COMMONWEALTH OF PENNSYLVANIA

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May 10, 2016

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
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:

Attached for electronic filing please find the Office of Consumer Advocate's Corrected Answer in the above-referenced proceeding. The Office of Consumer Advocate submits this corrected answer as requested by Commission staff, who noted a sentence inadvertently missing from page ten of the original PDF. Please note that the hard copies served in accordance with the Office of Consumer Advocate's Certificate of Service were correct.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Aron J. Beatty
Aron J. Beatty
Senior Assistant Consumer Advocate
PA Attorney I.D. # 86625

Attachment
cc: Office of Administrative Law Judge
Certificate of Service
220812

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
TO DIRECT ENERGY SERVICES RETAIL OPT-IN PETITION

I. INTRODUCTION AND BACKGROUND

On March 18, 2016, Direct Energy Services, LLC filed with the Pennsylvania Public Utility Commission (Commission) its "Petition to Expand Retail Market Enhancements." The primary purpose of the Petition is to require Pennsylvania's Electric Distribution Companies (EDCs), in their role as Default Service Providers, to institute a "Retail Opt-In Auction" (ROI) intended to provide residential and small commercial customers with the opportunity to shop for electric service with retail Electric Generation Suppliers (EGSs). The Petition seeks to implement a modified form of retail market enhancement that was previously considered and postponed by the Commission in 2013. <u>Petition of PECO Energy Company for Approval of its Default Service Program II</u>, Docket No. P-2012-2283641 (Final Order on Reconsideration entered April 4, 2013) (<u>April 2013 Order</u>). The Office of Consumer Advocate (OCA) submits that Direct Energy's Petition raises significant concerns that must be resolved if such a modified program was found necessary and allowed to proceed.

On April 29, 2011, the Commission launched a statewide investigation into the state's competitive electricity retail market (RMI) with the goal of making recommendations for improvement to ensure that a properly functioning and workable competitive retail electricity market exists in the Commonwealth. Petition at ¶3. On July 28, 2011, the Commission issued a further order directing additional steps to jump-start the retail competitive market. Petition at ¶ 4. Among the additional steps under consideration, the Commission recommended that the major EDCs include a standard offer customer referral program (SOP) and an ROI within their upcoming default service plans. Petition at ¶5. In each of the default service plan proceedings, an ROI was considered by the parties and the Commission. ROI programs were subsequently postponed by the Commission until after the Commission had the opportunity to consider the ongoing result of the SOP. The Commission concluded that "simultaneous implementation of both the ROI and SOP presents concerns about customer confusion as well as EDC implementation." April 2013 Order at 6.

The Company's Petition requests that the Commission restart the previous pilot program with modifications to the ROI program. The Petition also requests an expedited implementation schedule to allow for the program to begin in the PECO and PPL service territories on or around October 2016. Petition at ¶ 16. The Petition further states that the ROI program would be designed to draw customer interest to EGSs based on the "value added" products available in the market. Petition at ¶15.

As noted, the Company's Petition seeks several significant modifications to the ROI programs previously considered by the stakeholders and the Commission. In its Tentative Order regarding the Intermediate Work Plan from the Retail Market Investigation, the Commission summarized the concept of a "retail opt-in auction" for competitive supply. The concept, as originally conceived, entailed an aggregation of demand from interested retail customers who would "opt-in" to a competitive auction. The Commission described the process as follows:

> In a retail opt-in auction program (opt-in auction), an EGS or EGSs bid to provide competitive retail service to a group of customers

> within a specific EDC's service territory. These customers have affirmatively chosen to have their accounts included in the group, *i.e.*, "opt-in." Opt-in auctions pose a possible safe and easy mechanism to increase customer participation in the competitive market, and to decrease EGS customer acquisition costs.

Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952 (Tentative Order entered December 16, 2011 at 22) (December 2011 Order).

