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May 8, 2018

VIA OVERNIGHT DELIVERY

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MAY - 8 2018

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

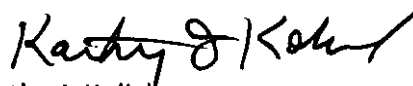
**Re: Petition of FirstEnergy Solutions Corp. for Reconsideration From Actions of the Staff
Docket No. A-110078**

Dear Secretary Chiavetta:

On behalf of FirstEnergy Solutions Corp., enclosed for filing please find one original **CONFIDENTIAL** Petition for Reconsideration From Actions of the Staff, which is to be filed under seal, along with an original **REDACTED** version of the same pleading that is to be publicly filed. Three additional courtesy copies of the **REDACTED** versions are also enclosed. Note that the information that has been redacted is underlined in the original **confidential** version of the document.

Thank you for your attention in this matter. Please contact me if you have any questions regarding this matter.

Respectfully submitted,



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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of FirstEnergy Solutions Corp. for :
Renewal of Its 5% Reduced Financial :
Security Requirement For the Period June : Docket No. A-110078
10, 2018 Through June 10, 2019 :
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PETITION OF FIRSTENERGY SOLUTIONS CORP. FOR RECONSIDERATION
FROM ACTIONS OF THE STAFF

Now comes Petitioner, FirstEnergy Solutions Corp. (hereinafter "FES" or "Company"), by and through counsel, and respectfully requests, pursuant to 52 Pa. Code § 5.44, reconsideration of the determination set forth in (i) the April 18, 2018 Secretarial Letter ("April 18 Letter") in which the Commission's staff ("Staff") denied FES' petition for renewal of its security requirements at a 5% level; and (ii) the April 27, 2018 Secretarial Letter ("April 27 Letter") in which Staff ordered FES to file by May 12, 2018 a rider or amendment increasing its security to a 10% level.

The Commission must reverse Staff's findings in both the April 18 and April 27 Letters -- because Staff's determinations are unsupported both in fact and in law -- and issue an entry granting FES' Petition to renew its current security requirements at the 5% level. Further, depending on the timing of the issuance of the Commission's Order on this Petition for Reconsideration, the Company may also require an extension of the currently approved 5% security level which it contingently requests consistent with the explanation set forth herein.

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I. BACKGROUND AND HISTORY

1. Pennsylvania law sets forth various licensing requirements that must be met by an EGS in order to maintain its license, including certain financial responsibilities. 66 Pa C.S. §2809(c)(1)(i) provides in pertinent part:

In order to ensure the safety and reliability of the generation of electricity in the Commonwealth, no energy supplier license shall be issued or remain in force unless the holder complies with all of the following:

- (i) Furnishes a bond or other security approved by the commission in form and amount to ensure the financial responsibility of the electric generation supplier and the supply of electricity at retail in accordance with contracts, agreements or arrangements.

* * *

2. The Commission's regulations at 52 Pa. Code § 54.40 provide specific details regarding the amount and form of bonds or other security for electric generation suppliers ("EGSs"). The initial security level currently required from each EGS license applicant that intends to take title to electricity is \$250,000.¹ After the first year of operation, the security level for each EGS is reviewed annually and modified primarily based on the EGS's reported annual gross receipts. Originally, the security level that had to be maintained by the EGS for those subsequent years was the higher of 10% of the EGS's reported annual gross receipts, or \$250,000.²
3. On December 5, 2013, the Commission issued a Tentative Order in Docket No. M-2013-2393141 in which it proposed both an adjustment to the bonding requirements for EGSs

¹ 52 Pa. Code § 54.40(c).

² 52 Pa. Code § 54.40(d).

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as well as an expansion of the forms of acceptable security instruments, and requested formal comments on the same.³

4. After considering the comments submitted by various interested parties, the Commission announced in its Final Order in the aforesaid docket (hereinafter “Order”) a new policy under which “the bond or security for an EGS after the first year of operation should be in the amount of 5% of the EGS’s most recent twelve months of revenue or \$250,000, whichever is higher ,”⁴ provided the bond or security meets the other criteria required under the Commission’s regulations.⁵ When establishing this new policy, the Commission found that “requiring an EGS to post a bond or security in the amount of 10% of reported gross receipts after the first year of EGS operation may be excessive in relation to the risk intended to be secured....”⁶ It also determined that even at a 5% level, the Commission’s financial security requirement would still be more stringent than other restructured states.⁷

5. In its Order, the Commission stated that “[t]he purpose of the security level is to ensure payment of the Gross Receipts Tax (GRT) and to ensure the supply of electricity at the retail level in accordance with contracts, agreement or arrangements.”⁸ It further noted that “[t]he Commonwealth also has an interest in receiving an EGS’s alternative compliance payments (ACPs) under the Alternative Energy Portfolio Standards [“AEPS”]

³ Public Utility Commission Bonding/Security Requirements for Electric Generation Suppliers; Acceptable Security Instruments, Docket No. M-2013-2393141, Final Order at 1 (entered July 24, 2014).

⁴ Id. at 10-11.

⁵ Id. at 12.

⁶ Id. at 10.

