under Section 5.361(a)(3) of the Commission's regulations, privileged information, or information related to privileged matters, is not properly subject to discovery. FES has acknowledged that privileged documents are not subject to discovery, yet the above interrogatory would require FES ICCC, its representatives or group members, as applicable, to furnish information related to privileged matters, contrary to Section 5.361(a)(3) of the Commission's Regulations. Such a request is inconsistent with the Commission's regulations and not properly discoverable.

In addition, see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 13 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 14**

*In negotiating your FES contract at issue in this complaint proceeding, did you or any other person ask FES to explain its intent in including the pass-through event clause?*

**Objection**

FES ICCC objects to this interrogatory. Discovery is not permitted if it would cause unreasonable annoyance, oppression, burden or expense. 52 Pa. Code § 5.361(a). Asking each member for individual responses and signed verifications would impose unreasonable burden and expense, particularly when FES could conduct its own research into a member's discussions with FES personnel. Such a request is inconsistent with the Commission's regulations and not properly discoverable.

In addition, see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 14 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 15**

Identify any Commission electric utility default service proceeding in which you or a group of which you were a member argued that responsibility for PJM non-market based charges should not be the responsibility of the electric utility and the bases for such arguments.

**Objection**

FES ICCC objects to this interrogatory. A party may not ask interrogatories related to information that is not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). Through the assessment of the RTO Expense Surcharge at issue in this proceeding, FES sought to recover costs primarily related to the higher than customary PJM uplift (operating reserves) charges during the 2014 Cold Weather Events. See Analysis of Operational Events and Market Impact During the January 2014 Cold Weather Events, at 22, 32, 35, 44-47, and 51 (May 8, 2014) available at <https://www.pjm.com/~media/documents/reports/20140509-analysis-of-operational-events-and-market-impacts-during-the-jan-2014-cold-weather-events.ashx>; Energy and Ancillary Services Uplift in PJM, at 10 (Sept. 8, 2014) available at <http://www.ferc.gov/CalendarFiles/20140905085408-PJM%20%20Whitepaper.pdf>. In a recent Commission proceeding, FES indicated that uplift charges are not among the non-market based charges for which an electric utility should be responsible. See FES to FES-ICCC, Set II, Question No. 15 Attachment at page 8. In other words, uplift charges are not properly classified as non-market based charges. FES's interrogatory request seeks information about non-market based charges that is unrelated to the charges at issue in this proceeding and is not likely to lead to the discovery of admissible evidence. Therefore, the requested information is not relevant to this proceeding.



February 21, 2014

VIA E-MAIL AND FIRST CLASS MAIL

**David P. Zambito**

Direct Phone 717-703-5892

Direct Fax 215-989-4216

dzambito@cozen.com

Honorable Susan D. Colwell  
Office of Administrative Law Judge  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Their Default Service Programs; Docket Nos. P-2013-2391368, P-2013-2391372, P-2013-2391375, and P-2013-2391378; SURREBUTTAL TESTIMONY OF SHARON L. NOEWER ON BEHALF OF FIRSTENERGY SOLUTIONS CORP.**

Dear Judge Colwell:

Enclosed on behalf of FirstEnergy Solutions Corp. ("FES"), please find the following prepared surrebuttal testimony in the above-referenced matter:

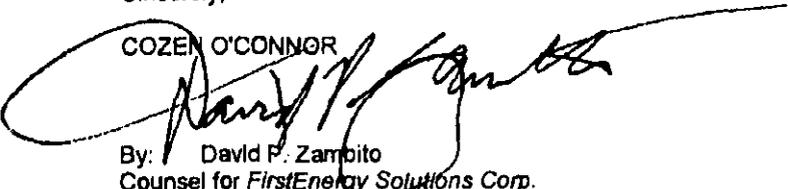
FES Statement No. 1-S (Surrebuttal Testimony of Sharon L. Noewer, Director of State Competitive Market Policies, FirstEnergy Solutions Corp.), including FES Exhibit SLN-4.

