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May 9, 2016

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed please find the Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Petition of Direct Energy Services, LLC in the above-referenced matter. This document has been served upon the parties as evidenced by the enclosed Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Tori L. Giesler

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Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**ANSWER OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA  
ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY AND  
WEST PENN POWER COMPANY TO THE PETITION OF  
DIRECT ENERGY SERVICES, LLC**

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TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code § 5.66, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (collectively, the “Companies”) hereby submit this Answer to the Petition of Direct Energy Services, LLC (“Direct Energy”) to Expand Retail Market Enhancements (“Petition”) in the above-captioned proceeding.

**I. INTRODUCTION**

On March 18, 2016, Direct Energy filed its Petition with the Pennsylvania Public Utility Commission (“Commission”) requesting that the Commission issue an order modifying and restarting the Retail Opt-In (“ROI”) Program originally contemplated by the Commission’s Investigation into Pennsylvania’s Retail Electric Market (“RMI”)<sup>1</sup> and subsequently suspended by the Commission in 2013 through each electric distribution company’s (“EDC”) then-pending default service plan proceeding. On March 24, 2016, the Commission issued a Secretarial Letter (“March 24 Secretarial Letter”) directing that the Petition be served on all jurisdictional EDCs and all electric generation suppliers (“EGSs”) serving in the PECO Energy Company (“PECO”) and

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<sup>1</sup> Docket No. I-2011-2237952.

PPL Electric Utilities Corporation (“PPL”) territories. As such, Direct Energy served its Petition in accordance with the March 24 Secretarial Letter on March 28, 2016, starting the clock for responsive pleadings. On April 13, 2016, the Retail Energy Supply Association requested a twenty-day extension to the response period, which extension was granted on April 14, 2016, making responses due on or before May 9, 2016.

Direct Energy’s proposal should be rejected on the basis that the reintroduction of the ROI as modified by Direct Energy’s Petition would effectively require EDCs to market Commission-endorsed EGS value-added products and services which will compete with the same EDCs’ statutorily-required energy efficiency and conservation (“EE&C”) programs, to the detriment of those EDCs. Furthermore, the proposal outlined in Direct Energy’s Petition does not contemplate how the pilot’s results are to be measured and evaluated. To the extent that the Petition is granted in whole or in part, these items must be addressed in a way that preserves the due process rights of all EDCs, including both those to participate in the pilot and those not selected for the pilot. Further, EDCs must be guaranteed full and current cost recovery as well as afforded ample time to implement whatever model would ultimately be developed as a model through this process.

## II. ARGUMENT

### **It Would Be Inappropriate To Require EDCs To Actively Market Commission-Endorsed Value-Added Products And Services Which Conflict With The Statutory Mandates Under Which They May Simultaneously Be Found In Violation And Fined.**

Direct Energy’s Petition specifically references its primary goals as intended 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.*<sup>2</sup> While the Companies remain committed to supporting the current vitality and continued growth of Pennsylvania’s retail electric market, the very stated intent behind the proposal is troubling. In an effort to forward this goal, the proposal set forth by Direct Energy would not only restart the ROI, but would modify the ROI in one very important respect: the inclusion of a “value added product or service that will assist them [customers] in reducing their electricity bills by, for example, helping them conserve or better manage their energy usage.”<sup>3</sup> The proposal specifically calls for the product or service to be “certified by the Commission as being an energy saving or energy management product or service,” and outlines specific examples of products and services which could be considered.<sup>4</sup> Finally, the proposal calls for EDCs to facilitate mailers outlining the details of these products and services, as well as provide EGS-supplied literature, to customers in an effort to market the offerings.<sup>5</sup>

These features of the proposal set forth by Direct Energy present concerns which impact all Pennsylvania EDCs in that they create a program that not only has the potential to detract from an EDC’s ability to meet its own statutory obligations under Act 129, but would do so by forcing EDCs to market products, on behalf of EGSs, which have been endorsed by the Commission. Section 2806.1 of the Pennsylvania Public Utility Code (“Code”)<sup>6</sup> certainly does not prohibit EGSs from offering “value added products and services,” including EE&C measures. However, Section 2806.1 places a significant statutory mandate on EDCs, from which EGSs are totally absolved. Specifically, Section 2806.1 imposes directly on EDCs, and requires the Commission to continue to impose, specific targets for EDCs to reduce electric consumption and peak demand. Section

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<sup>2</sup> Petition at 3 (emphasis added).

