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ILLINOIS COMMERCE COMMISSION**

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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FirstEnergy Solutions Corp. :  
:  
Petition for Relief To Protect Portions of :  
FirstEnergy Solutions Corp.'s 2014 Annual :  
Net Metering Report From Public Disclosure. :

2015 MAR 31 P 12:52

CHIEF CLERK'S OFFICE  
Docket No. 15-0242



**VERIFIED PETITION**

Pursuant to Sections 451.60 of the Illinois Administrative Code and Section 16-107.5(k) of the Public Utilities Act, FirstEnergy Solutions Corp. (FES) respectfully requests issuance of an order that protects from public disclosure, for not less than two years, highly confidential and proprietary information included in FES's 2014 report stating the total peak demand within each utility service territory in the preceding calendar year (2014 Net Metering Report). The Commission should grant this Petition for the reasons that follow.

1. FES is certified as an Alternative Retail Electric Supplier (ARES), pursuant to the Final Order in Docket 08-0142. In the Docket 08-0142 Order, the Commission granted FES a certificate of service authority (Certificate) to offer the sale of electricity and power to all eligible residential and nonresidential retail customers in the service areas of Ameren Illinois. The Certificate was amended in Docket 08-0522 to include the service area of Commonwealth Edison Company.

2. Concurrently with this Petition, FES has filed with the Chief Clerk and the Manager of the Energy Division of the Commission its 2014 Net Metering Report. FES's 2014 Net Metering Report includes total peak demand supplied by FES in the respective service territories of Ameren Illinois and ComEd. FES considers this information highly proprietary and confidential. It is imperative that public disclosure of total peak demand in the territories of

Ameren Illinois and ComEd be avoided for at least two years because of the competitive harm FES would suffer if this information became publicly available any sooner.

3. 83 Ill. 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 Ill. Adm. Code 200.430.”

4. Documents submitted to or filed with the Commission are generally available to the public, either through the Commission’s e-Docket system or upon request to the Commission. Section 7(g) of the Illinois Freedom of Information Act, however, exempts from public disclosure by the Commission “trade secrets and commercial or financial information . . . where the trade secrets or information are proprietary, privileged or confidential.” 5 ILCS 140/7(g).

5. The total peak demand supplied in the respective service territories of Ameren Illinois and ComEd falls within the exemptions recognized by 83 Ill. Adm. Code 451.60 and 5 ILCS 140/7(g). Total peak demand 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).

6. Public disclosure of FES’s 2014 total 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 peak demand is thus necessary to ensure free and fair competition.

7. 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 2014 Net Metering Report would be harmful not only to FES, but to competition generally.

8. FES's request for proprietary status of its 2014 Net Metering Report is consistent with requests made by other ARES. Illinois ARES routinely seek orders preventing disclosure of annual total peak demands. The Commission has granted these 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 FirstEnergy Solutions Corp.*, Dockets 14-0268 (Order, Apr. 29, 2014), 13-0270 (Order, June 5, 2013), 12-0274 (Order, Oct. 3., 2012); *Integritys Energy Services, Inc.*, Dockets 14-

0246 (Order, Apr. 16, 2014), 13-0245 (Order, May 1, 2013), 12-0232 (Order, Apr. 18, 2012); *Constellation NewEnergy, Inc.*, Dockets 14-0261 (Order, June 17, 2014), 13-0241 (Order, Apr. 9, 2013), 12-0228 (Order, Apr. 18, 2012); *Illinois Power Marketing Co. d/b/a Homefield Energy*, Docket 14-0259 (Order, Aug. 5, 2014); *Nordic Energy Services, LLC*, Docket 14-0251 (Order, Apr. 29, 2014); *Champion Energy LLC*, Dockets 13-0265 (Order, May 1, 2013), 12-0254 (Order, May 2, 2012); *BlueStar Energy Services, Inc.*, Dockets 11-0290 (Order, Apr. 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.

9. FES seeks an order preventing public disclosure of its total peak demand supplied during 2014 for a period of two years. Two years is the “default” period for confidential treatment under 83 Ill. Adm. Code Part 200.430(b), as the Commission found in each of the above dockets.

10. In addition to a confidential version of its 2014 Net Metering Report, FES is also filing with the Chief Clerk a public version. Total peak demand has been redacted from the public version.

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 total peak demand included in FES’s 2014 Net Metering Report.

Dated: March 30, 2015

Respectfully submitted,

**FIRSTENERGY SOLUTIONS CORP.**

By:

A handwritten signature in black ink, appearing to be 'M. Whitt', written over a horizontal line.

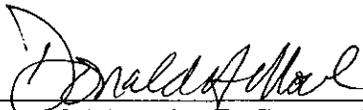
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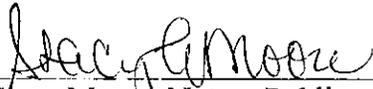
STATE OF OHIO     )  
                                  ) SS:  
SUMMIT COUNTY    )

**VERIFICATION**

Donald A Moul, being first duly sworn, deposes and says that he is VP, Commodity Operations; that he 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 his knowledge, information and belief.

  
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Donald A Moul, VP, Commodity Operations

Subscribed and sworn to  
before me this 27<sup>th</sup> day of  
March 2015.

  
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Stacy Moore, Notary Public

