



Eckert Seamans Cherin & Mellott, LLC  
213 Market Street  
8<sup>th</sup> Floor  
Harrisburg, PA 17101

TEL 717 237 6000  
FAX 717 237 6019  
www.eckertseamans.com

Daniel Clearfield  
717.237.7173  
dclearfield@eckertseamans.com

March 18, 2016

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Petition of Direct Energy Services, LLC to Expand Retail Market Enhancements  
Docket No. P-2016-XXXXXXX

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Petition of Direct Energy Services, LLC to Restart the Retail Opt In Retail Market Enhancement with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads 'Daniel Clearfield'.

Daniel Clearfield

DC/lww  
Enclosure

cc: Cert. of Service w/enc.

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of Direct Energy's Petition to Restart the ROI Market Enhancement upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

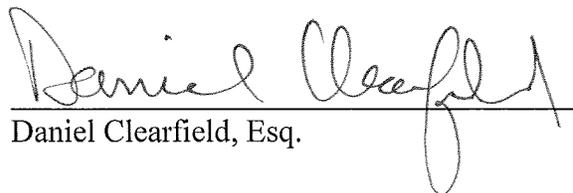
**Via First Class Mail**

Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Fl.  
Harrisburg, PA 17101-1923

Office of Small Business Advocate  
300 North Second St., Suite 202  
Harrisburg, PA 17101

Bureau of Investigation & Enforcement  
PA Public Utility Commission  
PO Box 3265  
400 North St., 2<sup>nd</sup> Floor West  
Harrisburg, PA 17105-3265

Dated: March 19, 2016

  
\_\_\_\_\_  
Daniel Clearfield, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition Of Direct Energy Services, LLC To :  
Expand Retail Market Enhancements : Docket No. P-2016-\_\_\_\_\_  
:  
:  
:  
:  
:

---

**PETITION OF DIRECT ENERGY SERVICES, LLC  
TO RESTART THE RETAIL OPT IN  
RETAIL MARKET ENHANCEMENT**

---

Pursuant to 66 Pa. C.S. §§ 501, 2802 and 52 Pa. Code § 5.41, Direct Energy Services, LLC (“Direct Energy” or “Direct”), respectfully requests that the Pennsylvania Public Utility Commission (“PUC” or “Commission”) issue an Order going forward with a modified version of the previously ordered Retail Opt in Program (“ROI”) – postponed by the PUC in 2013<sup>1</sup> initially as a pilot program. Direct Energy proposes that the restarted ROI would consist of a one-time mailing to non-shopping residential and small business (25kw and below) customers with an opt-in offer of: 1) a 24 month electric generation supply contract at a price 5% below the Price to Compare at the time of the offer (with no cancellation or early termination charges for the commodity); and 2) a value-added, energy saving or energy management product or service at no additional charge. Any EGS agreeing to participate on these terms would be eligible to participate.

Direct Energy proposes that the restarted ROI, modified as set forth in this Petition, be initiated initially as a pilot program in the PECO Energy and PPL service territories. Both of

---

<sup>1</sup> See *Petition of PECO Energy Company for Approval of its Default Service Program II, et seq.*, Docket Nos. P-2012-2283641, et seq., Final Order On Reconsideration entered April 4, 2013 (“ROI Reconsideration Order”) at 6-7.

these EDCs have smart meters in place and therefore these jurisdictions will offer the best opportunity for EGSs to offer innovative energy saving products or services as part of their “ROI offer.” Once the pilot is completed and evaluated, the Commission can determine how to roll out the ROI program and what modifications, if any, might be prudent based on the results of the pilot.

Direct Energy requests that the pilot EDCs be ordered to expeditiously file a proposed ROI program implementation plan in compliance with PUC-issued guidelines with the goal of implementing the revised ROI Program by October of this year. Direct Energy also requests that the Commission waive any rules, regulations or orders which are inconsistent with the adoption and implementation of the expansion of the Retail Market Enhancements, as detailed herein.

The current Retail Market Enhancements, and in particular, the Standard Offer Customer Referral Program, have successfully encouraged and resulted in an increased number of consumers in Pennsylvania that shop for electricity. However, in the last few years, retail switching levels have plateaued somewhat. Moreover, some energy providers are offering energy efficiency products and services either in conjunction with or in addition to their retail generation offerings – but that market is still in its initial stages and customer awareness levels are likely low given the traditional, “one sale at a time” marketing approach. Accordingly, the opportunity now exists to introduce a larger number of non-shopping customers to this enhanced market by restarting the previously approved ROI, but with a key modification: in addition to a competitive rate and a fixed price for two years, the customer would also receive a value added product or service that will assist them in reducing their electricity bills by, for example, helping them conserve or better manage their energy usage. Examples of such energy saving or energy management product or services could include an energy management tool such as providing

disaggregated load by appliance or providing projected bills, providing a smart thermostat, a home energy audit, or a maintenance plan for heating and cooling systems.