As noted on the attached Certificate of Service, FES has served copies of the testimony on the active parties and their consultants.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

COZEN O'CONNOR

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

DPZ/kmg  
Enclosure

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

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**CERTIFICATE OF SERVICE**  
**(Joint Petition of Metropolitan Edison Company, Pennsylvania Energy Company,**  
**Pennsylvania Power Company, and West Penn Power Company)**  
**Docket No. P-2013-2391368 et al.**

I hereby certify that I have this day served a true copy of FirstEnergy Solutions Corp.'s Surrebutal Testimony of Sharon L. Noewer, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA E-MAIL, and/or FIRST CLASS MAIL:**

Aron J. Beatty, Esquire  
Kristine E. Robinson, Esquire  
Cammie A. Shoen, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923  
[abeatty@paoca.org](mailto:abeatty@paoca.org)  
[krobinson@paoca.org](mailto:krobinson@paoca.org)  
[cshoen@paoca.org](mailto:cshoen@paoca.org)

Daniel G. Asmus, Esquire  
Office of Small Business Advocate  
Suite 1102, Commerce Tower  
300 North Second Street  
Harrisburg, PA 17101-1303  
[dasmus@pa.gov](mailto:dasmus@pa.gov)

Charles Daniel Shields, Esquire  
Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[chshields@pa.gov](mailto:chshields@pa.gov)

Daniel Clearfield, Esquire  
Deanne M. O'Dell, Esquire  
Carl R. Shultz, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[dodell@eckertseamans.com](mailto:dodell@eckertseamans.com)  
[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)  
Counsel for *Retail Energy Supply*  
*Association and Direct Energy Services*  
*LLC*

Tori L. Giesler, Esquire  
Lauren M. Lepkoski, Esquire  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001  
[Tgiesler@firstenergycorp.com](mailto:Tgiesler@firstenergycorp.com)  
[Llepkoski@firstenergycorp.com](mailto:Llepkoski@firstenergycorp.com)

Brian J. Knipe, Esquire  
FirstEnergy Solutions Corp.  
76 South Main  
Akron, OH 44308  
[bknipe@firstenergycorp.com](mailto:bknipe@firstenergycorp.com)

Amy M. Klodowski, Esquire  
FirstEnergy Solutions Corp.  
800 Cabin Hill Drive  
Greensburg, PA 15601  
[aklodow@firstenergycorp.com](mailto:aklodow@firstenergycorp.com)

Catherine G. Vasudevan, Esquire  
Thomas P. Gadsden, Esquire  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
[cvasudevan@morganlewis.com](mailto:cvasudevan@morganlewis.com)  
[tgadsden@morganlewis.com](mailto:tgadsden@morganlewis.com)  
Counsel for *Metropolitan Edison Company,*  
*Pennsylvania Electric Company,*  
*Pennsylvania Power Company, and West*  
*Penn Power Company*

Divesh Gupta, Esquire  
Exelon Business Services Corp.  
100 Constellation Way, Ste. 500C  
Baltimore, MD 21202  
[Divesh.gupta@constellation.com](mailto:Divesh.gupta@constellation.com)  
Counsel for *Exelon Generation Company*  
*LLC*

Stephen L. Huntoon, Esquire  
Nextera Energy, Inc.  
801 Pennsylvania Avenue NW  
Suite 220  
Washington, DC 20004  
[shuntoon@nexteraenergy.com](mailto:shuntoon@nexteraenergy.com)  
Counsel for *NextEra Energy Services PA  
LLC and NextEra Energy Power Marketing  
LLC*

Harry S. Geller, Esquire  
Patrick M. Cicero, Esquire  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
[hgellerpulp@palegalaid.net](mailto:hgellerpulp@palegalaid.net)  
[pciceropulp@palegalaid.net](mailto:pciceropulp@palegalaid.net)  
Counsel for *Coalition for Affordable Utility  
Services and Energy Efficiency in  
Pennsylvania ("CAUSE-PA")*

