

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Interim Guidelines Regarding	:	
Standards For Changing a	:	Docket No. M-2011-2270442
Customer's Electricity	:	
Generation Supplier	:	

**COMMENTS OF
FIRSTENERGY SOLUTIONS CORP.**

I. INTRODUCTION

FirstEnergy Solutions Corp. ("FES") respectfully submits these Comments in response to the Tentative Order adopted by the Pennsylvania Public Utility Commission ("Commission") in the above-referenced proceeding on November 10, 2011, and entered November 14, 2011 ("Tentative Order"). FES, a subsidiary of FirstEnergy Corp., is experienced in wholesale and retail markets, and offers wholesale and retail energy and related products to customers located throughout the Mid-Atlantic and Midwest regions. FES participates in the default service supply procurements of all of the largest electric distribution companies ("EDCs") in Pennsylvania. In addition, FES is a licensed electric generation supplier ("EGS")¹ authorized to serve all categories of retail customers throughout the Commonwealth. As such, FES has significant experience with the issues addressed in the Tentative Order.

The Tentative Order proposes interim guidelines that are intended to facilitate the timely transfer of a customer's account from an EDC to an EGS, or from one EGS to another, while preserving safeguards to prevent the unauthorized switching of a customer's account. FES supports the Commission's efforts to shorten the timeframe in which customers who want to switch suppliers are able to do so. In Comments submitted in the Commission's Retail Markets Investigation, FES has taken the position that the current 16 to 45 day time period for switching

¹ Docket No. A-110078 (1998).

is too long.² The Commission also requests comments on a long-term proposal to fully integrate supplier switching into all smart meter deployment plans to enable instantaneous or near-instantaneous customer account switching. Finally, Commissioner James H. Cawley requested that comments address four specific questions posed in his Statement issued in connection with the Tentative Order. FES addresses the Commission’s interim and long-term proposals and Commissioner Cawley’s questions below.

II. COMMENTS

A. Proposed Interim Guidelines

The Tentative Order identifies three readily available, promising options for accelerating customer account transfers:

1. Elimination of the 10-day waiting period, and the resulting reduction in the 16-day rule;
2. Implementation of measures by EGSs to ensure that completed enrollment transactions are sent to EDCs so that customers can be switched before the window closes before the next meter reading date; and
3. Customer education, by EDCs, EGSs and the Commission, focused on switching time frames to improve customer understanding of the process.³

The interim guidelines contained in the Tentative Order are intended to facilitate the achievement of the Commission’s goals of shortening the account transfer time frame while maintaining consumer protections against unauthorized service transfers, or “slamming.” FES supports the interim guidelines in general, and the waiver of the ten day EDC confirmation letter requirement in particular. FES believes that the confirmation letter initiating the ten day waiting period is often the cause of customer confusion, resulting in unnecessary cancellations. The interim guidelines are an important step toward the ultimate goal of instantaneous customer

² Investigation of Pennsylvania’s Retail Electricity Market, Docket No. I-2011-2237952, Comments of FirstEnergy Solutions Corp. (June 3, 2011), pp. 11, 20.

³ Tentative Order at 11.

switching. However, FES respectfully submits that certain provisions in the interim guidelines are not feasible to implement, for the reasons which follow.

1. Interim Guideline C (Definitions): While FES recognizes that EDC operational requirements could necessitate different switching deadline schedules among EDCs, FES believes that certain criteria can be applied uniformly and consistently among EDCs to achieve the goal of reducing the switching timeframe. For example, the definition of "Switching Deadline" should be revised to clarify that EDCs should establish one switching deadline for each meter read cycle, rather than one deadline each month (as is the practice in the gas industry). Fewer switching deadlines will result in increasing the switching timeframe, instead of accelerating it. Further, the Commission should require that meter read cycle and switching deadline data be made available to suppliers via download or in an electronic file format, that certain data formatting be standardized, and that meter read cycle and switching deadline dates be published within the same document or at the same locations online. Several months' future information should be available on a rolling basis throughout the year.

FES also recommends that the terms "Rescind" and "Rescission" should be added as defined terms as follows:

"Rescind" or "Rescission" – The cancellation of an account transfer by the EGS or customer during the three-day period in 52 Pa. Code §54.5, or the cancellation of an account transfer due to an allegation by a customer that the account transfer was unauthorized."