As noted, Direct Energy's proposed Program is structured so that participating consumers can select a fixed-rate price product for a 24-month period set at 5 percent off the EDCs' current price-to-compare ("PTC") with no early cancellation charge for the commodity. Prior to the end of the 24 month term, participating customers would receive the required options notices,<sup>2</sup> and, if the customers does not respond to these notices, he or she would begin month 25 on a 12 month, fixed rate product without an early termination fee rather than transitioning to a variable or month-to-month priced product.

The primary goals of the restarted ROI Restart Program are to: 1) offer customers a stable price and new and innovative products and services; 2) provide participating customers added-value products and services to assist them in placing downward pressure on their overall energy bills by helping them better manage their energy usage; and 3) facilitate the overall deployment of energy-efficiency, demand-response, and connected home devices through increased consumer participation in the competitive market.

Direct Energy requests that the Commission establish, via Secretarial Letter, a schedule for the Commission's consideration of Direct Energy's proposal that would permit the restarted ROI to be implemented as a Pilot program in the PECO and PPL service territories on or around October, 2016. Given the significant amount of work already achieved by the EDCs to prepare for the subsequently postponed ROI, this implementation target is reasonable. A possible procedural process that could permit the Program to be implemented in this time period would include the following:

---

<sup>2</sup> See, 52 Pa. Code § 54.10 (Notice of contract expiration or change in terms for residential and small business customers).

1. Direct Energy Files Petition for ROI Restart
2. Answers to Petition Filed
3. PUC Issues Tentative Order Directing Additional Retail Market Enhancement Pilot Program
4. Interested Parties Submit Comments on Tentative Order
5. PUC Issues Final Order Directing Pilot EDCs to File a Proposed Implementation Plan
6. PUC Conducts At Least One Collaborative With All Affected Parties To Develop ROI Details And Identify Issues<sup>3</sup>
7. Pilot EDCs file Proposed Implementation Plans or Petitions for Exclusion/Modification of the ROI Restart
8. Comments on Pilot EDCs Implementation Plans Filed
9. PUC Issues Order Ruling on Pilot EDCs Implementation Plans
10. Effective Date of Additional Retail Market Enhancement Pilot

In support of approval of the relief requested, Direct Energy states as follows:

### **Background**

1. Direct Energy is an electric generation supplier (“EGS”) licensed by the Commission at A-110164 to provide electricity and related services to retail customers throughout Pennsylvania. Direct Energy is a North American affiliate of Centrica plc, a leading international provider of energy and other energy-related services, with over 30 million customer relationships worldwide. Direct Energy has a unique business model, and extensive experience in providing innovative gas and electricity products and services to residential, small and large commercial and industrial customers, utilities and government entities.

---

<sup>3</sup> The collaborative would include discussion of program details, including among other things the date by which interested suppliers must provide a commitment to participate.

2. Direct Energy's attorneys in this matter are:

Daniel Clearfield, Esquire  
Sarah Stoner, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8th Floor  
Harrisburg, PA 17101  
717.237.6000  
Fax 717.237.6019  
dclearfield@eckertseamans.com  
sstoner@eckertseaman.com

3. On April 29, 2011, the Commission launched a statewide investigation into the state's competitive electricity retail market ("RMI"),<sup>4</sup> "with the goal of making recommendations for improvement to ensure that a properly functioning and workable competitive retail electricity market exists in the state."<sup>5</sup>

4. On July 28, 2011 the Commission issued a further order directing additional steps to jump-start the retail competitive market. Quoting from Direct Energy's comments, the PUC noted that it had, in the past, characterized a truly competitive market as "one in which there are low barriers to entry, many sellers, many buyers and offerings of a variety of products,"<sup>6</sup> and that "[n]o market in Pennsylvania has seen any material investment by EGSs in the infrastructure needed to offer non-price based products and services."<sup>7</sup> Accordingly, the Commission directed

---

<sup>4</sup> *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952, Order entered April 29, 2011 ("April RMI Order"). A subgroup was developed within the RMI, consisting of EGS, EDC and consumer advocacy representatives actively participating, while other interested stakeholders monitored its activities.