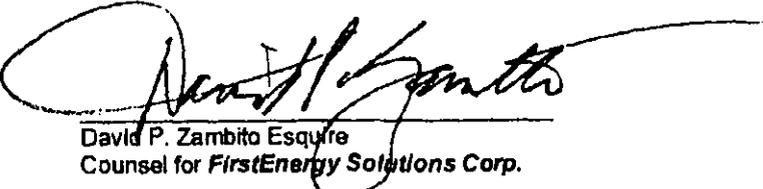
Michael A. Gruin, Esquire  
Linda R. Evers, Esquire  
Benjamin L. Shechtman, Esquire  
Stevens & Lee  
17 North Second Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101  
[mag@stevenslee.com](mailto:mag@stevenslee.com)  
[lr@stevenslee.com](mailto:lr@stevenslee.com)  
[bls@stevenslee.com](mailto:bls@stevenslee.com)  
Counsel for *Washington Gas Energy  
Services and Duquesne Light Energy LLC*

Susan E. Bruce, Esquire  
Charis Mincavage, Esquire  
Vasiliki Karandrikas, Esquire  
Teresa K. Schmittberger, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1186  
Harrisburg, PA 17108-1186  
[sbruce@mwn.com](mailto:sbruce@mwn.com)  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[ykarandrikas@mwn.com](mailto:ykarandrikas@mwn.com)  
[tschmittberger@mwn.com](mailto:tschmittberger@mwn.com)  
Counsel for *Met-Ed Industrial Users Group,  
Penelec Industrial Customer Alliance,  
Penn Power Users Group and West Penn  
Power Industrial Intervenors*

Todd S. Stewart, Esquire  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105-1778  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)  
Counsel for *Dominion Retail Inc. and  
Interstate Gas Supply, Inc.*

William E. Lehman, Esquire  
Thomas J. Sniscak, Esquire  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105-1778  
[wlehman@hmslegal.com](mailto:wlehman@hmslegal.com)  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)  
Counsel for *Pennsylvania State University*

DATED: February 21, 2014



David P. Zambito Esquire  
Counsel for *FirstEnergy Solutions Corp.*

**FES Statement No. 1-S**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<i>Joint Petition of Metropolitan Edison</i>	:	
<i>Company, Pennsylvania Electric</i>	:	Docket Nos. P-2013-2391368
<i>Company, Pennsylvania Power Company,</i>	:	P-2013-2391372
<i>and West Penn Power Company for</i>	:	P-2013-2391375
<i>Approval of Their Default Service</i>	:	P-2013-2391378
<i>Programs</i>	:	

**SURREBUTTAL TESTIMONY**

of

Sharon L. Noewer

ON BEHALF OF

FIRSTENERGY SOLUTIONS CORP.

**TOPICS ADDRESSED:**

NMB Charges

February 21, 2014

1 Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

2 A. My name is Sharon L. Noewer. My business address is 341 White Pond Drive,  
3 Akron, Ohio, 44320. I am the Director of State Competitive Market Policies for  
4 FirstEnergy Solutions Corp. ("FES").

5

6 Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

7 A. I am submitting this Surrebuttal Testimony on behalf of FES.

8

9 Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?

10 A. Yes, I submitted Direct Testimony in this proceeding.

11

12 Q. WHAT ISSUE ARE YOU ADDRESSING IN THIS SURREBUTTAL  
13 TESTIMONY?

14 A. Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power  
15 Company, and West Penn Power Company (collectively, the "Companies"), the  
16 Retail Energy Supply Association ("RESA"), Dominion Retail, Inc./Interstate Gas  
17 Supply, Inc. ("Dominion/IGS") and Exelon Generation Company ("ExGen") all  
18 support the proposition that the Companies should assume responsibility for non-  
19 market based ("NMB") charges associated with all load in their respective service  
20 territories. Companies St. No. 1-R at 13-16; RESA St. No. 1-R at 9-11;  
21 Dominion/IGS St. No. 1 at 8-9; ExGen St. No. 1-R at 4-7. However, Mr. Seidt  
22 misstates FES's position as to which NMB charges should be borne by the  
23 Companies on behalf of default service suppliers and retail service providers.