As the Commission noted in the December 2011 Order, a subgroup of RMI stakeholders, including the OCA, studied the development of an opt-in aggregation auction and provided a report to the Commission. December 2011 Order at 22. A number of consumer protection issues were raised by the OCA throughout the RMI process, both through the subgroup report, an *en banc* hearing, and a technical conference. See, e.g., December 2011 Order at 22, 29, 33, 37, 39.

At the time that the initial ROI was being considered, most of the EDCs were emerging from the long-standing generation rate caps and shopping for electric supply was beginning again in earnest. Through the RMI process, the stakeholders were exploring, among other things, different means to jump start the shopping process by creating an easy opportunity for consumers to enter the market. The OCA supported the opt-in aggregation auction concept, with appropriate consumer protections, as a reasonable effort to "jump start" retail markets at the time. The Commission summarized the OCA's position in its Final Order on the Intermediate Work Plan as follows:

> OCA opines that the Retail Opt-in Auctions, appropriately-structured, could provide a positive impetus for shopping while not harming default service and "that certain elements should be included in any program of this type to ensure that the costs, benefits and risks of such a program are properly aligned in order to provide the best opportunity of success for all stakeholders."

Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) (Final Order on Intermediate Work Plan).

The Opt-in Aggregation Auction concept, originally approved by the Commission, had several key consumer protections. Importantly, the Commission agreed with the OCA that participating EGSs should pay for the costs of implementing the Retail Opt-in Auctions. Final Order on Intermediate Work Plan at 78. The Commission explained:

> In the Commission's view, having the participating EGSs pay for the auction implementation is a prudent way to recover the auction costs, given that the participating EGSs are the entities reaping the possible customer acquisition benefits resulting from the auction.

Final Order on Intermediate Work Plan at 78. The Commission continued:

> As for the costs of the Retail Opt-in Auctions, we agree with UGIES and OCA that, in general, most, if not all, of these costs should be recovered from participating suppliers. The participating suppliers will be receiving customers via this program in a manner that negates almost all of the usual customer acquisition costs. As such, it is only fair that the suppliers, as the prime beneficiaries of the program, should pick up the associated costs. We advise EDCs, in their program filings, to propose mechanisms to identify and recover the costs from participating suppliers. For example, we agree with OCA that recovering the costs using the POR discount, as PECO has proposed, should be considered. Other mechanisms, such as using auction application fees to recover the cost of the auction process, should also be considered.

Final Order on Intermediate Work Plan at 84-85.

The Commission further detailed that customers would only participate on a completely "opt-in" basis. The Commission noted that "As such, customers will voluntarily make an affirmative choice to participate. At the time that customers make their choice to participate, they will be informed that the program term, including any prices, will conclude on a date certain. In addition, any EGS participating in the retail auction program must provide the notices mandated in our renewal notice guidelines." Final Order on Intermediate Work Plan at 73. The

Final Order on Intermediate Work Plan made it clear that customers were to be fully educated on their options as a result of their voluntary participation. The Commission further held that there should be "no exit or termination fees" and that customers "should be allowed to shop for other suppliers or return to default service at will." Final Order on Intermediate Work Plan at 70.

The Commission further defined the ROI in several default service proceedings. In the PECO default service proceeding, the Commission stated:

> [T]he ROI Program was required to provide a four-month discount from the EDC's price to compare, followed by an eight-month fixed price offer by participating electric generation suppliers. Customers who remained in the program for the first four months would receive a fifty dollar bonus. There would be no penalty for leaving the ROI Program at any time.

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 entered March 14, 2013 at 2) (Tentative Order on ROI Reconsideration). The discount was set at a minimum level but the final discount, and winning suppliers were to be determined by a competitive auction. See, Petition of PECO Energy Company for Approval of its Default Service Program II, Docket No. P-2012-2283641 (Order entered October 12, 2012 at 90).