<sup>5</sup> *Id.* at 2 (citation omitted).

<sup>6</sup> *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952, Order entered July 28, 2011 ("July RMI Order") at 4 (citation omitted).

<sup>7</sup> *Id.*

its Office of Competitive Markets Oversight (“OCMO”) to examine, among other market enhancements, customer referral programs.<sup>8</sup>

5. After affirming its statutory authority to do so,<sup>9</sup> the Commission recommended that the major EDCs include a customer referral program and a ROI aggregation program within their upcoming default service plans to be effective June 1, 2013 through May 31, 2015.<sup>10</sup> In a companion order, the Commission presented a recommended design and guidelines for a Standard Offer Customer Referral Program<sup>11</sup> and a ROI Program.<sup>12</sup>

6. Standard Offer Customer Referral Programs were approved for each major EDC<sup>13</sup> through each company’s default service proceeding after a full evidentiary record was

---

<sup>8</sup> *Id.* at 10-11.

<sup>9</sup> The Commission has affirmed on several occasions that it is empowered to direct EDCs to implement measures intended to encourage and increase customer participation in the competitive retail electricity market in the Commonwealth. *See, e.g.*, 66 Pa. C.S. §§ 501, 2807(d), 2811; *Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, Tentative Order entered November 8, 2012; *Investigation of Pennsylvania’s Retail Electricity Market: Revised Schedule for Statewide Consumer Education Mailings*, Docket No. I-2011-2237952, Final Order entered June 21, 2012; *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Final Order entered March 2, 2012 (“IWP Final Order”); *Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952, Final Order entered December 16, 2011 (“Default Service Plans Order”); *PPL Electric Utilities Corporation - Retail Markets*, Docket No. M-2009-2104271, Order entered August 11, 2009.

<sup>10</sup> *Investigation of Pennsylvania’s Retail Electricity Market: Recommended Directives on Upcoming Default Service Plans*, Docket No. I-2011-2237952 Order entered October 14, 2011 at 5-6; Default Service Plans Order at 6.

<sup>11</sup> Default Service Plans Order at 43 (“In general, all parties who submitted comments on this topic recognize that customer referral programs are a practicable way to educate customers about retail choice and facilitate electric shopping.”) *See* IWP Final Order at 31-33, 43. The Commission’s IWP Final Order excluded the small EDCs, Citizens Electric Company of Lewisburg and Wellsboro Electric Company, from implementing the Standard Offer Customer Referral Program. IWP Final Order at Ordering Par. 10. In lieu of implementing the Standard Offer Customer Referral Program, Pike County Light & Power Company was ordered to implement the PowerSwitch program of its parent company, Orange and Rockland Utilities, Inc., in its service territory. *Id.* at Ordering Par. 11.

<sup>12</sup> Default Service Plans Order at 21-44; IWP Final Order at 33-85.

<sup>13</sup> The Standard Offer Customer Referral Program was directed to be offered to customers residing in the service territories of the major EDCs: PECO Energy Company, PPL Electric Utilities Corporation,

developed, and were implemented starting in August 2013.<sup>14</sup> They were continued through the next rounds of default service plans that were effective June 1, 2015, ending in May 31, 2017.<sup>15</sup>

7. The Commission determined that the Standard Offer Customer Referral Program should be voluntary and provide residential and small commercial customers the opportunity to enroll with a participating supplier that makes the standard offer, which includes a fixed-rate price, 7 percent below the electric distribution companies' current PTC for a term of one-year with no cancellation or termination fees. This program, which is offered to customers applying for service, moving or making certain inquiries with the EDC, is primarily a commodity only program does not incorporate value added products and services.

8. In addition, prior to suspending the program, the Commission also ordered the implementation of a ROI Program.<sup>16</sup> Based upon the record developed in the default service proceedings, the PUC determined that the ROI Program would provide subscribing customers with a four-month discount from the EDC's PTC, followed by an eight-month, fixed price offer from participating electric generation suppliers at prices determined by suppliers and upon

---

Duquesne Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company.

<sup>14</sup> ROI Reconsideration Order, *supra*.

