



COMMONWEALTH OF PENNSYLVANIA

May 9, 2016

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**Re: Petition of Direct Energy Services, LLC to Expand Retail Market Enhancements
Docket No. P-2016-2535033**

Dear Secretary Chiavetta:

I am delivering for filing today the Answer, Notice of Intervention, and Public Statement, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Rose Triscari".

Elizabeth Rose Triscari
Deputy Small Business Advocate
Attorney ID No. 306921

Enclosures

cc: The Honorable Charles E. Rainey, Jr.
Mr. Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Direct Energy Services, LLC to : **Docket No. P-2016-2535033**
Expand Retail Market Enhancements :

**ANSWER OF THE OFFICE
OF SMALL BUSINESS ADVOCATE**

Pursuant to 52 Pa. Code §5.61, the Office of Small Business Advocate (“OSBA”) hereby answers the Petition of Direct Energy Services, LLC (“Direct Energy”) to Expand Retail Market Enhancements (“Petition”) filed with the Pennsylvania Public Utility Commission (“Commission”) on March 18, 2016,¹ and avers the following in support thereof:

I. INTRODUCTION AND BACKGROUND

The OSBA is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50) to represent the interests of small business utility customers as a party in proceedings before the Commission. Concurrent with the filing of this Answer, the OSBA is filing a Notice of Intervention and Public Statement in connection with the above-captioned proceeding to protect the interests of the Commonwealth’s small business customers.

In the Petition, Direct Energy requests that the Commission issue an Order implementing a pilot Retail Opt-In (“ROI”) program by October of 2016. Direct Energy’s proposed ROI program (“Direct Energy ROI Program”) consists of: (1) a one-time mailing to non-shopping residential and small business (defined as those with demand of 25 kW and below) customers

¹ Pursuant to a Secretarial Letter dated March 24, 2016, Direct Energy was directed to serve the Petition on all jurisdictional Electric Distribution Companies and on all Electric Generation Suppliers serving retail customers in the PECO Energy Company and PPL Electric Utilities service territories. The Secretarial Letter further provided that the twenty-day period for filing Answers to the Petition began when such service was made, which was on March 28, 2016. On April 13, 2016, the Retail Energy Suppliers Association (“RESA”) requested an extension of time until May 9, 2016, for Answers to the Petition to be filed, which request was granted by Secretarial Letter dated April 14, 2016.

with an opt-in offer of a 24 month electric generation supply contract at a price 5% below the Price to Compare (“PTC”) at the time of the offer; and (2) a “value-added, energy saving or energy management product or service at no additional charge.”² The Direct Energy ROI Program would have no cancellation or early termination charges “for the commodity.” All competitive electric generation suppliers (“EGSs”) would be eligible to participate on these terms.

Direct Energy further proposes that the Direct Energy ROI Program would be initially implemented as a pilot program in the PECO Energy Company (“PECO”) and PPL Electric Utilities (“PPL Electric”) service territories, where smart meters have been deployed. Upon completion and evaluation of the pilot, Direct Energy proposes that the Commission then determine how to implement the Direct Energy ROI Program for the remaining regulated electric distribution companies (“EDCs”).

Direct Energy seeks an expedited procedural process resulting in an effective date for implementation of the Direct Energy ROI Program by October of this year. The proposed procedure asks for the extraordinary relief of a Tentative Commission Order approving the Petition based solely on the pleadings (Petition and Answers). Subsequent Comments, Orders, Collaborative(s), proposed Implementation Plans, *etc.*, would merely work out the details of the relief Direct Energy has requested.

The OSBA has several concerns both with the merits of the proposed Direct Energy ROI Program, which differs significantly from the ROI Program previously approved and later postponed by the Commission, as well as with the proposed expedited procedure, which does not allow for proper vetting of Direct Energy’s new and different proposal. Therefore, the OSBA

² Petition at 1.

requests that this matter be referred to the Office of Administrative Law Judge for investigation, hearings, and a recommended decision.

II. ANSWER

A. Direct Energy ROI Program Differs From Commission-Approved ROI Program

The Commission initially ordered each EDC to implement a ROI program as part of the second round of default service proceedings. The Commission-approved ROI Program required participating EGSs to provide a four-month discount of at least 5% from the EDC's PTC, followed by an eight-month fixed-price offer at prices determined by EGSs and upon review by the Commission. Customers who remained in the Commission-approved ROI Program for the first four months would receive a fifty dollar bonus and there could be no penalty for leaving the program at any time.

The Direct Energy ROI Program is not, as it seeks to characterize it, a "restarted ROI," but rather differs significantly from the ROI Program previously approved by the Commission. The Direct Energy ROI Program is a 24 month versus a 12 month contract, does not have the \$50 bonus, does not provide for a *four-month* discount of at least 5% from the EDC's PTC,³ and most significantly, adds what Direct Energy describes as a "value-added, energy saving or energy management product or service at no additional charge." Such a product was never contemplated during prior default service proceedings when the Commission-approved ROI Program was vetted and no record exists in support of it. The OSBA has concerns with, among other things, what products or services would be eligible, what the costs of such products or services would be and how would they be recovered,⁴ and how these products would affect each

³ Instead, Direct Energy's proposed 5% discount would be limited to the time of the offer.