Direct Energy's pending Petition reveals substantial differences between the programs previously being considered and the proposed Direct Energy Retail Opt-in Program. Under Direct Energy's program, customers would receive a 24 month fixed-rate product that is supplemented with a "value added" service. The specifics of the value added service remain to be determined. Customers would receive information on offers through a mailer, rather than "aggregating" prior to an auction. Importantly, while Direct Energy indicates that there would be "no early cancellation fees for the commodity," it appears participating customers could be subject to fees and penalties for the "value added" portion of the program. Petition at 3.

The OCA is concerned with several aspects of Direct Energy's Petition, including whether such a program is necessary and if so, whether the program is appropriately designed and contains necessary consumer protections and education. Further, the OCA is concerned that any future approved opt-in program is integrated into today's retail and regulatory structure, including the integration of any program into existing energy efficiency, net metering, and time of use programs.

II. OCA ANSWER TO DIRECT ENERGY'S NEW OPT-IN MAILING PROGRAM

The OCA supports the continued development of the retail electric generation market with important consumer protections. The OCA previously supported the concept of a retail opt-in auction for residential customers as part of the RMI proceeding, as a one-time event designed to "jump start" shopping by retail customers as Pennsylvania emerged from the longstanding rate caps. Pennsylvania's renewed retail market has been on-going for nearly five years now. At present, over a third of residential customers receive generation service from EGSs and over two thirds of Pennsylvania's total electric consumption (all classes) is provided by EGSs. Residential customers continue to procure power from EGSs on both a traditional cost/commodity basis, as well as purchasing renewable products, and other "value added" products and affinity products associated with organizations of the customers choosing. In the PPL and PECO Energy service territories where Direct Energy proposes to implement its proposal on a pilot basis, hundreds of offers of products of many different types are available to customers.[1] In addition, the percent of residential customers and percent of residential load switching to EGSs has continued to grow since an ROI was first considered:

[1] As of May 9, 2016, PaPowersitch.com indicates 128 offers for PECO and 131 offers for PPL under the residential class. http://www.papowerswitch.com/shop-for-electricity/

Percent Of Residential Customers And Residential Load Taking EGS Service

	January 2012	April 2016
PECO Energy	22.4% of Customers 23.9% of Load	33.6% of Customers 35.3% of Load
PPL	40.5% of Customers 46.3% of Load	45.3% of Customers 48.7% of Load

See, http://www.oca.state.pa.us/Industry/Electric/elecstats/ElectricStats.htm. The retail market remains robust, even in light of the events of the Polar Vortex.

Direct Energy is now proposing a modified Retail Opt-In Program that would consist of a one-time mailing to non-shopping residential and small business customers with an opt in offer of: 1) a 24 month EGS contract at a price 5% below the PTC at the time of the offer; and 2) a "value-added, energy saving or energy management product or service" at no extra charge. Petition at 1, ¶16. Direct Energy asserts that the development of smart meters, smart thermostats and other energy management services and technologies will provide more information and value to customers. Petition at ¶14. In support of its Petition, Direct Energy concludes that "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." Petition at ¶14. In the instant Petition, Direct Energy notes that the market has provided 10.57% of offers that include a "value added product or service (other than renewable energy, cash back, or % off incentives)." Petition at ¶13.

As the OCA noted above, the purpose of the consideration of the ROI was to jump start a market that was emerging from long-standing generation rate caps. That is no longer the situation faced by the market. Rather, Direct Energy's Petition seeks to advance a particular product within a market that has already developed a wide array of products. The OCA submits that the Commission should first determine whether such a program is necessary given today's retail market and whether such an administrative intervention into the market is reasonable and appropriate at this time. As the market develops and customers continue to engage in the market, it becomes ever more incumbent upon suppliers to provide to customers the types of products and services that customers find beneficial.