<sup>15</sup> *Petition of PECO Energy Company for Approval of its Default Service Program for the period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362, Opinion and Order entered December 4, 2014 at 16-19; *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs*, Docket Nos. P-2013-2391368, P-2013-2391372, P-2013-2391375, and P-2013-2391378, Opinion and Order entered July 24, 2014 at 15-17; *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 Through May 31, 2017*, Docket No. P-2014-2417907, Opinion and Order entered January 15, 2015 at 14-15; *Petition of Duquesne Light Company for Approval of a Default Service Program for the Period June 1, 2015 through May 31, 2017*, Docket No. P-2014-2418242, Opinion and Order entered January 15, 2015 at 6-7.

<sup>16</sup> IWP Final Order at 41-44.

review by the PUC.<sup>17</sup> The discount for the four-month term was required to be at least 5% lower than the PTC at the time of the offer. Customers who remained in the ROI Program for the first four months would have received a \$50 bonus. There would be no penalty for leaving the ROI Program at any time. Any EGS that agreed to provide the required ROI offer was permitted to participate. Each EDC would send a mailer to non-shopping customers describing the offer.

9. However, after a similar full vetting during the default service proceedings, the ROI Programs were “postponed” by the Commission, on its own motion, until “after [the Commission] had the opportunity to consider the ongoing result of the Standard Offer Customer Referral Program.”<sup>18</sup> The Commission found that “simultaneous implementation of both the ROI and Standard Offer Customer Referral Programs presents concerns about customer confusion as well as EDC implementation.”<sup>19</sup>

10. Since inception, the SOP has been successful. From August 2013 through December 2015, a total of 536,605 residential customers and 18,665 small commercial customer enrolled in the Standard Offer Customer Referral Program.<sup>20</sup> And the program continues to be popular and successful, as can be seen by the enrollment statistics. In December 2015, 13,238 residential customers were referred to the existing program and 17,651 residential customers

---

<sup>17</sup> See, e.g., ROI Reconsideration Order at 2; *Petition of PECO Energy Company for Approval of its Default Service Program II, et seq.*, Docket No. P-2012-2283641, *et seq.*, Tentative Order on ROI Reconsideration (Tentative Order on ROI Reconsideration) entered March 14, 2013 at 2.

<sup>18</sup> ROI Reconsideration Order at 3; Tentative Order on ROI Reconsideration at 3.

<sup>19</sup> ROI Reconsideration Order at 6.

<sup>20</sup> See Statewide Standard Offer Customer Referral Program Information through December 31, 2015, available at [http://www.papowerswitch.com/assets/pdf/EDC\\_SOP\\_Stats123115.pdf](http://www.papowerswitch.com/assets/pdf/EDC_SOP_Stats123115.pdf).

enrolled in the program.<sup>21</sup> For small commercial customers, 409 customers were referred to the program and 618 customers were enrolled in December, 2015.<sup>22</sup>

11. Despite the success of the Standard Offer Customer Referral Program, overall shopping levels, particularly for the residential and small business classes have plateaued.<sup>23</sup> Shopping statistics as of February, 2016 indicate that only approximately 34% of residential customers (34% of load) in the applicable service territories were receiving service from an EGS.<sup>24</sup> Similarly available statistics for small business customers also continue to lag.<sup>25</sup>

12. The lack of significant progress in growing the residential and small business retail shopping market can be seen by comparing shopping statistics from July, 2013 (when the SOP started) and December, 2015. Since July, 2013, residential shopping (by load) has decreased in five of the seven major EDC jurisdictions (Duquesne, MetEd, Penelec, Penn Power and West Penn).<sup>26</sup> Only slight increases in shopping load have been experienced in PECO's service territory (35% compared to 34% in 2013) and in PPL's service territory (50.7% compared to 48.1% in 2013).<sup>27</sup> For small non-residential customers, shopping has fallen in four

---

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> The following percentage of residential customers (% of load) in all EDC territories were receiving service from an EGS: 2014 - 38%; 2013 - 36%; 2012 - 29%; and 2011 - 15%. See Table 1 Number of Customer Accounts & MWh Sales in the 2011-2014 Retail Electricity Choice Activity Reports, available at [http://www.puc.state.pa.us/utility\\_industry/electricity/retail\\_choice\\_activity\\_reports.aspx](http://www.puc.state.pa.us/utility_industry/electricity/retail_choice_activity_reports.aspx)

<sup>24</sup> See PAPowerSwitch Monthly Update – Switching to an Electric Generation Supplier (February 2016), available at <http://extranet.papowerswitch.com/stats/PAPowerSwitch-Stats.pdf/download/PAPowerSwitch-Stats.pdf>. While shopping statistics are available for commercial customers, the statistics do not separate small commercial customers from large commercial customers.