⁴ Direct Energy's Petition proposes to recover the costs of the one-time mailing in the same manner approved in the Commission ROI Program, but is silent on how costs would be recovered for the energy saving/energy management product or service. Furthermore, the Petition states that there are no cancellation or early termination charges "for the commodity," which begs the question whether there is a cancellation/early termination fee for the energy

EDC's Commission-approved Act 129 EE&C plans.⁵ Such a radical departure from the Commission-approved ROI Program, which may create significantly higher costs, should be subject to a thorough investigation of the merits of the proposal, far beyond the cursory review presented in the Petition. This investigation necessarily requires a traditional procedural schedule that provides for discovery, testimony, and hearings, not the expedited process proposed by Direct Energy granting it extraordinary relief that amounts to a judgment on the pleadings. Direct Energy's proposed procedure raises serious due process concerns and is wholly inadequate.

B. Problematic Timing Of Petition Between Default Service Proceedings

The OSBA also has concerns with the timing of Direct Energy's Petition, which would have been more appropriately filed before the current round of default service proceedings or in conjunction with the next round of default service proceedings. The stated goal of the Direct Energy ROI Program is, of course, to increase shopping. Thus, an ROI Program will affect wholesale bid solicitations and risk premiums. As such, ROI programs should be evaluated, and if found appropriate, implemented, on a stand-alone basis in the context of each EDC's default service proceeding, not on a statewide basis. Both the PECO and PPL Electric fourth default service proceedings are well underway. Both company and intervenor direct testimony has already been served in the PPL Electric proceeding and discovery is already ongoing in the PECO proceeding. Moreover, upcoming bid solicitations in the current default service time period for PECO and PPL Electric would also be affected. As petitioner, Direct Energy has the burden of demonstrating that its proposal is reasonable, and it must therefore demonstrate that

saving/energy management product/service.

⁵ The OSBA observes that the EDC-sponsored EE&C programs are able to subsidize energy efficiency measures for participating customers by imposing non-bypassable charges on all ratepayers. As EGSs do not have this option, the OSBA is uncertain how EGS offerings will be cost competitive, at least for those measures where they would compete with utility EE&C plans.

the Direct Energy ROI Program will not have a negative impact on the default service plans currently being adjudicated for PPL Electric and PECO.

C. Lack of Necessity

By Order entered April 4, 2013, the Commission directed EDCs to postpone their ROI Programs, citing concerns about customer confusion between the ROI Program and Standard Offer Program. The Commission stated that it would revisit the ROI Program after it had the opportunity to consider the ongoing results of the Standard Offer Program. Direct Energy's Petition assumes that the Commission has not already considered its postponement of the Commission-approved ROI Program and decided to allow that postponement to stand, given the success of the Standard Offer Program and retail choice generally in the Commonwealth. The Petition also assumes that the Commission is receptive to re-opening the issue of appropriate terms for an ROI Program, an issue already determined.

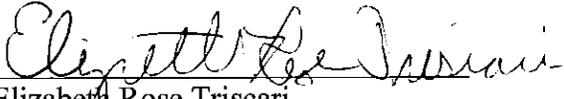
The OSBA asserts that any additional retail market enhancement, especially one like the Direct Energy ROI Program, which recovers the costs of EGS marketing from default service customers, is simply not necessary at this time. Pennsylvania enjoys a robust retail electric market, with 2,041,729 customers shopping as of the end of December 2015 and 2,067,196 total switching customers in the first quarter of 2016, representing an increase of more than 25,000 shoppers.⁶ A "plateau" of shopping, if one even exists as claimed by Direct Energy, could as easily be explained by other factors, including customers' rational response to the actions of

⁶ See PAPowerSwitch Monthly Update – Switching to an Electric Generation Supplier (December 2015, March 2016).

certain EGSs during the polar vortex.⁷ Regardless, Direct Energy has offered no compelling evidence that EGSs need a customer-funded boost for their marketing activities like the Direct Energy ROI Program.

WHEREFORE, the Office of Small Business Advocate respectfully requests that the Commission refer the Petition to the Office of Administrative Law Judge for investigation and hearings and the preparation of a Recommended Decision.