1 Companies St. No. 1-R at 15. I will clarify FES's position on that point.

2

3 Q. CAN YOU SPECIFY WHICH NMB CHARGES FES BELIEVES SHOULD BE  
4 THE COMPANIES' RESPONSIBILITY?

5 A. Yes. Mr. Seidt states in his rebuttal testimony that FES's proposal pertains only to  
6 NITS. Companies St. No. 1-R at 15. This statement is incorrect. FES's response to  
7 the Companies' Interrogatory Set I-1 lists the NMB charges FES believes should be  
8 borne by the Companies by PJM billing line item. The response is attached to this  
9 Surrebuttal Testimony as FES Exhibit SLN-4. FES Exhibit SLN-4 was prepared  
10 under my supervision.

11

12 Q. WHY ARE THESE PARTICULAR PJM LINE ITEMS INCLUDED IN YOUR  
13 RECOMMENDATION?

14 A. I mentioned in my Direct Testimony that Ohio utilities already bear NMB charges in  
15 the manner I recommend in these proceedings, or have proposed to the Ohio Public  
16 Utility Commission that they do so.<sup>1</sup> FES Exhibit SLN-4 sets out by PJM line item  
17 those NMB charges to which my Direct Testimony refers.

18

19 Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

20 A. Yes.

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<sup>1</sup> Ohio Power Company is the only major electric utility in Ohio that does not bear responsibility for these charges, and has recently filed a petition with the Ohio PUC to begin doing so.

**FES Exhibit SLN-4**

**METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC  
COMPANY, PENNSYLVANIA POWER COMPANY, AND WEST PENN  
POWER COMPANY'S INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO  
FIRST ENERGY SOLUTIONS CORP., SET I**

The following questions pertain to FirstEnergy Solutions Corp. ("FES") Statement No. 1, the Direct Testimony of Sharon L. Noewer.

FirstEnergy-(FES)-I-1. Reference FES St. No. 1, p. 5, lines 6-16. Please identify the PJM charges and credits currently billed to EGSs for which Ms. Noewer proposes the FirstEnergy EDCs assume responsibility.

**Response:** FES proposes that the Companies assume responsibility of the following PJM charge and credit line items which are currently billed to default service suppliers and retail suppliers.

- 1100 and 2100: Network Integration Transmission Service
- 1101 and 2101: Low-Voltage Network Integration Transmission Service
- 1102 and 2102: Network Integration Transmission Service (exempt)
- 1104 and 2104: Network Integration Transmission Service Offset
- 1106 and 2106: Non-Zone Network Integration Transmission Service
- 1320 and 2320: Transmission Owner Scheduling, System Control and Dispatch Service
- 1330 and 2330: Reactive Supply and Voltage Control from Generation and Other Sources Service
- 1450: Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service

The above proposal is in addition to the NMB charges for which the Companies are currently responsible, and those for which they propose to assume responsibility in these proceedings.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 16**

Provide any communications between you and representatives of FES regarding the meaning of the pass-through event clause in your FES contract at issue in this complaint proceeding.

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 16 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 17**

Specify the exact nature of any deceptive marketing by FES that you are alleging or otherwise intend to assert in this complaint proceeding. Provide any documents supporting such allegations.

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1 and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 17 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 18**

Specify the exact nature of any fraudulent billing by FES that you are alleging or otherwise intend to assert in this complaint proceeding. Provide any documents supporting such allegations.

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1 and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 18 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 19**

Provide any non-privileged communications, including but not limited to internal reports to your organization, regarding the subject matter of the instant complaint.