<sup>25</sup> See Retail Electricity Choice Activity reports filed by the seven major EDCs at Docket No. L-00070184.

<sup>26</sup> *See*, Attachment “A”, hereto.

<sup>27</sup> *Id.*

of the seven major EDC jurisdictions since the second quarter of 2013 (Duquesne, Penn Power, PPL and West Penn).<sup>28</sup>

13. Moreover, despite the number of customers taking advantage of the Standard Offer Customer Referral Program, there has not been the anticipated development of “value added” products and services that both the Commission and suppliers hoped to see and was perhaps envisioned when the Commission issued its RMI directives in December 2011.<sup>29</sup> A recent review of offers posted to PAPowerSwitch for residential customers in the applicable service territories revealed that merely 10.57% of offers included a value added product or service (other than renewable energy, cash back, or % off incentives).<sup>30</sup> A comparable review of small non-residential offers revealed that 15.20% of offers included a value added product or service.<sup>31</sup>

14. It therefore continues to be important to continue to “jump start” the retail market but also to move customers away from viewing the markets as solely commodity based. With the deployment of smart meters, availability of smart thermostats and other energy management services and technologies, customers’ options for monitoring and managing their energy usage are growing and will provide more information and value to customers, particularly in service territories in which smart meters have been deployed. The success of the Standard Offer Customer Referral Program has shown that customers, presented directly with the opportunity, will utilize an EGS. With the availability of value added products and services, customers should also be made aware of additional advantages to them if they participate in the

---

<sup>28</sup> *Id.*

<sup>29</sup> *See* footnote 11, *supra*.

<sup>30</sup> *See*, Attachment “B”, hereto.

<sup>31</sup> *See*, Attachment “C”, hereto.

electricity marketplace. The proposed modified ROI will increase awareness and will facilitate the overall deployment of energy-efficiency, demand-response, and connected home devices through increased consumer participation in the competitive market.

15. Direct Energy therefore submits that it is time to “restart” the previously postponed ROI with additional, “value added” enhanced programs to better manage customers energy bills in order to: 1) help facilitate shopping among remaining, non-shopping residential and small commercial customers; 2) expose non-shopping customers to the energy plus value-added product and service market; and, 3) more importantly, help restore confidence in a post-Polar Vortex marketplace that still, two years later, is lagging in its shopping numbers.

### **Proposal for Reinstatement of Opt In Program**

16. Direct Energy requests that the Commission move forward with a modified version of the ROI program previously postponed by the Commission in 2013. The ROI would move forward initially as a Pilot Program in the service territories of PECO and PPL and would include the provision of a value-added product to customers affirmatively opting to take the offer. Direct Energy proposes the following high-level terms for the reinstated ROI as the EDC’s develop their implementation plans:

- (i) All EGSs that wish to participate may do so, assuming they meet the modified ROI program guidelines.
- (ii) The Commission would authorize a one-time mailing describing the program to all non-shopping residential and small business customers<sup>32</sup> that would set forth a retail offer authorized by the Commission and facilitated by the Pilot EDC. The

---

<sup>32</sup> Direct Energy recommends that small business customers be defined as those with peak monthly usage of 25kw or less.

mailing would include several means (prepaid return postcard, telephone number and website) for the customer to convey their interest in participating in the program.

- (iii) Direct Energy recommends that the EDC mailer list each of the participating EGSs and the specific energy saving or energy management product or service it is offering. The Commission could also consider permitting each EGS to include marketing material in the mailer with further information about the company and the product or service it is offering.
- (iv) Customers could choose one of the listed EGSs; those customers who express their desire to participate that do not choose a specific supplier would be randomly enrolled by the EDC with one of the participating EGSs.
- (v) EGSs would also be free to market the program to shopping and non-shopping customers, as well as existing and potential customers at their own cost, utilizing PUC-approved language in their marketing materials describing the retail offer endorsed/authorized/facilitated by the Commission and the EDC nature of these specific offerings.
- (vi) EGSs would be pre-approved as meeting the Commission/EDC participation guidelines and agree to offer to participating consumers a fixed-rate price product for a 24-month period set at a rate 5% lower than the electric distribution companies' current PTC (at the time the offer is made) with no early cancellation charge for the commodity. The consumer would also receive the added benefit of a value-added energy saving or energy management product or service.