The OCA has several concerns with Direct Energy's Proposal if it is to move forward. While the OCA does not object to efforts to increase awareness and to educate consumers about the different products in the market, such efforts must come with appropriate consumer protections and must be carefully considered and designed. Key among the OCA's concerns is the cost of the program. The OCA submits that if Direct Energy's proposal moves forward, the costs of this initiative must be borne by the participating EGSs. As the Commission correctly recognized with the first ROI proposal, these programs serve as a means for EGSs to acquire customers (for a lengthy period under this proposal) without the one on one acquisition costs typically incurred to secure such customers. In its Petition, Direct Energy proposes to collect a $1 charge for each participating customer from its EGS, with all remaining costs recovered from customers. Petition at ¶16(x). The OCA submits that the costs incurred from a program designed to bring customers to EGSs with "value added service" business models should be recovered from those EGSs that benefit from the program. Furthermore, customers (both shopping and default service customers) who do not take EGS-provided "value added service" should not be asked to subsidize the service for those customers who choose such an offer.

Other considerations are also not fully addressed by the Petition or the ROI as proposed by Direct Energy. In this proposal, the Commission is being asked to promote, through a Commission-approved program with an EDC imprimatur, a specific product in a multi-product market. It is not at all clear to the OCA that this is appropriate or reasonable. Rather than products competing on their own merits, one product would be given an administrative "boost" if the mailing was limited to the one product presented in the Direct Energy Petition. The Commission must also be concerned that consumers are properly educated about the product being offered and how to compare that product to the Price to Compare and other products in the market.

In addition, the Commission must find a reasonable method to determine what would qualify as "value added" and must find a way to educate consumers as to what this means. Direct Energy's Petition identifies several examples of "value added" products, all with very different potential values. Direct Energy also suggests that this list may not be exclusive. If this program moves forward, it will be incumbent upon the Commission to determine a common understanding of value added and how this will be communicated to customers.

Further, the Commission must consider the potential impacts of the modified ROI on other programs being operated by the EDCs. For example, the Petition seeks to advance energy efficiency and energy management programs that are very similar to the extensive Act 129 energy efficiency and demand side management programs mandated for the EDCs. The Petition also contemplates possible time of use programs which are also mandated under Act 129. Additionally, the Commission has approved "Standard Offer Programs" in all of the major EDC service territories. These programs include initial incentive rate discounts and provide a stable one-year fixed price for those residential customers who elect to participate. All of the EDCs operating a Standard Offer Program promote the shopping opportunity through representations made by call center representatives, and through website materials. The OCA is concerned that introducing a new Retail Opt-in program simultaneously with the Standard Offer Program could result in customer confusion. In addition, running both programs at the same time may not be cost-effective.

Direct Energy also suggests that all aspects of the previously approved ROI – except for the participation cap – should be approved for this program. Petition at ¶16. The circumstances here, though, are different than five years ago as is the program structure. As already discussed, cost recovery should be from participating EGSs, not ratepayers. This is particularly the case for the modified ROI which advances a particular product. Also, the program here is a two year program for a value added product which may require additional education and consumer protections. The OCA would also note that participation of Customer Assistance Program participants would require special consideration and protections given the potential cost of the value added portion and the length of the contract.

Of particular concern here as well is the fact that the Direct Energy Petition protects customers from cancellation and termination fees for the commodity portion only but would allow cancellation fees for the value added component. Petition at ¶16(vi). Direct Energy provides examples of non-commodity program benefits that include, among other products, energy management devices and credits toward roof-top solar installations. Petition at ¶16(vii). These products can be costly and are likely to include substantial termination fees. The OCA submits that this poses a significant concern for consumers.

The OCA submits that Direct Energy's Petition raises many significant concerns that must be thoroughly examined if this program is found necessary. In no instance, however, should the Petition move forward on an expedited basis and without all necessary consumer protections.

III. CONCLUSION

For the reasons detailed above, the OCA submits that the Commission must thoroughly review Direct Energy's Petition. If a modified ROI is to move forward, it should only do so with the reasonable allocation of costs of any ROI program, and appropriate consumer protections and education.

Respectfully Submitted,

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May 9, 2016

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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Corrected Answer, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 10th day of May 2016.

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