⁷ Id.

⁸ Id. at 4-5.

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Act of 2004,”⁹ which is imposed on an EGS that fails to comply with the AEPS Act’s alternative energy portfolio standards.¹⁰

6. In that same Order, the Commission delegated its authority to review uncontested petitions for requests for reduction of security requirements to the Bureau of Technical Utility Services (“TUS”).¹¹ The Order further provides that the Staff, at a minimum will require the following information from an EGS seeking a change to its security requirement:

- 1) Gross receipts revenues for the sale of electricity to retail customers in Pennsylvania for the most recent 12 months;
- 2) The amount of gross receipts taxes that the EGS has prepaid towards its estimated revenues for the current calendar year;
- 3) If the EGS is proposing to utilize a parental or corporate guarantee, documentation that demonstrates that the guarantor meets the required long-term bond rating from two of the approved rating agencies;
- 4) Available AEPS compliance data from the most recent 12 months; and
- 5) Copies of all Department of Revenue documents that support the EGS’s request.

And, depending on the nature of the EGS’s request, Staff may seek more information from the EGS.¹²

7. If TUS denies an EGS’ request for a modification of its security requirements, the Order instructs TUS to state in a Secretarial Letter “how the request is not consistent with the Public Utility Code and the Commission’s bonding/security regulations.”¹³

8. In an April 8, 2016 Secretarial Letter, instructions on how to renew a reduced security level were provided, stating:

⁹ Id. at 5 (citations omitted).

¹⁰ Id. at footnote 4.

¹¹ Id. at 13.

¹² Id. at 16.

¹³ Id. at 13.

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To be eligible for the renewal [of reduced security requirements], [an EGS] must provide annual documentation of its eligibility for a bond reduction at least ninety (90) days prior to the current security's expiration date. Such documentation should include but may not be limited to:

- a petition for renewal, filed with the Commission's Secretary's Bureau
- a \$350 filing fee
- proof of service of the petition on the statutory advocates and affected EDCs
- a Tax Letter of Good Standing from the Department of Revenue, and
- the company's gross receipts for the most recent four quarters.¹⁴

9. On June 10, 2015, by Secretarial Letter, FES was approved for a 5% Financial Security Reduction.¹⁵ On April 1, 2016, FES filed a Financial Security Reduction Petition Renewal to maintain its 5% security reduction, which was approved by Secretarial Letter on April 29, 2016.¹⁶ On March 31, 2017, FES filed with the Commission a Financial Security Reduction Petition Renewal ("2017 Petition") to maintain its 5% security reduction.¹⁷ This petition was granted in a May 22, 2017 Secretarial Letter and indicated that the approved security level will be in effect from June 10, 2017 through June 10, 2018.¹⁸ FES subsequently obtained a bond sufficient to meet its security requirements for each of the indicated periods, proof of which was provided to the Commission each year. The bond obtained in 2017 will expire on July 1, 2018.¹⁹
10. On or about March 9, 2018, FES submitted a Financial Security Reduction Petition Renewal for the period June 10, 2018 through June 10, 2019 ("2018 Petition"), providing all supporting documentation as required in past renewal filings and as required by both

¹⁴ Guidance on Electric Generation Supplier Licensee Financial Security, Docket No. M-2013-2393141, Secretarial Letter (April 8, 2016).

¹⁵ Petition of FirstEnergy Solutions Corp. to Reduce its Bonding Requirement from 10% to 5%, Docket No. A-110078, Secretarial Letter (June 10, 2015)

¹⁶ Bonding/Security Reduction Renewal for Electric Generation Suppliers, Docket No. A-110078, Secretarial Letter (April 29, 2016).

¹⁷ Financial Security Reduction Petition Renewal, Docket No. A-110078, Secretarial Letter (May 22, 2017).

¹⁸ *Id.* at page 2.

¹⁹ *See* bond provided to the Commission in Docket No. A-110078.

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the Commission Order and the April 8, 2016 Secretarial Letter, including (i) a Tax Letter of Good Standing from the Pennsylvania Department of Revenue; (ii) FES' gross receipts from electric generation sales to retail customers in Pennsylvania for the most recent four quarters; (iii) evidence of FES' gross receipts tax ("GRT") prepayment for 2018; (iv) Evidence of FES' compliance with the Alternate Energy Portfolio Standards ("AEPS") requirements for the most recent reporting period; and (v) a check in the amount of the necessary filing fee.²⁰ FES also informed Staff through a response to a Staff data request that FES had, on March 8, 2018, electronically prepaid in full its 2018 GRT prepayment liability for the period ending December 31, 2018.²¹ Staff submitted no other data requests, nor did Staff informally seek any other information related to the FES 2018 Petition.

11. On or about April 2, 2018, FES, pursuant to Section 54.34 of Title 52 of the Pennsylvania Code ("Code"), provided the Commission with notice of a material change to its business operations, informing the Commission of the fact that on March 31, 2018, FES filed a voluntary petition in the United States Court for the Northern District of Ohio ("Court") for relief pursuant to Chapter 11 of Title 11 of the United States Code.²² In various orders addressing first day motions, the Court granted authority for FES to continue paying day-to-day operating expenses and honoring its day-to-day commitments on a going forward basis.²³ Prior to issuing the April 18 Letter, Staff had made no inquiries as to the status of the bankruptcy proceeding or the Company's ability to meet future financial obligations and other commitments.