<sup>3</sup> Petition at 2.

<sup>4</sup> Petition at 13.

<sup>5</sup> Petition at 11-13.

<sup>6</sup> 66 Pa.C.S. § 2806.1.

2806.1 further requires that EDCs file detailed plans identifying with specificity the measures they will impose to achieve targeted customer usage reductions. It also requires the Commission to review those plans in detail and approve them before they become effective – or dictate modifications as the Commission concludes may be necessary to achieve the goals of Act 129. Finally, and most importantly, Section 2806.1(g) requires EDCs to achieve their targeted usage reductions within a statutorily defined cost cap and, at the same time, Section 2806.1(h) imposes substantial penalties, of up to \$20 million, for not achieving their required reductions by specific deadlines. In other words, while limiting how much EDCs may expend to achieve mandated usage reductions, Section 2806.1 subjects them to significant penalties if they do not reach their mandated reductions by specific points in time. This is a challenging enough position for EDCs to find themselves in. This position becomes even more challenging when faced with products being offered in the marketplace which are viewed as a “supplement to the programs instituted by the EDCs in compliance with Act 129.”<sup>7</sup> However, a proposal to require the EDCs themselves to market such products and services, which would carry the “certification” of the Commission, when those very products and services may serve to undercut or compete with (whether unintentionally or otherwise) the efforts that very EDC is undertaking in order to avoid serious financial penalties, is fundamentally flawed.

Direct Energy seems to recognize this challenge in its Petition, suggesting that “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.” Direct Energy goes on to propose a collaborative be initiated to discuss this topic.<sup>8</sup> While the Companies appreciate this sentiment and recognize that such a construct could help to alleviate some of the concerns

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<sup>7</sup> Petition at 17.

<sup>8</sup> *Id.*

regarding Direct Energy’s proposal, the reality is that it is not clear whether this is permissible as the law currently stands, and may require legislative changes.

It must be emphasized that EDCs do not offer Act 129-mandated EE&C programs in an effort to compete with EGSs. As the foregoing summary of key Section 2806.1 provisions makes clear, EDCs did not adopt EE&C programs in an attempt to exploit their positions as default service or distribution providers in order to offer EE&C products and services. EDCs do not earn any profit on their efforts and have no motivation, apart from avoiding significant financial penalties, to offer the programs they do today. In short, Section 2806.1 imposes significant burdens on EDCs, subjects them to risks of loss and substantial (up to \$20 million) penalties, and provides no rewards of any kind; if EDCs do everything right, the best they can achieve is avoidance of a penalty and recovery of most – but not necessarily all – of the costs of implementing statutorily mandated EE&C programs. It is patently unfair to allow EGSs to offer *Commission-certified* products and services - marketed by the EDCs themselves - where they, unlike EDCs, have no obligation to achieve specific usage reductions by prescribed deadlines; are not restricted by mandated cost caps; and are not subjected to penalties if they miss their usage reduction targets. EGSs are free to “cherry pick” the usage reduction opportunities that provide the greatest reductions at the least effort and lowest cost. This not only maximizes business opportunities and profits for EGSs, it does so at the expense of EDCs. The very offering of these products makes EDCs’ targeted reductions much harder to achieve, while keeping the same cost caps in place and continuing to subject EDCs to penalties for failing to achieve those reductions. However, the additional steps of Commission certification of these products and services paired with EDC-sponsored marketing of such offerings would create the very real potential for confiscatory treatment of EDCs by requiring them to hit targets that have become unachievable and subjecting them to penalties when they fall short.