**Objection**

FES ICCC objects to Interrogatory No. 19 on the basis that it seeks information that is commercially sensitive which could be used for anti-competitive purposes. FES ICCC members are energy-intensive users of electricity and, thus, electricity costs represent a significant portion of members' operating costs. The disclosure of internal reports regarding the subject matter of this complaint may provide a competitive advantage to FES ICCC members' competitors. In addition, the disclosure of such information may provide FES with a competitive advantage vis-à-vis other competitive suppliers seeking to do business with FES ICCC members. Finally, there is no Protective Order in effect which would restrict inclusion of commercially sensitive information in the public record or to ensure that the FES representatives seeking this information are not involved in the company's competitive generation supply activities.

In addition, see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 20**

With regard to the FES contract at issue in the instant proceeding, identify any analyses you performed that informed your decision to enter into the FES contract instead of a contract with another generation supplier.

**Objection**

FES ICCC objects to Interrogatory No. 19 on the basis that it seeks information that is commercially sensitive which could be used for anti-competitive purposes. FES ICCC members are energy-intensive users of electricity and, thus, electricity costs represent a significant portion of members' operating costs. The disclosure of internal communications regarding the decision-making process for entering a contract with FES may provide a competitive advantage to FES ICCC members' competitors. In addition, the disclosure of such information may provide FES with an inappropriate competitive advantage vis-à-vis other competitive suppliers seeking to do business with FES ICCC members. Finally, there is no Protective Order in effect which would restrict inclusion of any potentially commercially sensitive information in the public record or to ensure that the FES representatives seeking this information are not involved in the company's competitive generation supply activities.

In addition, see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 21**

With regard to the FES contract at issue in the instant proceeding, provide any internal communications concerning your decision to enter into said FES contract.

**Objection**

FES ICCC objects to Interrogatory No. 21 on the basis that it seeks information that is commercially sensitive which could be used for anti-competitive purposes. FES ICCC members are energy-intensive users of electricity and, thus, electricity costs represent a significant portion of members' operating costs. The disclosure of internal communications regarding the decision-making process for entering a contract with FES may provide a competitive advantage to FES ICCC members' competitors. In addition, the disclosure of such information may provide FES with an inappropriate competitive advantage vis-à-vis other competitive suppliers seeking to do business with FES ICCC members. Finally, there is no Protective Order in effect which would restrict inclusion of any potentially commercially sensitive information in the public record or to ensure that the FES representatives seeking this information are not involved in the company's competitive generation supply activities.

In addition, see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 22**

With regard to the instant complaint, identify the specific provisions of the Pennsylvania Public Utility Code, Commission rule, or Commission order that you believe FES violated in its dealings with you.

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 22 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 23**

With regard to the instant complaint proceeding, on what basis do you believe that FES violated a specific provision of the Pennsylvania Public Utility Code, Commission rule, or Commission order with respect to any other member of FES-ICCC. What is your basis for that belief?

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 23 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 24**

Identify any non-privileged communications with other members of FES-ICCC regarding the instant complaint proceeding.

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 24 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 25**

Do you believe that the weather events of January 2014 were “extraordinary”? If not, how would you classify them and why?

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 25 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 26**

Identify the witnesses whom you intend to present at hearing in this complaint proceeding to satisfy your burden of proof that FES engaged in deceptive marketing or fraudulent billing with respect specifically to you.

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1, 16, 17, and 19, which are incorporated herein as if fully set forth. Notwithstanding these objections, FES ICCC will respond to Question No. 26 as fully as reasonably possible consistent with these objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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**FES to FES-ICCC, Set II, Question No. 27**

Provide any exhibits that you intend to present in this complaint proceeding to satisfy your burden of proof that FES engaged in deceptive marketing or fraudulent billing with respect specifically to you.

**Objection**

Please see the objections to FES-ICCC, Set II, Instruction Nos. 1 and 19, which are incorporated herein as if fully set forth. Notwithstanding these Objections, FES ICCC will respond to Question No. 27 as fully as reasonably possible consistent with these Objections.