²⁰ Petition of FirstEnergy Solutions Corp. for Renewal of Its Reduced Financial Security Requirement, Docket No. A-110078 (Mar.9, 2018).

²¹ Response to Financial Security Reduction Petition Data Request, Docket No. A-110078, Letter (Mar. 29, 2018).

²² Notice of Material Change, Docket No. A-110078 (April 2, 2018).

²³ See generally, *In re FirstEnergy Solutions Corp.*, Case No. 18-50757, U. S. BR Court N. D, First Day Motions and Orders, which can be accessed via the internet at www.primeclerk.com.

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12. In the April 18 Letter, Staff denied the 2018 Petition to renew FES' 5% security level for the period June 10, 2018 through June 10, 2019. It noted FES' bankruptcy filing and the fact that Moody's Investors Service ("Moody's") downgraded FES' rating outlook from stable to negative. When explaining its rationale for denying FES' request, Staff stated:

Because of Moody's downgrade of FES's rating outlook, we find considerable uncertainty regarding FES's ability to fulfil [sic] its future annual obligations under Section 2809. In particular, we have concerns regarding FES's ability to fulfil [sic] its obligations related to gross receipts taxes, Alternate Energy Portfolio Standards (AEPS) and the Commission's Annual Fee levied on EGSs. Because of these uncertainties, we believe that it is prudent to return FES's financial security level to 10% of its most recent four quarters of revenue.²⁴

In its letter, Staff defined "FES" as FirstEnergy Services Corporation.²⁵ The Petitioner is FirstEnergy Solutions Corp.

13. In the April 27 Letter, Staff informed FES (which in this letter was defined as "FirstEnergy Solutions Corporation") that, according to Commission records, FES' "current bond or other approved security amount is insufficient." Staff went on to order the Company to file with the Commission by May 12, 2018 "an **ORIGINAL** amendment or rider in the amount directed by the Commission."²⁶ Staff did not identify to which records it was referring when ordering this action to be taken.
14. FES submits this Petition for Reconsideration, respectfully asking the Commission to reverse the April 18 Letter in which Staff denied FES' 2018 Petition to renew its financial security at a 5% level, and grant the Company's 2018 Petition because the requested security level meets all of the criteria under Pennsylvania law and as set forth in the Commission's regulations. Further, by reversing Staff's determination as set forth in the

²⁴ Bonding/Security Reduction for Electric Generations Suppliers, Docket No. A-110078, Secretarial Letter (April 18, 2018).

²⁵ Id.

²⁶ Financial Security Increase Notice, Docket No. A-110078 (April 27, 2018) (emphasis in original).

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April 18 Letter, the Commission would render moot the April 27 Letter in which Staff ordered proof of the mandated increase in security be filed by May 12, 2018, thus supporting a reversal and/or withdrawal of the April 27 Letter. Finally, due to the administrative time requirements necessary for the Company to obtain a bond sufficient to meet the security level ultimately approved by the Commission and also submit it to the Commission by June 1, 2018,²⁷ FES respectfully asks that, if the Commission does not grant the Company's 2018 Petition by May 18, 2018, it issue an entry extending the currently approved 5% security level until at least thirty (30) days after it renders its decision on this Petition for Reconsideration.

II. STANDARD OF REVIEW

15. Section 5.44(a) of the Commission Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.44(a), provides that:

Actions taken by staff, other than a presiding officer, under authority delegated by the Commission, will be deemed to be the final action of the Commission unless reconsideration is sought from the Commission within 20 days after service of notice of the action, unless a different time period is specified in this chapter or in the act.

Courts have held that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”²⁸ This standard of review has been applied to petitions for reconsideration submitted pursuant to 52 Pa. Code § 5.44(a).²⁹ As will be explained below, the Company can meet its burden of proof and, accordingly, Staff’s

²⁷ TUS’ EGS license validation procedure requires an EGS to submit proof of security for the upcoming year at a level approved by the Commission no later than 30 days prior to expiration of the then current bond in effect which, in FES’ case, is June 1, 2018.

²⁸ *Samuel J. Lansberry, Inc. v. Pennsylvania PUC*, 578 A. 2d 600, 602 (Pa. Cmwlth. 1990).

²⁹ See e.g., *Pennsylvania PUC, Bureau of Technical Services v. R. Jean Ryan t/d/b a Scotty Taxi*, Docket No. P-2014-2399803 and A-00108919, 2014 WL 2427097 (Pa P. U. C.) slip copy, Opinion and Order (May 22, 2014).

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denial of FES' petition to renew its security requirement at a 5% level should be reversed and FES' 2018 Petition be granted.

