

Commission its 2010 Kilowatt-Hour Report. (A redacted copy of the Kilowatt-Hour Report is attached as Exhibit A.) FES's 2010 Kilowatt-Hour Report contains trade information and market sensitive information regarding FES's provision of service to customers in Illinois. FES considers this information to be highly proprietary and confidential information, the disclosure of which to competitors, or potential competitors, would be detrimental to FES.

3. The retail electric service industry is highly competitive and it is imperative that public disclosure of confidential information contained in the 2010 Kilowatt-Hour Report be avoided for a period of at least two years because of the competitive harm which disclosure of such information would likely cause FES. Additionally, 83 III. Adm. Code Section 451.60 provides: "If an applicant or ARES believes any of the information to be disclosed by an applicant of ARES is privileged or confidential, the applicant or ARES should request that the Commission enter an order to protect the confidential, proprietary or trade secret nature of any data, information or studies pursuant to 83 III Adm. Code 200.430."

4. Section 7(g) of the Illinois Freedom of Information Act exempts from public disclosure "trade secrets and commercial or financial information... where the trade secrets or information are proprietary, privileged or confidential." (5 ILCS 140/7(g).) The trade information contained in FES's 2010 Kilowatt-Hour Report falls within this exemption. The specific information for which FES seeks proprietary treatment is the total annual kwh sales in the respective service territories of Ameren Illinois and ComEd. Such information could be used by competitors to derive FES's market share. Market share information is highly sensitive, and is treated as such by FES. Courts have recognized that market share information is entitled to protection from public disclosure. *See The Stanley Works v. Newell Co.*, 1992 U.S. Dist. Lexis 13817 (N.D. Ill. 1992), at *15 (denying motion to compel production of market share

information). Public disclosure of FES's market share would help competitors or potential competitors drive FES out of business. It is for this reason that FES seeks proprietary treatment of the 2010 kwh Report.

5. Public disclosure of FES's 2010 kwh sales would inform FES's competitors of the volume of load served by FES last year. Competitors would know not only the aggregate amount of electricity sold; they would also know, by utility service territory, where this electricity was sold. By knowing the volume of load served and where it was served, FES's competitors (or potential competitors) will be able to determine FES's market share in each incumbent utility service area. Competitors will know where FES is most active, and where it may be concentrating its marketing efforts. Armed with knowledge of FES's market share, competitors could adjust their marketing strategies to respond to competition from FES. Competitors, for example, could use FES's kwh sales information to develop misleading comparative advertising, highlighting their relative prominence in the market while diminishing FES's. Competitors could also use FES's kwh sales information to their advantage by attempting to price FES out of the market and gain market share. If successful, such tactics would lead to fewer ARES. Granting proprietary treatment of ARES' annual kwh reports is thus necessary to ensure free and fair competition.

6. The fewer ARES there are, the more flexibility remaining ARES have to raise prices. Diminishing competition is antithetical to the purpose of the Electric Service Customer Choice and Rate Relief Law of 1997, 220 ILCS 5/16-101 *et seq.* The Commission should encourage a diversity of suppliers in order to promote competition. "Competition in the electric services market may create opportunities for new products and services for customers and lower costs for users of electricity." 220 ILCS 5/16-101A(b). Thus, disclosure of FES's 2010 kwh

Report would be harmful not only to FES, but to competition itself.

7. FES's request for proprietary status of its 2010 kwh Report is consistent with requests made by other ARES. Indeed, Illinois ARES routinely seek proprietary status for their annual kwh reports. The Commission has consistently granted such requests, finding in each instance that the ARES would be harmed by public disclosure of data that could be used to derive market share. See *Exelon Energy Co.*, Docket 10-0239 (Order, May 5, 2010); *Direct Energy Bus.*, Docket 10-0221 (Order, May 25, 2010); *Spark Energy, L.P.*, Docket 10-0166 (Order, March 24, 2010); *Eagle Industrial Power Services (IL), LLC*, Docket 10-0162 (Order, October 6, 2010); *BlueStar Energy Service, Inc.*, Docket 10-0161 (Order, April 21, 2010). Nothing about the ARES market has changed to warrant a departure from past practice concerning the proprietary status of annual kwh reports.

8. Furthermore, FES's request is consistent with the Commission's prior decision in Docket 10-0071, which granted FES's petition for confidential treatment of its kwh Report for two years on the basis that "competition, and therefore customers, benefit from the presence of multiple ARES . . . [and that] [p]ublic disclosure of annual kwh reports soon after their issuance would likely harm competition as well as consumers through diminished choices in the marketplace." March 24, 2010 Order at 2. FES seeks a two year proprietary status, which is the "default" period, under 83 Ill. Admin. Code Part 200.430(b). Accordingly, two years is an appropriate period for confidential treatment of an ARES' annual kwh report, as the Commission found in each of the above dockets.

9. Consistent with past treatment of this highly proprietary and confidential information, FES seeks an order from this Commission, without hearing, protecting from disclosure, for a period of not less than two years from the date of this Order, FES's 2010

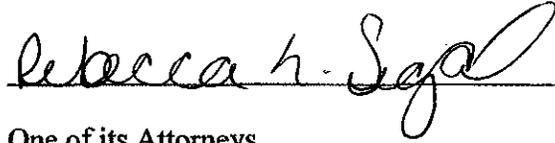
Kilowatt-Hour Report.

WHEREFORE, FES respectfully requests that the Commission enter an Order, without hearing, protecting from disclosure for a period of not less than two years, the above-referenced exhibits and documents filed with the Chief Clerk of the Commission regarding FES's 2010 Kilowatt-Hour Report.

Respectfully submitted,

FIRSTENERGY SOLUTIONS CORP.

By:

A handwritten signature in cursive script, reading "Rebecca L. Segal", written over a horizontal line.

One of its Attorneys

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Dated: March 1, 2011

STATE OF OHIO)
) SS:
SUMMIT COUNTY)

VERIFICATION

Tony C. Banks, being first duly sworn, deposes and says that he is the Vice President, Product & Market Development, of FirstEnergy Solutions Corp.; that he has read the foregoing Verified Compliance Filing and has personal knowledge of the contents thereof; and that the statements therein are true and correct to the best of his knowledge, information and belief.



Tony C. Banks
VP, Product & Market Development

Subscribed and sworn to
before me this 1st day of
March 2011.



Notary Public

Carol A. Seaman
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 8/9/2015