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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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DEC 21 2011

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Rulemaking Re: Marketing and Sales )  
Practices for the Retail Residential )  
Energy Market )

Docket No. L-2010-2208332

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COMMENTS OF FIRSTENERGY SOLUTIONS CORP.

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I. INTRODUCTION

In a Final Order issued on November 5, 2010,<sup>1</sup> the Pennsylvania Public Utility Commission (Commission) finalized interim guidelines on marketing and sales activities for electric generation suppliers (EGSs) and natural gas suppliers (NGSs) in the retail residential energy markets (Interim Guidelines). The Interim Guidelines were developed by the Commission's Office of Competitive Market Oversight (OCMO) through meetings with the CHARGE (Committee Handling Activities for Retail Growth in Electricity) and SEARCH (Stakeholders Exploring Avenues to Remove Competitive Hurdles) working groups, and comments filed following the issuance of a Tentative Order on July 16, 2010.

On February 14, 2011 in this proceeding the Commission issued a Proposed Rulemaking Order that contains proposed regulations at Title 52 Pa. Code Chapter 111; the proposed regulations are based on the Interim Guidelines. The Comments herein are filed in response to the Commission's directive in the Proposed Rulemaking Order that written comments on the proposed regulations be submitted within sixty days of their publication in the *Pennsylvania Bulletin*, which occurred on October 22, 2011.

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<sup>1</sup> *Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers*, Docket No. M-2010-2185981, Final Order entered November 5, 2010.

FirstEnergy Solutions Corp. (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)<sup>2</sup> authorized to serve all categories of retail customers throughout the Commonwealth, and is a participant in the CHARGE working group. As such, FES has significant experience with the issues addressed in the regulations proposed in the Proposed Rulemaking Order.

FES supports the majority of the proposed regulations, most of which codify the Interim Guidelines. FES recognizes the importance and necessity of consumer protections when suppliers or their agents contact prospective customers. FES' concerns with a few of the proposed regulations relate to clarifications of the Commission's proposed regulations, and should not be construed as anything other than support for the Commission's laudable goals of ensuring the protection of Pennsylvania consumers while encouraging the further development of retail energy competition.

## II. COMMENTS

FES respectfully offers its comments on the following proposed regulations.

### A. § 111.6. Agent compensation; discipline.

Subsection (a) codifies a concept that was discussed in the November 5, 2010 Final Order in which the Interim Guidelines were adopted, but not included in the Interim Guidelines.<sup>3</sup> In

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<sup>2</sup> Docket No. A-110078 (1998).

<sup>3</sup> *Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers*, Docket No. M-2010-2185981, Final Order entered November 5, 2010, p. 33.

proposed §111.6(a), the Commission proposes to require suppliers to design their agent compensation programs to ensure that they do not “promote, encourage or reward behavior than [sic] runs counter to the practices established in this chapter and to the general obligation of fair dealing and good faith that a supplier should exercise when interacting with customers.”<sup>4</sup> FES agrees with the Commission’s proposed regulation, and respectfully submits that the Commission should allow each supplier’s management to continue to exercise its discretion in setting specific agent compensation elements in a way that suits its business model. FES supports the Commission’s efforts to ensure fair treatment of the public in the Interim Guidelines and elsewhere in the proposed regulations, by making suppliers responsible for the training of their agents, and for any violations of applicable federal, state and municipal laws and regulations by agents acting on a supplier’s behalf.<sup>5</sup> The consequences to suppliers of their agents’ noncompliance with those laws are sufficient deterrence against suppliers’ promoting, encouraging or rewarding illegal behavior.

**B. § 111.7. Customer authorization to transfer account; transaction; verification; documentation.**

The proposed regulation at §111.7(b) requires a supplier to establish a process to verify a transaction that involves an agent in order to confirm that the customer authorized the transfer of his or her account to the supplier. FES agrees that the assurance of customer consent to a transaction involving an agent is an important consumer protection against slamming. FES recognizes that the current Interim Guidelines contain similar verification processes. However, FES respectfully requests the Commission to reconsider the requirement that customers be

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<sup>4</sup> Proposed regulation §111.6(a).