III. ARGUMENT

16. Pennsylvania law requires an EGS to post security in an amount and form approved by the Commission in order to ensure the financial responsibility of the EGS and the supply of electricity at retail in accordance with contracts, agreements or arrangements. The form of security is not at issue in this matter. Rather, the question is whether FES' security should remain at the 5% level as it has been since 2015, or be increased to a 10% level, as determined by Staff in the April 18 Letter. The Commission explained in the Order that the security level should be commensurate with the risk intended to be secured. The Commission has interpreted that risk to be the EGS' ability to (i) pay its gross receipts taxes; (ii) pay any ACP that may be levied against it for non-compliance with the AEPS requirements during the period in question; and (iii) supply electricity at retail consistent with its commitments to its customers. And, if these prerequisites are met, then, according to the Commission's policy set forth in the Order, the security level should be set at 5%.
17. In support of the 2018 Petition, FES submitted documentation consistent with Commission regulations, guidelines and past practice in similar filings, which Staff presumably reviewed. If Staff had questions, Staff could have requested additional information. Staff did not. Instead, Staff submitted one data request asking the Company to provide a copy of a 2018 gross receipts form that the Company was not required to complete or file because the Company had electronically paid its gross receipts tax

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liability, and such liability exceeded the jurisdictional amount required on the form.³⁰ Staff submitted no other document requests to the Company. It requested no other information from the Company. It asked nothing about the pending Chapter 11 bankruptcy. It asked nothing about the Company's strategy to comply, or current level of compliance, with its AEPS requirements for the upcoming year. It asked nothing related to the Company's anticipated cash flow for the upcoming year or its current cash balance. Instead, according to the April 18 Letter, Staff apparently noted that (i) FES filed for Chapter 11 bankruptcy protection; and (ii) Moody's downgraded the Company's ratings outlook; and based upon the latter, Staff concluded that there was "considerable uncertainty" surrounding FES' ability to meet certain of its annual financial obligations.

18. As more fully discussed below, Staff's findings in the April 18 Letter are based on speculation that the Company cannot meet its GRT or potential AEPS-related obligations, or supply electricity at retail consistent with its commitments. Such speculation, however, is not evidence. And the evidence clearly demonstrates that the Company will, indeed be capable of meeting each of these obligations consistent with both the Public Utility Code and the Commission's bonding/security regulations. Therefore, Staff's findings are contrary to the preponderance of substantial and legally credible evidence that has been available for Staff's review. Accordingly, Staff's denial of the Company's request to renew its current 5% level of security is contrary to Commission precedent as set forth in the Order, and must be reversed.

³⁰ Staff requested a copy of REV-423 (Specialty Tax Estimated Payment Form). Pursuant to Instruction No. 3 on REV-423, "payments of \$1,000 or more must be made electronically or by certified or cashier's check remitted in person or by express mail courier." In addition, Instruction No. 4 on REV-423 states that the form should not be mailed if the payment is being made electronically. Inasmuch as FES prepaid its 2018 gross receipt taxes via ACH credit on March 8, 2018, it did not, consistent with the instructions therein, submit a REV-423.

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A. STAFF'S FINDINGS IN THE APRIL 18 LETTER ARE BASED ON SPECULATION, NOT FACT, AND ARE CONTRARY TO THE EVIDENCE.

19. Staff rejected the Company's request for a renewal of its current 5% security level stating:

Because of Moody's downgrade of FES's *rating outlook*, we find considerable uncertainty regarding FES's ability to fulfil [sic] its *future annual obligations* under Section 2809. In particular, we have concerns regarding FES's ability to fulfil [sic] its obligations related to gross receipts taxes, Alternate Energy Portfolio Standards (AEPS) and the Commission's Annual Fee levied on EGSs. Because of these uncertainties, we believe that it is prudent to return FES's financial security level to 10% of its most recent four quarters of revenue.³¹

Staff's rationale for denying the Company's 2018 Petition is flawed for a number of reasons. First, Staff's focus on "future annual obligations" is misplaced. The 2018 Petition is seeking a 5% security level for the period June 10, 2018 through June 10, 2019 ("the 2018 Petition Period"). If the Company desires to maintain that same level of security in future years, it will be required to file a separate petition for renewal for each of those years, each of which will be independently reviewed by Staff based on the then most current available information. Therefore, rather than speculating as to whether FES will be able to meet its financial obligations in future years, Staff should have focused on whether FES will be able to meet its financial obligations during the 2018 Petition Period. As explained below and as the evidence demonstrates, it clearly will be able to do so.

20. Second, FES has historically prepaid its GRT prepayment liability; and the 2018 GRT liability is no exception. The Company's 2018 GRT prepayment liability was paid in full on March 8, 2018. The Company submitted documentation demonstrating this fact with its 2018 Petition and subsequently reiterated this fact to Staff in response to its sole data request. Moreover, the Court, when granting one of the many First Day Motions,

³¹ April 18 Letter (emphasis added).

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authorized FES to make all payments related to tax liabilities.³² As such, Staff's concern regarding the Company's ability to meet its 2018 GRT obligation is without merit.