- (vii) The product or service would be certified by the Commission as being an energy saving or energy management product or service. Examples of such products or services would include:
- (1) A connected home or business device or system which helps manage energy utilization
  - (2) A smart thermostat such as a Nest or equivalent advanced device
  - (3) an energy management tool such as providing disaggregated load by appliance
  - (4) A home or business energy audit
  - (5) A heating and cooling maintenance plan or furnace and air-conditioner system inspection and tune-up
  - (6) A credit towards a roof-top solar or other energy saving distributed energy installation
- (viii) Direct Energy proposes that each EGS interested in participating in the restarted ROI would submit to the Commission<sup>33</sup> a description of the service or product it proposes to offer in addition to the 24 month, discounted energy product. The Commission would then certify that the product or service qualifies as a value added energy saving or energy management product or service that can participate in the ROI offer.
- (ix) The Program would be available, on an “opt-in” or voluntary basis, targeting non-shopping residential and small commercial customers. Customers who are already enrolled with an EGS would not be precluded from participating if they express an interest (but they would not initially receive the mailing).

---

<sup>33</sup> The Commission should take care to assure that all decisions about the ROI, including rules for participation, marketing and implementation, should be determined by the PUC and not left to the sole discretion of the individual EDCs as part of the process of implementation.

- (x) The costs of preparation and mailing of the mailing would be recovered in the same way that the Commission determined that the costs of the original ROI Program were to be recovered. For example, for PECO, the Commission approved PECO's proposal that the cost of the ROI Program would be determined by assessing a \$1 charge for each customer that opts-in to the offer by that EGS with remaining costs (if any) recovered through either a non-bypassable surcharge or equally from EGSs through an addition to PECO's POR discount and a charge to affected distribution customers.<sup>34</sup>
- (xi) Direct Energy proposes that the Commission modify the ROI orders to eliminate the provision that limited the number of customers that could participate to 50% of the eligible customers. This will ensure that if customer interest exceeds typical levels for an opt-in promotion no customer will be turned away.
- (xii) All other resolutions arrived at by the Commission for the ROI (prior to postponement) be applied to the ROI Restart, unless revised by the PUC upon request of an EDC or an interested party. This would include participation by CAP customers (differs by EDC), a 50% EGS cap (no single EGS will serve more than 50% of the total number of customers agreeing to the ROI offer as a result of the direct mailing per utility territory), a two-month timeline for leaving the offer open to allow for focused marketing efforts and EDC reporting.

---

<sup>34</sup> *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Order entered February 14, 2013 at 13-14; *See also Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670, Order entered February 15, 2013 at 14-15; *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074, Order entered January 24, 2013 at 178-183.

(xiii) The ROI restart would initially be restarted as a pilot program in the service territory of two EDCs. Direct Energy proposes that PECO and PPL be used for the pilot as each jurisdiction has smart meters deployed to residential and small business customers and the existence of smart meters should make it easier for EGSs to offer innovative energy saving or monitoring products and services as part of the ROI.<sup>35</sup> After the pilot, the Commission would evaluate the results and accept comments from interested parties. It would then consider the terms and conditions under which it would be reasonable to order the continued roll-out of the ROI in the service territories of the other major EDCs.<sup>36</sup> The Commission would then order each major EDC to submit a compliance plan consistent with those determinations. Each EDC would either submit such a plan or submit any changes or modifications in the PUC's initial directive it wishes to propose.

### **AUTHORITY FOR COMMISSION ACTION**

17. Section 501 of the Public Utility Code (the "Code") provides that the Commission has the full power and authority to enforce and carry out the provisions of the Code, and also provides that "[e]very public utility, its officers, agents, and employees, and every other person or corporation subject to the provisions of [the Code], affected by or subject to any regulations or orders of the Commission . . . shall observe, obey, and comply with such regulations or orders,

---

<sup>35</sup> Smart meters are not absolutely required for energy saving products and services to be offered, however. So after the pilot is completed, the ROI could be ordered to be implemented in the service territories of the other major EDCs but on terms and conditions that both consider the "learnings" from the pilot and the market and cost conditions existing in the other EDC service territories.

<sup>36</sup> For example, depending upon the market conditions, the discount from the PTC might need to be changed up or down, or the definition of the energy saving or energy management product or service may need to be altered.

and the terms and conditions thereof.”<sup>37</sup> The Commission codified the following policy at 52 Pa. Code § 69.1815: “The public interest would be served by consideration of customer referral programs in which retail customers are referred to EGSs.”<sup>38</sup>

18. The Commission is also authorized to waive its rules and regulations when necessary and in the public interest.<sup>39</sup>

19. Direct Energy submits that the Commission has abundant authority under the Code to approve the Program proposed by Direct Energy. As set forth above, the Commission is fully authorized under the Code to authorize programs to assure that customers have ample opportunity to obtain competitive prices and a variety of innovative product offerings.