Defining "Rescind" and "Rescission" to refer only to cancellations during the three day customer rescission period, or cancellations due to a slamming allegation, would

eliminate significant confusion and alleviate FES' concerns about subparagraph 3 of Interim Guideline N (EDC Rescission of the Account Transfer), which are discussed below.

2. Interim Guidelines E (Meter Read Date; Switching Deadline) and K (EDC Transfer of Customer Account): Both of these guidelines implicate switching deadlines and meter read cycles established by the EDCs. Given the increased importance of these timeframes, FES requests that both the meter read cycle and switching deadline schedules be clearly communicated and posted on both the EDC's supplier services website and on PaPowerSwitch.com. PaPowerSwitch.com could include these schedules in the proposed customer education section on switching, in enough detail that any customer who knows his or her meter read cycle can calculate an estimated date that service will be switched to the EGS.
3. Interim Guideline E (Meter Read Date; Switching Deadline): An EGS' ability to advise customers regarding the anticipated switch date is dependent on the EDC and on the customer being able and willing to provide certain information. In order for an EGS to advise a customer regarding the account transfer date, the customer must be able to provide the EGS with his or her meter read cycle. Therefore, it is critical that all EDCs include meter read cycles on customers' bills (if they do not already do so). The meter read cycles should be displayed in a clear, customer-friendly manner, preferably in the same area as the account number. If a customer is not able to provide the meter read cycle at the time of the sale, the EGS will not be able to provide a "good faith estimate" of the anticipated account transfer date.⁴ FES further recommends that EGSs be allowed to enroll the customer and provide a date range in which the switch

⁴ See Tentative Order p. 16.

should occur, and refer the customer to PaPowerSwitch.com or the EDC's website for more specific information for switching deadlines.

In addition, this requirement should not apply to residential and small commercial customers who enroll through direct mail solicitations or the internet. In FES' experience, requiring customers to enter meter read cycles in order to complete an internet enrollment is a significant barrier to sales and results in fewer enrollments. It is impractical for direct mail or internet solicitations to be targeted to individual customers with the specificity this guideline proposes. FES proposes that during the enrollment process, such customers be referred to the information on their EDC's supplier services website, or to PaPowerSwitch.com as suggested above, and provided with a phone number for further questions.

4. Interim Guideline G (Customer Receipt of Written Disclosure Statement; Start of 3 Day Contract Rescission Period): It is unclear from the proposed guidelines if suppliers should hold account transfer notices until after the three day contract rescission period expires. Specifically, FES requests guidance on how to proceed if a switching deadline is to occur during this three day period.
5. Interim Guideline H (Disclosure Statement): Subparagraph 2 of Interim Guideline H requires that the disclosure statement include a "good faith estimate" of the starting date of service with the EGS, based on the customer's next immediate meter read date and the switching deadline. FES strongly believes that requiring the inclusion of a starting date in the disclosure statement is administratively impractical. Whereas today an EGS may use one disclosure statement (by program by EDC), this provision could potentially require EGSs to produce 250-280 different disclosure statements for each

offer (one for each cycle by month by program by EDC). It would be nearly impossible to track all of those versions and ensure that they are associated with the correct customers. Additionally, customers enrolling on the internet would have to be able to accurately enter meter read cycle information in order for the correct version of the disclosure statement to be generated. Customer errors could delay the enrollment process and lengthen the switching timeframe or result in the EGS losing the sale. For these reasons, FES requests that Subparagraph 2 of Interim Guideline H be deleted, and that the current disclosure statement requirements be retained. If the Commission were to adopt FES' proposal to post meter read cycle and switching deadline information on EDC supplier services websites and PaPowerSwitch.com, customers could access either source to obtain the estimated switching date information in a more efficient and effective way than requiring that such information be included in the disclosure statement.

Also, Interim Guideline H, subparagraph 3 states that when a disclosure statement is at issue in a complaint proceeding, and is unclear or ambiguous in a manner relevant to the complaint, the Commission will interpret the language against the EGS as the drafter of the language.⁵ FES respectfully requests that this subparagraph be deleted. The item is not relevant to the accelerated switching timeframe issues in this proceeding. If the Commission determines to retain this language, EGSs should be granted a safe harbor exemption if the Commission's Bureau of Consumer Services has previously reviewed and approved the language relevant to the complaint in the disclosure statement at issue in the complaint proceeding.