21. As for the 2019 GRT obligation, the Company estimates its *total* GRT obligation for 2019 to be approximately [REDACTED]. Assuming a 5% security level, the Company estimates that the bond in effect through June 10, 2019 will be approximately [REDACTED], which is more than adequate to cover any potential shortfall in the 2019 GRT prepayment obligation. Moreover, the Court has authorized payment for such obligations through its First Day Orders, and, as explained *infra*, the Company's cash balances are more than sufficient to meet the 2019 GRT tax prepayment obligation, assuming revenues consistent with those estimated in 2018 (which, given the Company's current situation, is a relatively good assumption).
22. Third, Staff's focus on the Company's AEPS obligation is also misplaced. As the Commission explained, the obligation at risk in this instance is not the amount of money that must be spent in order for the Company to meet its AEPS requirements. Rather, the risk lies in whether the Company could pay the Alternative Compliance Payment if it failed to meet its AEPS requirements. The Company does not report on its AEPS compliance until September of each year. But, given its current AEPS status, there is virtually no risk the Company will be unable to achieve its AEPS requirements for this reporting year, which, in turn negates any risk that the Company will be liable for an ACP. Had Staff inquired, the Company would have provided the following information to demonstrate this fact:

³² *In re FirstEnergy Solutions Corp.*, Case No. 18-50757, U. S. BR Court N. D, First Day Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees, Docket No. 16, (Motion); First Day Orders, Interim Order Authorizing Debtors to Pay Certain Prepetition Taxes and Fees, Docket No. 166 (April 4, 2018), both of which can be accessed via the internet at www.primeclerk.com.

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- a. Tier I: Current Reporting Year Estimated Obligation: [REDACTED]
- b. Tier II: Current Reporting Year Estimated Obligation: [REDACTED]
- c. Solar: Current Reporting Year Estimated Obligation: [REDACTED]

Additionally, one of the Company's First Day Motions filed in the bankruptcy proceeding requested authority "to honor all prepetition obligations with respect to the renewable energy obligations in the ordinary course of business and to continue to honor existing renewable energy obligations consistent with their past practice."³³ The bankruptcy court granted this motion on April 4, 2018.³⁴ In light of the foregoing, FES has the authority to obtain any necessary RECs to comply with its AEPS requirements during the 2018 Petition Period and, based upon the current compliance status, FES' total estimated cash outlay that may be required in order to comply is approximately [REDACTED]. In light of this, there is virtually no risk that FES will fail to achieve its AEPS obligation during the September 2018 reporting year, and even less risk that it will incur an ACP obligation related thereto.

- 23. Fourth, FES has historically paid its Commission assessments in full and on time, and it intends to continue to do so during the 2018 Petition Period as evidenced by filings made

³³ *In re FirstEnergy Solutions Corp.*, Case No. 18-50757, U. S. BR Court N. D, First Day Motion / Debtor's Motion For Entry of an Order Authorizing the Debtors to (i) Maintain And Administer Customer Programs And to Perform Under Customer Agreements, (ii) Honor Obligations Related Thereto, And (iii) Establish Procedures For Notifying Customers in the Debtors Chapter 11 Cases Filed by Debtor FirstEnergy Solutions Corp., Docket No. 18, para. 62 (April 1, 2018). This Motion can be accessed via the internet at www.primeclerk.com.

³⁴ *Id.* at First Day Orders, Order Authorizing Debtors to (i) Maintain And Administer Customer Programs And to Perform Under Customer Agreements, (ii) Honor Obligations Related Thereto, And (iii) Establish Procedures For Notifying Customers in the Debtors Chapter 11 Cases Filed by Debtor FirstEnergy Solutions Corp., Docket No. 161. This Order can be accessed via the internet at www.primeclerk.com.

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with the Court. At the time FES filed its Chapter 11 Petition with the Court on March 31, 2018, it had more than \$550 million available in cash.³⁵ First Day Motions were included as part of the filing. One of these motions expressly requested authority to pay state regulatory fees,³⁶ which was granted on April 4, 2018.³⁷ Again, had Staff inquired, the Company would have provided this information, and would have put the Commission's assessment in perspective by explaining that if the Commission's assessment is similar in amount to that of last year's assessment of [REDACTED], such a payment would represent [REDACTED] % of FES' cash balance on March 31, 2018.³⁸ And, as will be discussed *infra*, FES anticipates approximately \$1.78 billion in revenues during 2018. In light of these facts, the risk that FES will not be able to meet its Commission assessment obligation during the 2018 Petition Period is virtually nil.

24. Fifth, instead of requesting information such as that set forth above, Staff concluded that there was "considerable uncertainty" surrounding the Company's ability to meet the aforementioned financial obligations because Moody's downgraded FES' ratings outlook from stable to negative. Per Moody's, a "rating outlook is an opinion regarding the likely rating direction over the medium term,"³⁹ and not, as Staff implies, a definitive statement as to a company's ability to pay its bills over the next year. As was explained when Ford

³⁵ *In re FirstEnergy Solutions Corp.*, Case No. 18-50757, U. S. BR Court N. D, First Day Motion, Motion of Debtors for Entry of Interim and Final Orders (A) Authorizing Debtors to (i) Continue Using Their Existing Cash Management System and (ii) Maintain Existing Business Accounts and Business Forms, (B) Authorizing Continued Intercompany Transactions, (C) Granting Post Petition Intercompany Claims as Administrative Expense Priority, and (D) Granting Related Relief. Docket No. 10 at para. 16, which can be accessed via the internet at www.primeclerk.com.