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

**Objections of FES Industrial & Commercial Customer Coalition to  
FirstEnergy Solutions Corp. Interrogatories, Set II  
FES Industrial & Commercial Customer Coalition**

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Respectfully submitted,

McNEES WALLACE & NURICK LLC

By   
Susan E. Bruce (I.D. No. 80146)  
Charis Mincavage (I.D. No. 82039)  
Vasiliki Karandrikas (I.D. No. 89711)  
McNEES WALLACE & NURICK LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
Phone: (717) 232-8000  
Fax: (717) 237-5300  
[sbruce@mwn.com](mailto:sbruce@mwn.com)  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[vkandrikas@mwn.com](mailto:vkandrikas@mwn.com)

Counsel to the FES Industrial and Commercial  
Customer Coalition

July 24, 2015

**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 Motion to Compel FES Industrial & Commercial Customer Coalition to Respond to Discovery Sets I and II, 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  
Suite 220, Platt Place  
301 Fifth Avenue  
Pittsburgh, PA 15222  
kdunderdal@pa.gov

Susan E. Bruce, Esquire  
Charis Mincavage, Esquire  
Vasiliki Karandrikas, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street, P.O. Box 1166  
Harrisburg, PA 17108-1166  
sbruce@mwn.com  
cmincavage@mwn.com  
vkarandrikas@mwn.com  
**Counsel for FES Industrial & Commercial  
Customer Coalition**

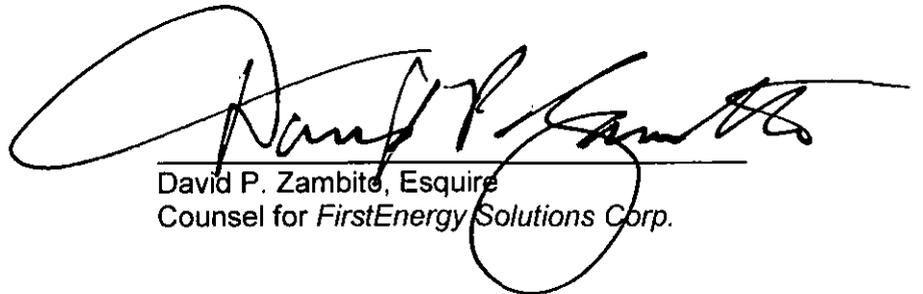
Candis A. Tunilo, Esquire  
Brandon J. Pierce, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923  
ctunilo@paoca.org  
bpierce@paoca.org  
**Counsel for Office of Consumer  
Advocate**

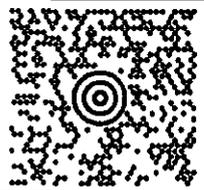
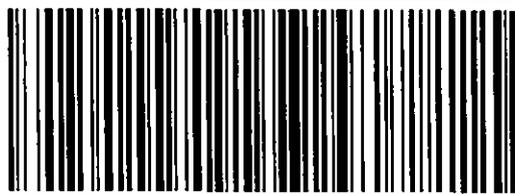
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AUG 03 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

DATED: August 3, 2015

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

DAVID ZAMBITO 2156653713 COZEN O'CONNOR 17 NORTH SECOND STREET HARRISBURG PA 17101		2 LBS PAK 1 OF 1
<b>SHIP TO:</b> ROSEMARY CHIAVETTA, SECRETARY 7177727777 PA PUBLIC UTILITY COMMISSION 2ND FLOOR - FILING ROOM 400 NORTH STREET HARRISBURG PA 17120-0079		
	<b>PA 171 9-20</b> 	
<b>UPS NEXT DAY AIR</b> TRACKING #: 1Z 16Y 18Y 01 9574 0503		<b>1</b>
		
BILLING: P/P		
Reference No.1: 349313.000-5278 Reference No.2: 5278 Zambito, David		

FOLD on this line and place in shipping pouch with bar code and delivery address visible

1. Fold the first printed page in half and use as the shipping label.
2. Place the label in a waybill pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.
3. Keep the second page as a receipt for your records. The receipt contains information useful for tracking your package.