Direct Energy's proposal, while postured as a supplement intended to further the policies of the Commonwealth, in fact stands to undermine the entire EE&C concept as envisioned and carefully delineated in Act 129. By further developing such products and requiring what amounts to EDC and Commission sponsorship of those products, Direct Energy is promoting a program which would begin to, in effect, displace EDCs as the principal administrators of Act 129-compliant EE&C plans in their respective service areas, but without the elimination of the associated penalties. That simply cannot – and should not - be done without a legislative change that radically restructures Section 2806.1. EGSs have no right to be granted Commission certification of their products and services as effective EE&C measures while EDCs remain subject to significant penalties if they do not achieve mandated usage reductions that, under those circumstances, would be a function of factors outside their control. Making EDCs the guarantors of mandated usage reductions while at the same time mandating EDCs to market government-endorsed measures that could achieve those reductions through alternative paths is a “Catch-22” that violates due process, subjects EDCs to confiscatory regulatory requirements and, therefore, would not withstand legal scrutiny. Thus, the requirement that EDCs market, on behalf of EGSs, products and services which carry Commission certification and which would be eligible for inclusion in an EDC's Act 129 program must not be implemented without statutory changes that, at a minimum, eliminate the penalty provisions currently embedded in Section 2806.1.

**To The Extent Such Programs Are Directed, EDCs Must Be Provided Ample Time For Implementation And Full And Current Cost Recovery Of Implementation Costs**

From a timing perspective, Direct Energy requests that implementation be required of EDCs identified for the pilot (PPL and PECO) by October 2016. While the Companies are not

directly impacted by this proposal as it is been filed, they caution the Commission and parties to be mindful of the timelines necessary and reasonable for an EDC to implement such a program, even if the ROI were to be re-initiated absent the proposed EE&C product and service components. Any timeline imposed for implementation of the pilots or any future programs must make sense given the procedural steps which must be taken before the Commission and subsequent technical implementation to be undertaken by the EDCs. As an example, Direct Energy proposes a ten-step procedure for adoption of a pilot model in its Petition. A review of the timelines necessary to complete each of these steps paired with the Commission's public meeting schedule makes it clear that an October 2016 implementation date is unlikely, if not entirely unworkable.

Also, while Direct Energy correctly notes that ROI programs had been previously discussed for each EDC in 2013, it ignores the fact that steps towards implementation of these programs were either cancelled or interrupted by the suspension of those programs at that time – at least for the Companies' part, no further implementation work has been completed. Furthermore, modifications to the programs as proposed would make any work that was implemented subject to possible change. Therefore, significant work may be required, depending on the level of modifications directed to the previously-considered models. It is important that any pilot or program directed by the Commission on this topic take into account the work to be performed in implementing the program, beginning from the point a final order is issued creating such an obligation on the part of the EDC.

From a cost recovery standpoint, the Companies agree with Direct Energy that EDCs must be granted full and current recovery of the costs associated with implementation of such programs.

To that end, EDCs should be permitted to seek recovery of all program costs through a reconcilable surcharge mechanism.

**Interested Parties Must Be Given An Opportunity To Consider Results And Provide Input Regarding Next Steps Following Conclusion Of Any Proposed Pilot**

Direct Energy proposes that the pilot initially run in the PECO and PPL territories, on the basis of their smart meter deployment status as of this time. Direct Energy does not specify the exact method through which an evaluation of the pilot results be undertaken, nor what procedural steps would follow before PECO and PPL be directed to continue, or other EDCs be directed to adopt, such programs. However, it is clear that Direct Energy does contemplate input in the form of comments from interested parties.<sup>9</sup>

To the extent a pilot is directed from this proceeding and, at its conclusion, all jurisdictional EDCs are required to develop such a model for implementation based on experience from the pilots, it is critical that all interested parties be given an opportunity to review, reconsider, and propose alternative models (or discontinuance) of any portions of the pilots, then-current market conditions, and any other factors that may develop over the interim period. Due process rights require that EDCs and all interested parties be afforded such an opportunity prior to any directive to continue or implement such programs going beyond the pilot period.

WHEREFORE, for the reasons stated above, the Companies respectfully request that the Commission deny the Petition of Direct Energy Services, LLC to Expand Retail Market Enhancements consistent with the reasons outlined in this Answer. Alternatively, the Companies request that Direct Energy's proposal be modified to remove the EE&C-oriented products and

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<sup>9</sup> Petition at 15.

services contemplated to be included as part of any ROI offering and that proper timing, cost recovery and due process be afforded all interested parties at the conclusion of the pilots.

Respectfully submitted,

Dated: May 9, 2016

  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Petition of Direct Energy Services, LLC upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 5.61 (relating to service by a participant).

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