³⁶ *Id.* at Debtor's Motion for Entry of Interim and Final Orders Authorizing the Debtors to pay Certain Prepetition Taxes and Fees, Docket No. 16 (April 1, 2018).

³⁷ *Id.* at First Day Orders, Interim Order Authorizing Debtors to Pay Certain Prepetition Taxes and Fees, Docket No. 166 (April 4, 2018).

³⁸ The estimated payment of \$27,000 for AEPS compliance represents approximately [REDACTED] % of FES' cash balance as of March 31, 2018.

³⁹ Ratings Symbols and Definitions (July 2017), which can be found at https://www.moody.com/researchdocumentcontentpage.aspx?docid=PBC_79004

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Motor Company's ratings outlook was similarly downgraded to negative from stable because it was facing a more challenging operations environment, such an action by Moody's "does no harm to [Ford's] credit now, but alerts Wall Street that the situation is dynamic."⁴⁰ Clearly, FES' filing for bankruptcy protection creates a "dynamic" situation, but Staff's leap in logic to conclude that because of this filing FES is unable to meet its GRT, Commission assessment, and potential AEPS-related liabilities, or unable to supply electricity at retail consistent with its commitments during the 2018 Petition Period is unsupported even in Moody's report in which the ratings outlook had been downgraded.

25. Although not addressed by Staff, there is little risk that the Company will not supply electricity at retail consistent with its customer agreements, contracts and arrangements. FES has a vested interest in maintaining its retail book of business and continuing to honor its obligations to its customers. This fact is demonstrated in the following excerpt from one of the Company's First Day Motions in which the Company indicated:

The Customer Agreements are critical to the Debtors' operations. ... [T]he Debtors forecast that the Customer Agreements will account for approximately 36.3 TWh of delivered power and \$1.748 billion of overall annual revenues in 2018. To provide assurances to current and prospective Customers that FES will continue to perform under the Customer Agreements and provide the same level of competitive and innovative service on par with their prepetition performance, the Debtors seek authority pursuant to the Order to continue to

- (a) honor any and all obligations under the prepetition Customer Agreements,
- (b) honor the Customer Agreements on a post-petition basis, and
- (c) negotiate with Customers, including the authority to (i) modify, amend, and extend existing Customer Agreements and (ii) settle any Customer claims arising from or related to the Customer Agreements and other Customer Programs, all in the ordinary course of business, consistent with their past practice.

⁴⁰ Detroit Free Press, (Jan. 31, 2018) via the internet at freep.com

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Additionally, in an abundance of caution, the Debtors seek authority pursuant to the Order to continue to enter into new contracts and enroll new Customers after the Petition Date, in the ordinary course of business, consistent with their past practice.⁴¹

The bankruptcy court granted the motion on April 4, 2018⁴² and, to date, FES has supplied electricity at retail in a “business as usual” manner. Further, the risk of failing to supply electricity at retail is already mitigated by PJM’s security requirements, which are designed to ensure that an EGS meets its supply obligations. In PJM, the Electric Distribution Company assigns the load responsibility to the EGS and informs PJM of that responsibility. PJM then requires cash collateral from the EGS, which is directly related to (among other things) the size of an EGS’s load obligations.⁴³ Accordingly, any additional security required by the Commission to mitigate supply risk is duplicative with that already required by PJM. In light of the foregoing, there is virtually no risk not already hedged, either through PJM’s cash collateral requirements or the 5% bond required by the Commission, that FES will not supply electricity at retail consistent with its commitments.

26. In sum, the Company cannot anticipate each and every concern Staff may have with regard to any given filing, especially in an instance such as this where the Company

⁴¹ *In re FirstEnergy Solutions Corp.*, Case No. 18-50757, U. S. BR Court N. D, First Day Motion / Debtor’s Motion For Entry of an Order Authorizing the Debtors to (i) Maintain And Administer Customer Programs And to Perform Under Customer Agreements, (ii) Honor Obligations Related Thereto, And (iii) Establish Procedures For Notifying Customers in the Debtors Chapter 11 Cases Filed by Debtor FirstEnergy Solutions Corp., Docket No. 18, para. 28 (April 1, 2018). This Motion can be accessed via the internet at www.primeclerk.com.

⁴² *Id.* at First Day Orders, Order Authorizing Debtors to (i) Maintain And Administer Customer Programs And to Perform Under Customer Agreements, (ii) Honor Obligations Related Thereto, And (iii) Establish Procedures For Notifying Customers in the Debtors Chapter 11 Cases Filed by Debtor FirstEnergy Solutions Corp., Docket No. 161. This Order can be accessed via the internet at www.primeclerk.com.