<sup>5</sup> Interim Guideline E; proposed regulation §111.3.

notified of their 3-day rescission rights at the end of the verification process contact in §111.7(b)(3), particularly for situations involving telemarketing sales. FES understands the concerns inherent in situations involving door-to-door marketing and sales, or other in-person sales contacts, and that the Commission may want to protect people who may feel vulnerable or intimidated when faced with a sales person in their home or in a public setting. However, FES submits that these concerns are not present in telemarketing situations since the sales person is not physically in the customer's presence, and FES suggests that requiring another notification of a customer's rescission rights at the end of the verification process in telemarketing situations is unnecessary, and may even be seen as urging the customer to rescind his or her authorization.

Under the proposed regulations customers receive notification of the 3-day right of rescission at the end of the transaction process contact,<sup>6</sup> and in the written "Welcome Packet" materials (which include the disclosure statement) sent after customer authorization has been received<sup>7</sup>. FES respectfully suggests that requiring yet another notice of the 3-day right of rescission at the end of the verification process in telemarketing situations as set forth in proposed §111.7(b)(3) is unnecessary, since the customer will receive this notification at least two other times, including during the initial telephone contact which will likely be followed immediately by the verification process. Unlike situations involving door-to-door sales or other in person sales activities where physical separation from the initial sales contact is important, another such notification following a telemarketing sale is counterproductive. Therefore, FES respectfully requests that § 111.7(b)(3) be deleted, particularly in the event of telemarketing sales activity. If the Commission accepts FES' recommendation, the proposed regulation at §111.7(b)(3) should be revised to read as follows:

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<sup>6</sup> See proposed regulation §111.9(f)(4) for door to door transactions, and proposed regulation §111.10(c) for telemarketing transactions.

<sup>7</sup> Proposed regulation §§111.11(a) and (b).

“(3) When verifying transactions under §§111.7(b)(2)(i) and (ii) above, [A] a customer shall be informed of the 3-business day right of rescission of the transaction under §§54.5(d) and 62.75(d) (relating to disclosure statement for residential and small business customers) at the end of the verification process contact.”

**C. § 111.14. Notification regarding marketing or sales activity.**

Proposed regulation §111.14(c), when read together with page 13 of the Proposed Rulemaking Order, suggests that an EDC can use a customer’s call to inquire about a supplier’s prices and terms of service as an opportunity to discuss the EDC’s own price and terms. FES submits that this contravenes the Commission’s desire to encourage customer shopping away from EDC-provided default service to competitive suppliers. An EDC should not use customer contacts regarding supplier options to market its own price and terms unless that information is specifically requested by the customer during the call. Any specific supplier-related questions should be referred to the supplier. Any general questions about supplier choice should be referred to the Commission’s website at [PAPowerSwitch.com](http://PAPowerSwitch.com). When EDCs receive calls from consumers concerning their choices among service providers, EDCs should be limited to offering Commission-approved communication materials on retail choice. Scripts for such situations should be developed through the Commission’s Department of Communications.

Based on the above comments, FES suggests that §111.14(c) be revised to read as follows:

“In responding to a customer inquiry about price and service, a distribution company may not provide information about its own price and terms unless the customer specifically requests such information. The distribution company shall refer the customer to the supplier for questions about the supplier’s prices and terms. General questions about supplier choice shall be referred to the Commission’s website at [www.PaPowerSwitch.com](http://www.PaPowerSwitch.com).”

### III. CONCLUSION

FES supports the proposed Chapter 111 regulations regarding marketing and sales practices for the retail residential energy market, if they are modified to be consistent with the following recommendations:


- The requirement in § 111.7(b)(3) that the customer be reminded of the 3 business day right of rescission at the end of the verification process should be removed, at least in cases of telemarketing sales.
- § 111.14(c) should be clarified to avoid the inference that EDCs may market their own service during customer inquiries about supplier choice.

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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Dated: December 21, 2011

Attorneys for FirstEnergy Solutions Corp.

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December 21, 2011

**VIA HAND DELIVERY**

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

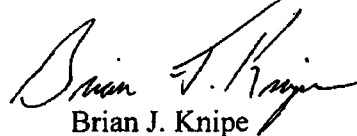
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SECRETARY'S BUREAU

Re: *Rulemaking Re: Marketing and Sales Practices for the Retail Residential Energy Market*, Docket No. L-2010-2208332

Dear Secretary Chiavetta:

In accordance with the Proposed Rulemaking Order entered February 14, 2011 in this proceeding, I have enclosed for filing an original and fifteen (15) copies of the *Comments of FirstEnergy Solutions Corp.*

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/kra

Enclosures

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