⁵ Tentative Order at 17-18.

6. Interim Guideline I (Evidence of a Customer’s Authorization to Transfer Account):

This guideline concerns the required customer consent to prevent slamming pursuant to Section 2807(d)(1) of the Public Utility Code.⁶ While the guideline appears to be premised on a requirement that the customer’s consent be in writing, Section 2807(d)(1) also permits “direct oral confirmation” as a permissible form of customer consent.⁷ In fact, the Commission’s Proposed Rulemaking at Docket No. L-2010-2208332, *Marketing and Sales Practices for the Retail Residential Energy Market*, includes a proposed regulation which specifically recognizes that a residential customer may orally authorize the transfer of his or her account to a supplier.⁸ The Commission’s regulation at 52 Pa. Code §57.173 permits direct oral confirmation as well. Accordingly, the proposed guideline should similarly recognize direct oral confirmation as a permissible form of customer consent.

7. Interim Guideline L (Customer Notice of Account Transfer): FES believes that an account transfer letter sent by the EDC is not necessary. It is common practice for the EGS to send a welcome letter and a disclosure statement upon enrolling the customer and FES submits that these communications provide sufficient customer notice. The current EDC confirmation letter starting the ten day waiting period has historically caused numerous problems for EGSs, resulting in customer confusion and, depending on the wording of the letter, even encouraging customers to cancel their contracts with the EGS. FES recommends that Interim Guideline L be deleted. Should the

⁶ 66 Pa.C.S. §2807(d)(1).

⁷ §2807(d)(1) reads as follows: “The commission shall establish regulations to ensure that an electric distribution company does not change a customer’s electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer’s consent to a change of supplier.”

⁸ *Marketing and Sales Practices for the Retail Residential Energy Market*, Docket No. L-2010-2208332, Proposed Rulemaking entered February 10, 2011, proposed 52 Pa. Code §111.7(a)(1)(i) and (ii).

Commission choose to retain this letter, FES has two recommendations. First, Subparagraph 2 of Interim Guideline L provides that the EDC *may* use the sample account transfer notice included in Attachment B. FES strongly believes that all EDCs should be required to use the same letter to avoid any inconsistent or possibly confusing wording. Second, FES proposes revisions to the form notice included in Attachment B, which are detailed below.

8. Interim Guidelines M (EGS Rescission of Account Transfer) and N (EDC Rescission of the Account Transfer): Consistent with FES' recommendation that the term "Rescind" or "Rescission" be used in situations of alleged slamming or transfer cancellations during the 3-day customer rescission period in 52 Pa. Code §54.5, FES suggests that these Interim Guidelines be revised to use the terms "cancel" and "cancellation" instead.

Subparagraph 1 of Interim Guideline M states that the transfer of a customer's account may be rescinded by an EGS no later than three business days before a switching deadline. FES submits that there is no reason that an account transfer could not be cancelled by an EGS closer to the switching deadline, up to the day before the transfer is to occur. FES recommends that "three business days" be changed to "one business day" in Subparagraph 1 of Interim Guideline M. Subparagraph 1 of Interim Guideline M further states that only an EDC or DSP may rescind the customer account transfer after the EGS deadline; FES respectfully suggests that this provision should include specific language that a cancellation at any time would be done *only* upon request by the EGS or the customer.

Also, Subparagraph 3 of Interim Guideline M and subparagraph 2 of Interim Guideline N require an EGS to reimburse an EDC or DSP for “reasonable costs related directly to the rescission of a customer account transfer by the EDC or DSP.”⁹ FES has two concerns with this requirement. First, this guideline is vague and does not adequately explain which specific costs may be recovered and what amount is considered “reasonable.” Second, FES respectfully questions whether there is legal support for such a reimbursement requirement, particularly absent any requirement that EDCs or DSPs have in place approved tariffs stating precisely which costs this would include or what the amount of those charges would be. If an EDC chooses to request cost recovery related to the rescission of a customer account transfer by the EDC or DSP, the EDC is able to do so through a tariff application. For these reasons, FES recommends that Subparagraphs 2 of Interim Guidelines M and N be deleted.