⁴³ In its First Day Motion, Debtor’s Motion For Entry of an Order Authorizing the Debtors to (i) Maintain And Administer Customer Programs And to Perform Under Customer Agreements, (ii) Honor Obligations Related Thereto, And (iii) Establish Procedures For Notifying Customers in the Debtors Chapter 11 Cases Filed by Debtor FirstEnergy Solutions Corp., Docket No. 18, the Company sought authority to (among other things) maintain PJM collateral commitments, which was approved by the Court as part of the April 4, 2018 First Day Order, Order Authorizing Debtors to (i) Maintain And Administer Customer Programs And to Perform Under Customer Agreements, (ii) Honor Obligations Related Thereto, And (iii) Establish Procedures For Notifying Customers in the Debtors Chapter 11 Cases Filed by Debtor FirstEnergy Solutions Corp., in Docket No. 161 (April 4, 2018).

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provided information that was found to be sufficient in the past and was consistent with Commission guidelines and regulations. Notwithstanding the fact that Staff has the discretion to request additional information, at no time did Staff make any such request prior to issuing the April 18 Letter (other than a single data request related to a form not required to be completed by the Company). If Staff had concerns regarding the Company's ability to meet its financial obligations during the 2018 Petition Period, it should have contacted the Company who could have alleviated those concerns with the information provided herein. And, as that information clearly demonstrates, the risks intended to be addressed by the requirements of 66 Pa C.S. § 2809(c)(1)(i) -- namely, the Company's ability to meet its GRT and any potential ACP liability, and supply electricity at retail consistent with its commitments during the 2018 Petition Period -- are more than sufficiently secured at the 5% security level, as is any Commission assessment authorized by Act 155 of 2014.

27. The objective under 66 Pa C.S. § 2809(c)(1)(i) is to obtain security at a level that provides the Commission comfort that an EGS' GRT, Commission assessment and any potential ACP liability can be paid. The Company has demonstrated this to be the case during the 2018 Petition Period. Inasmuch as the 5% security level meets all of the Commission's regulations as well as Pennsylvania statutes, Staff's denial of the Company's 2018 Petition is in error and must be reversed. Anything less results in a security requirement that is excessive in relation to the risk intended to be secured, well beyond any security level required in any other restructured state, and inconsistent with the Commission's Order. The fact that FES voluntarily filed for Chapter 11 bankruptcy protection and Moody's downgraded the Company's ratings outlook is not sufficient to justify doubling the security requirement, especially since the 5% security level is more than adequate to cover

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the risks contemplated by 66 Pa C.S. § 2809(c)(1)(i); Staff's findings are not based in fact, and are contrary to all of the evidence presented. Therefore, based upon the foregoing, the Company respectfully asks the Commission to reverse Staff's denial of the Company's request to maintain its current 5% security requirement and grant the Company's 2018 Petition to do so.

B. THE APRIL 27 LETTER IS CONTRARY TO A PRIOR COMMISSION ORDER

28. In the April 27 Letter, Staff indicated that, according to Commission records, FES' "current bond or other approved security amount is insufficient" and ordered the Company to file with the Commission by May 12, 2018 an original amendment or rider to increase the bond to 10%. Staff provided no reference to the Commission records that indicated such insufficiency, which makes it difficult for the Company to respond. Nevertheless, for purposes of discussion, the Company will assume that such "records" refers to the findings in the April 18 Letter.
29. As a preliminary matter, if the Commission reverses the April 18 Letter, the mandates in the April 27 Letter become moot. However, assuming *arguendo* that the April 18 Letter is not reversed, then the April 27 Letter must be reversed because it is contrary to a prior Commission order currently in effect.
30. According to the May 22, 2017 Secretarial Letter in which the Company's 2017 Petition was granted, the Company's current 5% security requirement is effective until June 10, 2018. And, as evidenced by the bond on file with the Commission, FES has complied with the security requirement as approved in that Secretarial Letter. Because no Petition for Reconsideration was filed with regard to the May 22, 2017 Secretarial Letter, the

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findings in that letter are deemed to be a final order of the Commission.⁴⁴ Inasmuch as the May 22, 2017 Secretarial Letter has not been rescinded or overturned by the Commission, the Company's 5% security requirement is still in effect, at least until June 10, 2018. Accordingly, the April 27 Letter in which Staff requires an increase in the security level by May 12, 2018 is contrary to a prior Commission order and must be reversed.

C. THE COMPANY HAS DEMONSTRATED GOOD CAUSE TO WARRANT AN ENTRY IN WHICH THE CURRENT 5% SECURITY LEVEL IS EXTENDED.

31. The Company obtained a bond to meet its current 5% security requirement renewed through the 2017 Petition. That bond will expire on July 1, 2018. On March 9, 2018, the Company filed its request to renew its current 5% security level consistent with the April 8, 2016 Secretarial Letter in Docket No. M-2013-2393141 (which requires a request for renewal be filed at least 90 days prior to the expiration of the existing bond). According to TUS' EGS license validation procedures, the Company must submit proof of having security in an amount approved by the Commission for the 2018 Petition Period no later than June 1, 2018. Given the timing of the filing of this Petition for Reconsideration, it is unclear whether the Company will know its approved security requirement in time to meet this deadline. Therefore, because of the administrative time requirements necessary for the Company to obtain a bond sufficient to meet the security level ultimately approved by the Commission and also submit it to the Commission by June 1, 2018,⁴⁵ FES respectfully asks that, if the Commission does not grant the Company's 2018 Petition by May 18,

⁴⁴ 52 Pa. Code § 5.44

⁴⁵ TUS' EGS license validation procedure requires an EGS to submit proof of security for the upcoming year at a level approved by the Commission no later than 30 days prior to expiration of the then current bond in effect which, in FES' case, is June 1, 2018.