20. Under the Electric Choice Act, the Commission is fully authorized to establish rules and issue orders to implement electric choice for customers and to take steps – such as this ROI – to facilitate a vibrant competitive retail market.<sup>40</sup>

21. The Commission’s ROI Order clearly concluded that the PUC had the authority to order retail market enhancements in order to stimulate and to expose customers to the benefits of retail competition. No party ever challenged the Commission’s authority to order the EDCs to implement either the SOP or the ROI before it was postponed.

---

<sup>37</sup> 66 Pa. C.S. §§ 501(a), (c).

<sup>38</sup> 52 Pa. Code § 69.1815.

<sup>39</sup> 52 Pa. Code §§ 1.2(c), 56.222.

<sup>40</sup> See 66 Pa. C.S. §§ 501, 2811; See also *April RMI Order, supra*; *July RMI Order, supra*. On Page 7 of the July RMI Order, the Commission concluded that: “Pennsylvania’s current retail market requires changes in order to bring about the robust competitive market envisioned by the General Assembly when it passed the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801, et seq., in 1996.” July RMI Order at 7. The Orders cited herein at footnotes 9 to 15 and 34, *supra*, further established directives on the Standard Offer Customer Referral Program and the ROI Program.

22. As the current state of the market and the Commission's prior observations make clear, so long as the suppliers must continue to compete against the currently structured default service, vibrant, fully competitive retail electric markets will not occur unless suppliers successfully distinguish their products from the default service option. The market enhancement proposed here would help to "jump-start" that differentiation by offering customers two things that they cannot obtain from default rates (as presently structured): a) long term (two years) stability; and b) value over and above a particular commodity price.

23. The goal of the proposed market enhancements is to get more customers aware of and experienced with products that include "value added" provisions such as energy efficiency, demand-response, or other additions that help these customers better manage their overall energy bills. This in turn will encourage more suppliers to offer such products and put the market on a path to permanent, vibrant competitiveness. So long as a market is focused solely on price, it will be subject to wide swings in participation depending upon the relationship between wholesale market prices and default service prices.

24. The proposed "energy savings plus energy savings or management product" package has the added value of helping to advance the Commonwealth's goals of increasing energy efficiency and reducing carbon emissions, similar, and as a supplement to the programs instituted by the EDCs in compliance with Act 129. Indeed, it may be possible to coordinate the energy efficiency products and services to be provided as part of this ROI with each EDC's Act 129 programs to ensure maximum efficiency.<sup>41</sup>

25. Direct Energy acknowledges that the first round of competitive market enhancements were reviewed and considered by the Commission in the context of default service

---

<sup>41</sup> Direct Energy suggests that, once the PUC orders the ROI restart as proposed here, it convene a collaborative to discuss Act 129 coordination.

procurement plan investigations, specifically the second default service procurement period (DSP II). However, the ROI was first ordered by the Commission in the Retail Market Enhancement proceeding<sup>42</sup> and the details were determined during the default service proceedings. Having already gone through this process, the Commission has the opportunity to build upon the record created there and order the enhancements herein requested without the requirement of engaging in a long, time consuming and expensive relitigation of the issues associated with the requested expansion of the existing program. To the extent that an EDC wishes to raise issues associated with its own special or unique circumstances it can do so in the compliance filing that Direct Energy is proposing be filed in response to a final order by the Commission granting Direct Energy's request.

26. For similar reasons, Direct Energy does not believe it is either reasonable or necessary to hold off restarting the modified ROI program until the next default service plan period, starting in June, 2017. All default service supply providers were (or should have been) aware of the Commission's decision to order – but then postpone – the ROI Program. The postponement could have been reversed at any time. Accordingly, default service suppliers should have fully anticipated the modest switching away from default service that is likely as a result of the restarted ROI program could occur during the current DSP period. Of course, as the Commission is well aware, default service suppliers have no “right” to serve any particular level of default load. Therefore, there is no reasonable basis on which to hold off implementing the ROI until the next DSP period begins and a new group of wholesale suppliers are in place. In addition, by initially rolling out the restarted ROI as a pilot, the Commission can monitor the results and insure that any significant effect on default service load, if any and in consideration

---

<sup>42</sup> IWP Final Order at 33-85.

of the benefits accruing to participating customers, will be fully understood and consistent with its policy goals.