9. Interim Guideline N (EDC Rescission of the Account Transfer): Again, consistent with FES’ recommendation that the terms “Rescind” or “Rescission” be reserved for instances of alleged slamming or transfer cancellations during the 3-day customer rescission period in 52 Pa. Code §54.5, FES suggests that this Interim Guideline be revised to use the terms “cancel” and “cancellation” instead.

Subparagraph 3 of Interim Guideline N requires an EDC or DSP to assume that any customer contact to an EDC or DSP requesting a cancellation is due to slamming. Considering FES’ previous experience with the ten day EDC confirmation letter and concerns with the proposed wording of the customer account transfer notice in Appendix B, application of this guideline would likely result in an increased number of slamming allegations when no slam has actually occurred. It appears that when a

⁹ Tentative Order at 21, Appendix A at 6.

customer contacts the EGS to rescind after the three day customer rescission period in 52 Pa. Code §54.5, the EGS has the flexibility to cancel the contract with or without penalty by notifying the EDC or DSP, and it is not considered a slamming allegation unless the customer specifically describes it as such. If the customer contacts the EDC or DSP to cancel after the three day customer rescission period, the new guidelines automatically assume that a slam has occurred. The guidelines should recognize the possibility that a customer contacts the EDC to cancel the EGS contract before power flow for reasons other than slamming. At the very least, an EDC that receives such a customer contact should ask the customer if he or she believes the transfer was unauthorized. If the customer responds in the negative the contact should not be treated as a slamming dispute.

10. Appendix B (Proposed Content of EDC Account Transfer Letter): As stated above, FES believes the EDC notice of account transfer in Interim Guideline L is unnecessary. If the Commission nevertheless requires some form of EDC communication to switching customers, FES believes that the EDC communication should not include the contact information of the EDC. The intent of the letter is simply to notify the customer of the new supplier that he or she has selected. By including the EDC's contact information, the letter will encourage customers to call the EDC, even if they have simply changed their mind after the three day customer rescission period. As noted above, under subparagraph 3 of Interim Guideline N, the EDC will automatically treat this type of call as a slamming allegation. FES is concerned that including EDC contact information in the Account Transfer Letter will cause slamming allegations to increase without actual slams. EGS contact information

should be included instead so the EGS can address any customer questions or concerns.

B. Long-Term Proposal

The interim proposals of providing additional consumer education focused on educating customers on the switching process, requiring EGSs to have the meter read date, and implementing switching schedules are all important steps in improving the retail shopping experience for customers. In the Tentative Order the Commission also requests comments on a long-term proposal that supplier switching should “be fully integrated into all smart meter deployment plans, with the expectation that, once smart meters are in use, supplier switching will be able to occur at any given point in time,” meaning instantaneously or near-instantaneously with customer authorization of an account transfer.¹⁰ FES supports the inclusion of supplier switching in EDCs’ smart meter implementation plans. FES recognizes, as the Commission noted, that the implementation of smart meter technology will require substantial changes to EDCs’ meter and billing systems.

While these substantial changes may be necessary to fully utilize the features of smart meters, FES proposes that the Commission consider the possibility that existing EDC meter and billing systems may be amenable to near-term modifications to accommodate mid-cycle switches, assuming the benefits of doing so outweigh the costs. The two issues of mid-cycle switches and implementation of smart meters, while related for purposes of implementing universal instantaneous switching, could be considered separately.

Mid-cycle switching allows customers to see the benefits of electric supplier choice as soon as possible and FES encourages the Commission to undertake an analysis of the feasibility

¹⁰ Tentative Order at 25.

of mid-cycle switching. FES consistently pursues the goal of giving customers what they want, and in this case, FES believes customers want to see the benefits of their switching decision as soon as possible.

C. Questions Posed by Commissioner James H. Cawley

In his Statement issued in connection with the Tentative Order, Commissioner Cawley requested that parties respond to four questions. FES' responses reflect its experience providing electric generation supply to residential, commercial and industrial customers in the mid-Atlantic and Midwest regions of the country. FES notes at the outset that the answers to these questions vary significantly depending on the type of customer involved (residential, small commercial/industrial or large commercial/industrial).