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2018, it issue an entry extending the currently approved 5% security level until at least thirty (30) days after it renders its decision on this Petition for Reconsideration.

D. THE APRIL 18 AND APRIL 27 LETTERS ARE INVALID ON THEIR FACE AND, AT A MINIMUM, THE RECORD MUST BE CORRECTED.

32. The Petitioner in this matter is FirstEnergy Solutions Corp. The April 18 Letter discusses a company by the name of "FirstEnergy Service Corporation," while the April 27, 2018 Letter addresses a company by the name of "FirstEnergy Solutions Corporation". In light of this, it is confusing as to whom the various letters pertain. At a minimum, the record should be clarified to identify the proper entity. For purposes of discussion herein, it was assumed that both the April 18 and April 27 Letters were directed to FirstEnergy Solutions Corp.

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IV. CONCLUSION

WHEREFORE, based upon the foregoing, FirstEnergy Solutions Corp. respectfully requests that the Commission (i) clarify for the record the entity to which the April 18 and April 27 Letters apply; (ii) reverse Staff's denial of FES' Petition to renew its security requirement at a 5% level and grant the Company's 2018 Petition for Renewal because it is consistent with 66 Pa. C.S. § 2809(c), the Commission's Order and its regulations, and it is not unlawful, unjust, unreasonable, or contrary to the public interest; (iii) reverse and/or withdraw or vacate the April 27 Letter; and (iv) issue an entry that extends the Company's currently approved 5% security level until at least thirty days after issuance of a decision on this Petition for Reconsideration, if the Commission does not approve the 2018 Petition by May 18, 2018.

Respectfully submitted,

Dated: May 8, 2018

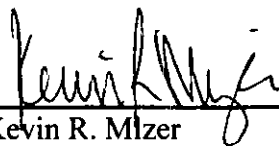

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Counsel for FirstEnergy Solutions Corp.

VERIFICATION

I, Kevin R. Mizer, Manager, Market Intelligence for FirstEnergy Solutions Corp., hereby state that the facts set forth in the attached document are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: May 8, 2018



Kevin R. Mizer

RECEIVED

MAY - 8 2018

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RECEIVED

MAY - 8 2018

CERTIFICATE OF SERVICE

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I hereby certify that I have this day served a true copy of the Petition of FirstEnergy Solutions Corp. for Reconsideration from Actions of the Staff, without Confidential appendices, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

VIA FIRST CLASS MAIL:

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2 West
P.O. Box 3265
Harrisburg, PA 17105-3265

Officer of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Office of Small Business Advocate
Suite 202, Commerce Tower
300 North Second Street
Harrisburg, PA 17101-1303

Pennsylvania Department of Revenue
Bureau of Compliance
Fourth and Walnut Streets
First Floor, Strawberry Square
Harrisburg, PA 17128

Pennsylvania Office of Attorney General
Bureau of Consumer Protection
Fourteenth Floor, Strawberry Square
Harrisburg, PA 17120

Duquesne Light
Regulatory Affairs
411 Seventh Street, MD 16-4
Pittsburgh, PA 15219

Met-Ed, Penelec, and Penn Power
Legal Department
FirstEnergy Corp.
2800 Pottsville Pike
Reading, PA 19612

Citizens' Electric Company
Attn: EGS Coordination
1775 Industrial Boulevard
Lewisburg, PA 17837

Wellsboro Electric Company
Attn: EGS Coordination
33 Austin Street
P.O. Box 138
Wellsboro, PA 16901

Manager Energy Acquisition
PECO Energy Company
301 Market Street
Philadelphia, PA 19101-8699

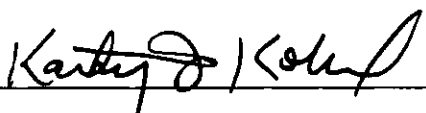
Legal Department
Attn: Paul Russell
PPL
Two North Ninth Street
Allentown, PA 18108-1179

UGI Utilities, Inc.
Attn: Rates Dept - Choice Coordinator
2525 N. 12th Street, Suite 360
Post Office Box 12677
Reading, PA 19612-2677

Pike County Light & Power Company
Director of Customer Energy Services
Orange and Rockland Company
390 West Route 59
Spring Valley, NY 10977-5300

West Penn Power d/b/a Allegheny Power
Legal Department
800 Cabin Hill Drive
Greensburg, PA 15601

Dated: May 8, 2018

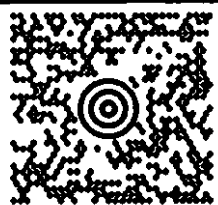

Kathy J. Kolich (92203)

KIM PELC
330-315-7385
PE SERVICE COMPANY
341 WHITE POND DR
AKRON OH 44320

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HARRISBURG PA 17105



PA 171 9-20



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