Respectfully submitted,


Elizabeth Rose Triscari
Deputy Small Business Advocate
Attorney I.D. No. 306921

Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
(717) 783-2525

Date: May 9, 2016

⁷ For example, in the current default service proceedings for the FirstEnergy Companies, the EDCs demonstrated that they recently incurred a significant increase in uncollectibles costs associated with electricity supply receivables that they purchased from EGSs under their purchase-of-receivables programs. A contributing factor to those uncollectibles was customer reaction to very high prices being charged by EGSs during extremely cold winters. In the filed settlement to those proceedings (recommended for approval by ALJ Salapa), the parties, including EGS representatives, agreed that the EDCs would be allowed to limit their exposure to high uncollectibles rates associated with EGSs who impose relatively high electric prices on their customers. See April 1, 2016 Joint Petition for Settlement and April 15, 2016 Recommended Decision at Docket Nos. P-2015-2511333, P-2015-2511351, P-2015-2511355, and P-2015-2511356.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Direct Energy Services, LLC to : Docket No. P-2016-2535033
Expand Retail Market Enhancements :

**NOTICE OF INTERVENTION
OF THE SMALL BUSINESS ADVOCATE**

The Office of Small Business Advocate (“OSBA”) files this Notice of Intervention with respect to the Petition of Direct Energy Services, LLC (“Direct Energy”) to Expand Retail Market Enhancements (“Petition”) filed with the Pennsylvania Public Utility Commission (“Commission”) on March 18, 2016. The Petitioner requests that the Commission issue an Order implementing a pilot Retail Opt-In (“ROI”) program by October of 2016.

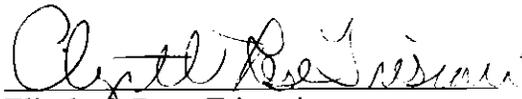
In support of this Notice of Intervention, the OSBA avers as follows:

1. The OSBA is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50) to represent the interest of small business consumers as a party in proceedings before the Commission.

2. Representing the OSBA in this proceeding is:

Elizabeth Rose Triscari, Esquire
Deputy Small Business Advocate
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)
etriscari@pa.gov

Respectfully submitted,



Elizabeth Rose Triscari
Deputy Small Business Advocate
Attorney ID No. 306921

Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)

Dated: May 9, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Direct Energy Services, LLC to : **Docket No. P-2016-2535033**
Expand Retail Market Enhancements :

**PUBLIC STATEMENT
OF THE SMALL BUSINESS ADVOCATE**

The Small Business Advocate is authorized and directed to represent the interests of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50 (“Act”). The Act further provides that the Small Business Advocate is to issue publicly a written statement setting forth concisely the specific interest of small business consumers to be protected by his initiation of or intervention in any proceeding involving those interests before the Pennsylvania Public Utility Commission (“Commission”) or any other agency or court. This public statement relates to the Small Business Advocate’s intervention in the above-captioned Commission proceeding.

On March 18, 2016, the Petition of Direct Energy Services, LLC (“Direct Energy”) to Expand Retail Market Enhancements was filed with the Commission requesting that the Commission issue an Order implementing a pilot Retail Opt-In program by October of 2016.

The Small Business Advocate is intervening in the above-captioned proceeding in order to protect the interests of the Commonwealth’s small business customers. A thorough inquiry by the Commission into all of the elements of the Direct Energy’s petition is necessary to ensure that it is in accord with the Public Utility Code, all other

applicable statutes, and Commission regulations and orders.

In view of the foregoing, the Small Business Advocate is requesting that the petition be subject to investigation and evidentiary hearings before the Commission. The Small Business Advocate will ask the Commission to deny or modify any aspect of the Direct Energy's proposal that is not proven by Direct Energy to be in accord with the Public Utility Code, all other applicable statutes, and Commission regulations and orders.

Dated: May 9, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Direct Energy Services LLC to :
Expand Retail Market Enhancement : **Docket No. P-2016-2535033**

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (unless other noted below) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable Charles E. Rainey, Jr.
Chief Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor West
Commonwealth Keystone Building
Harrisburg, PA 17120
crainey@pa.gov
(Email and Hand Delivery)

Tanya J. McCloskey, Esquire
Office of Consumer Advocate
555 Walnut Street - 5th Floor
Harrisburg, PA 17101-1923
tmccloskey@paoca.org
(Email and Hand Delivery)

Johnnie E. Simms, Esquire
Bureau of Investigations and Enforcement
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
josimms@pa.gov
(Email and Hand Delivery)

Daniel Clearfield, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
(Email and US Mail)

Craig Williams, Esquire
PECO Energy Company
2301 Market Street
Philadelphia, PA 19101-8699
Craig.williams@exeloncorp.com
(Email and US Mail)

Duquesne Light Company
Attn: Regulatory Affairs
411 Seventh Street, MD 16-4
Pittsburgh, PA 15219

Paul Russell, Esquire
PPL Electric Utilities
Two North Ninth Street
Allentown, PA 18108-1179
perussell@pplweb.com
(Email and US Mail)

FirstEnergy
Attn: Legal Department
2800 Pottsville Pike
Reading PA, 19612

UGI Utilities, Inc.
Attn: Rates Dept. Choice Coordinator
2525 N. 12th Street, Suite 360
Post Office Box 12677
Reading, PA 19612-2677

Citizens' Electric Company
Attn: EGS Coordination
1775 Industrial Boulevard
Lewisburg, PA 17837

Wellsboro Electric Company
Attn: EGS Coordination
33 Austin Street, P. O. Box 138
Wellsboro, PA 16901

DATED: May 9, 2016


Elizabeth Rose Triscari
Deputy Small Business Advocate
Attorney I.D. No. 306921