



Net Metering 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 2012 Net Metering 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 date, 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 2012 Net Metering Report falls within this exemption. The specific information for which FES seeks proprietary treatment is the total peak demand 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 2012 Net Metering Report.

5. Public disclosure of FES's 2012 peak demand 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 peak demand information to develop misleading comparative advertising, highlighting their relative prominence in the market while diminishing FES's. Competitors could also use FES's peak demand 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 net metering 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 2012 Net Metering Report would be harmful not only to FES, but to competition itself.

7. FES's request for proprietary status of its 2012 Net Metering Report is consistent with requests made by other ARES. The Commission has 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 *Champion Energy LLC*, Docket 12-0254 (Order, May 2, 2012); *Integrus Energy Services, Inc.*, Dockets 12-0232 (Order, April 18, 2012), 11-0306 (Order, April 12, 2011), 10-0246 (Order, June 2, 2010); *Constellation NewEnergy, Inc.*, Dockets 12-0228 (Order, April 18, 2012), 11-0314 (Order, April 12, 2011), 10-0248 (Order, June 2, 2010); *BlueStar Energy Services, Inc.*, Dockets 11-0290 (Order, April 12, 2011), 10-0256 (Order June 23, 2010). Nothing about the ARES market has changed to warrant a departure from past practice concerning the proprietary status of annual net metering reports.

8. FES seeks a two-year proprietary status, which is the "default" period, under 83 Ill. Admin. Code Part 200.430(b).

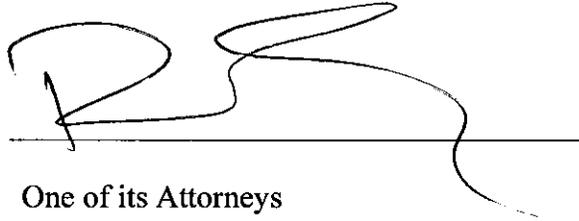
9. Consistent with past treatment of this highly proprietary and confidential information, FES seeks an order from this Commission, without hearing, protecting from disclosure, for a period of not less than two years from the date of this Order, FES's 2012 Net Metering Report.

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 documents filed with the Chief Clerk of the Commission regarding FES's 2012 Net Metering Report.

Respectfully submitted,

**FIRSTENERGY SOLUTIONS CORP.**

By:



A handwritten signature in black ink, appearing to be 'M. Whitt', is written over a horizontal line. The signature is stylized and extends to the right of the line.

One of its Attorneys

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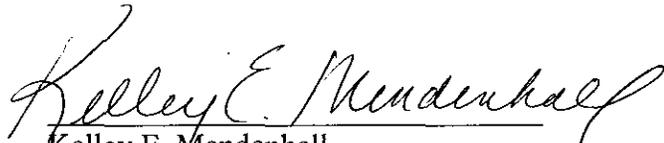
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Dated: March 29, 2013

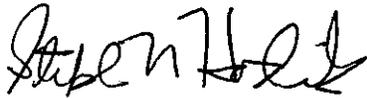
STATE OF OHIO )  
 ) SS:  
SUMMIT COUNTY )

**VERIFICATION**

Kelley E. Mendenhall, being first duly sworn, deposes and says that she is Vice President, FES Strategy and Planning; that she has read the foregoing Petition and has personal knowledge of the contents thereof; and that the statements therein are true and correct to the best of her knowledge, information and belief.

  
Kelley E. Mendenhall  
Vice President, FES Strategy and Planning

Subscribed and sworn to  
before me this 29 day of  
March 2013.



Notary Public  
**STEPHEN N. HADICK, Attorney at Law**  
Notary Public - State of Ohio  
My Commission Has No Expiration Date Sec. 147.03 R.C.