27. Direct Energy specifically requests that, in issuing its order, the Commission grant a blanket waiver of any rule or regulation that is inconsistent with the implementation of the proposed Program and to specify, for the purposes of facilitating the Program, that such waiver shall apply to both participating suppliers and the EDCs.

### **CONCLUSION**

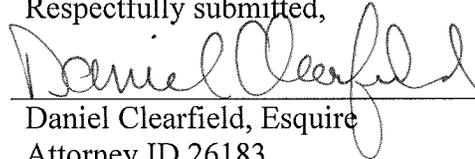
WHEREFORE, Direct Energy Services, LLC respectfully requests that the Commission:

- (1) Issue a Secretarial Letter establishing a schedule that follows the procedural steps set forth on pages 3-4 above for consideration of the restarted Retail Opt-In Program modified as proposed herein, as a pilot program;
- (2) Issue a Tentative Order directing the implementation of a reinstated Retail Opt-In Program as a pilot in the service territories of PECO Energy and PPL, with the terms and conditions set forth above in Paragraph 15;
- (3) Thereupon issue a Final Order requiring the pilot EDCs to file a proposed Retail Opt-In Program implementation plan within a specified period, after a workshop conducted by OCMO to determine the recommended details of pilot Retail Opt-In Program;

(4) Waive all Commission rules, regulations or orders which are inconsistent with the adoption and implementation of the enhanced Standard Offer Customer Referral Program as explained above; and

(5) Grant any other relief determined by the Commission to be in the public interest.

Respectfully submitted,



---

Daniel Clearfield, Esquire

Attorney ID 26183

Sarah Stoner, Esquire

Attorney ID 313793

Eckert Seamans Cherin & Mellott, LLC

213 Market St., 8th Floor

Harrisburg, PA 17101

717.237.6000

Fax 717.237.6019

Date: March 18, 2016

Attorneys for Direct Energy Services, LLC

# Attachment A

Attachment A

Percentage of MWh Sales of EGSs in the Major EDCs  
in 2Q 2013 and 4Q 2015

	Residential 2Q 2013	Small Non- Residential 2Q 2013	Residential 4Q 2015	Small Non- Residential 4Q 2015
Duquesne	49.78%	47.90%	34.22%↓	45.51%↓
Met-Ed	31.80%	38.10%	31.70%↓	43.80%↑
Penelec	29.50%	40.00%	28.60%↓	40.30%↑
Penn Power	31.80%	48.50%	19.40%↓	38.80%↓
PECO	34.00%	61.00%	35.00%↑	62.00%↑
PPL	48.10%	86.30%	50.70%↑	86.00%↓
West Penn	30.50%	53.70%	26.50%↓	35.30%↓

Data was obtained from the quarterly reports filed by the seven major EDCs at Docket No. L-00070184.

# Attachment B

**Attachment B**

**Residential Products Reviewed March 7, 2016 on PA PowerSwitch That Offer Value Added Products/Services Other than Renewable Energy, Cash Back or % Off Incentives**

<b>Territory</b>	<b># of Products Available</b>	<b># of Products w/ Value Added Product/Service</b>
Duquesne	89	10
Met-Ed	96	9
Penelec	84	9
Penn Power	51	7
PECO	127	13
PPL	129	13
West Penn	77	8
<b>AVERAGE</b>	<b>93.29</b>	<b>9.86</b>

**% of Products that Include Value Added Product/Services                      10.57%**

# Attachment C

**Attachment C**

**Small Non-Residential Products Reviewed March 7, 2016 on PA Power Switch that Offer Value Added Products/Services Other than Renewable Energy, Cash Back or Percentage Off Incentives<sup>43</sup>**

<b>Territory</b>	<b># of Products Available</b>	<b># of Products w/ Value Added Product/Service</b>
Duquesne	34	6
Met-Ed	45	7
Penelec	39	6
Penn Power	27	5
PECO	60	7
PPL	54	7
West Penn Power	37	7
<b>AVERAGE</b>	42.29	6.43

**% of Products that Include Value Added Product/Services                      15.20%**

---

<sup>43</sup> The applicable Rate Classifications are as follows: Duquesne (GS - General Service Small), Met-Ed (GS- General Service Small Non-Demand Metered), Penelec (GS - General Service Small Non-Demand Metered), Penn Power (GS - General Service Small (under 50kW)), PECO (GS-General Service (Demand <= 100KW), PPL (GS-1) and West Penn Power (GS-20).