- 1. How important is it to customers that they have a good faith estimate of the projected starting date for EGS service in the Disclosure Statement?*

While FES believes it is important that customers are educated about meter read dates and the switching timeline, including a specific estimated start date for each individual customer in the disclosure statement would be nearly impossible to administer. This requirement could necessitate the preparation and maintenance of a different disclosure statement for each day of each month a particular offer is in place, particularly if the offer is in effect in different EDC service territories. FES' current disclosure statements differ among residential, small commercial and large commercial classes, but generally they all state that EGS service will commence with the meter read date in the month listed, or the next available meter reading following an applicable rescission period. FES believes that this language is sufficient.

- 2. Are there other means or timelines that would more beneficially provide information to customers regarding the service starting date?*

Rather than requiring that EGSs provide an estimated start date in the disclosure statement, which is administratively impractical for the reasons stated above and in the discussion of Interim Guideline H (Disclosure Statement), FES proposes that each individual EDC supplier service website and PaPowerSwitch.com include specific timelines for each EDC as part of the customer education efforts on the switching process, in enough detail for any customer who knows his or her meter read cycle to calculate an estimated date of service. The EDCs would be responsible for the development of the timeline and for updates. This would allow for all EGSs to point all potential customers to those resources to get a good faith estimate of their service start dates.

3. *If a customer opts out of the Eligible Customer List (ECL) and the EGS and/or customer does not readily have information on customer specific meter read dates, will this complicate the customer contracting process, and what new processes or EDC information systems can be provided in real time to enable effective contracting between EGSs and customers?*

The contracting process will be negatively affected to the extent that the proposed guidelines require the EGSs to have access to this information, and prohibit enrollment of a customer until either the EGS (with the customer's consent) or the customer obtains this information. Many EDCs maintain websites that allow the customer to retrieve billing information through a password-protected system, thus enabling customers (and EGSs, with the customer's consent) to readily obtain that information on a real-time basis. The EDCs that do not currently maintain such websites would have to implement similar systems if the EGS is required to communicate a good faith estimate of a start date and include this information in the disclosure statement. It is also critical that all EDCs include meter read cycles on their customers' bills (if they do not already do so) in a clear, customer-friendly manner.

4. *What is the experience of EGSs with regard to customers having ready access to their billing statements so that EGSs can provide the necessary meter read information to customers during the contracting process? Does the vast majority of customers keep a copy of their bills and/or have a copy available when contracting with an EGS?*

FES' experience with customers' access to billing statements varies both by customer and EDC, depending on the EDC's on-line billing options. FES' data show that approximately one-third of residential and small commercial customers exit the on-line enrollment process offered by FES at the point where they are asked for their account number. This suggests that they exited because they did not have their account number, or bill, available. Residential and small commercial customers whose EDCs offer on-line billing information are most likely to have their bills on hand. Large commercial and industrial entities may be structured such that the person making energy purchasing decisions does not get copies of the entity's bills; the person will know usage and rate information, but may not have detailed billing information needed for the enrollment process, such as meter read dates. FES clearly communicates to customers that they should have their billing information available when contacting FES prior to enrollment.

III. CONCLUSION

FES believes the Commission is taking the right steps to further improve retail competition in the Commonwealth by accelerating the switching timeframe. To clarify the proposed guidelines and ensure the success of implementation, FES reiterates:

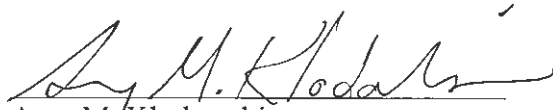
- o Criteria for establishing switching deadlines must be consistent and uniform across EDCs.
- o EGS' ability to provide a good faith estimate of the account transfer date is dependent on access to switching deadlines and meter read cycle schedules and the ability of the customer to find meter read cycle information on his or her bill.

- EGSs should not be required to include the estimated account transfer date in the disclosure statement.
- Customers should be directed to their EGSs to cancel an account transfer and not all contacts should be assumed to be slamming allegations.

FES appreciates the opportunity to submit these Comments, thanks the Commission for its support for robust retail electric competition, and looks forward to continuing to participate in the Commission's efforts to improve customers' direct access to competitive markets throughout the Commonwealth.

Respectfully submitted,

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