

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rulemaking Re :  
Electric Distribution Companies' :  
Obligation to Serve Retail Customers at the : Docket No. L-00040169  
Conclusion of the Transition Period :  
Pursuant To 66 Pa. C.S. §2807(e)(2) :

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**REPLY COMMENTS OF DIRECT ENERGY SERVICES, LLC**

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Direct Energy Services, LLC ("Direct Energy") submits these Reply Comments to the comments of several parties suggesting that the Commission remove the suggested option for the appointment of an alternative Default Service Provider ("DSP") or that the concept needs to be extensively investigated before including it in the rules. Such opposing comments are grounded in the traditional regulatory construct and the current state of the competitive retail market, and fail to acknowledge that a full Retail Default Service bid out model provides the greatest opportunity for competitive market forces to deliver the benefits of a competitive electricity market, including product options, innovation, service improvement and downward pressure on electricity prices. The Commission should reject these comments and adopt, in whole or in part, Direct Energy's Retail Default Service model as set forth below.

**I. Retail Default Service Bid Out**

In its initial comments, Direct Energy explained why the Commission's proposal to have the incumbent utilities provide post-transition Default Service through a wholesale supply bid out is the wrong approach, noting the deficiencies of wholesale auctions<sup>1</sup> – and why a bid out of

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<sup>1</sup> Direct Energy Comments at 9-11. Direct Energy explained that the Commission's wholesale supply bid out proposal is not supportive of the broader goals of the Electric Choice Act because it will distort the retail market and, even in the best light, can only capture a portion of the

the entire Retail Default Service function to qualified EGSs is the correct approach to permit competitive market forces to deliver the best value and service to consumers as envisioned by the Electric Choice Act.<sup>2</sup> Direct Energy pointed out that allowing companies other than the incumbent utilities to provide default and equivalent service has worked in other areas, such as Texas and Canada.

Despite the Commission's clear authority to require a Retail Default Service model,<sup>3</sup> some commentators recommend that the Commission should not provide for the appointment of an alternative DSP,<sup>4</sup> which is the basis for a retail bid out model. Other commentators acknowledge the Commission's authority to appoint an alternative DSP, but raise a myriad of issues they believe must be examined and resolved before the Commission can consider doing so.<sup>5</sup> These comments do not provide support for rejecting outright, in whole or in part, Direct Energy's Retail Default Service Bid Out model.

1. The Commission should reject requests not to exercise its authority to provide for the appointment of an alternative DSP.

The OCA argues that the provisions for the appointment of an alternative DSP should be removed from the regulations because doing so would be "unworkable" and "the EDC will always be the 'last resort' since it must connect and deliver supply."<sup>6</sup> Although Direct Energy's

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benefits the competitive market can provide to customers after the transition period market ends. *Id.* at 3-4.

<sup>2</sup> *Id.* at 1-9. Bidding out the full Retail Default Service function based upon a commitment that the bidder agree to provide service according to all PUC rules, regulations and guidelines will ensure that competitive market forces deliver the best value to customers for these services in a manner that meets all the key policy declarations of the Electric Choice Act. *Id.* at 6.

<sup>3</sup> December 16, 2004 Rulemaking Order at 8.

<sup>4</sup> OCA Comments at 13-14, 31; OSBA Comments at 7-8.

<sup>5</sup> Industrial customer groups' Comments at 7-10; Exelon Comments at 8-9; PPL Comments at 4.

<sup>6</sup> OCA Comments at 13-14. The OCA also argues that there is no efficiency, clear purpose or need to consider authorizing an alternative DSP. *Id.* at 14.

Retail Default Service Bid Out proposal envisions the EDC providing retail back-up service for short-term energy replacement,<sup>7</sup> that approach is not absolutely necessary. In the United Kingdom, other retailers act as the retail back-up providers under the direction of the regulators, rather than the incumbent "wires" utilities. In Georgia, the incumbent utility Atlanta Gas Light ("AGL") provides only a pure "wires equivalent" delivery service, and marketers are responsible for arranging customer connections,<sup>8</sup> billing, customer care and retail back-up service. Contrary to the OCA's argument that the EDCs "must" connect and deliver supply in the post-transition period,<sup>9</sup> Sections 2807(e)(2) and (3) of the Electric Choice Act provide the Commission with the authority to permit an alternative DSP to perform some, or all, of the EDCs' "obligation to connect and deliver and acquire electricity" for Default Service customers in the post-transition period.<sup>10</sup>

The OCA also argues that "the obligation to provide universal service programs must remain with the EDC as a non-bypassable distribution function and cost" and not transferred to an alternative DSP.<sup>11</sup> Similarly, Duquesne Light Company ("DLC") argues that funding for universal service programs is currently recovered through distribution rates, and that this should continue even if an alternative DSP is appointed.<sup>12</sup> Although Direct Energy argued in its initial

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<sup>7</sup> Direct Energy Comments at 7.

<sup>8</sup> AGL makes the connections.

<sup>9</sup> OCA Comments at 14.

<sup>10</sup> Section 2807(e)(2) provides that after the transition period ends, the Commission must promulgate regulations to define the EDC's obligation to connect and deliver and require electricity under Section 2807(e)(3), and Section 2807(e)(3) specifically authorizes the Commission to direct that these obligations be performed by a "commission-approved alternative supplier." 66 Pa. C.S. § 2807(e)(2),(3).

<sup>11</sup> OCA Comments at 32.

<sup>12</sup> DLC Comments at 34.

comments that an alternative DSP could provide universal service programs,<sup>13</sup> Direct Energy does not oppose this position.

The OSBA appears to accept the idea of an alternative DSP, but argues that it is "questionable" whether permitting an alternative DSP would result in lower rates or better service for small business customers.<sup>14</sup> The OSBA also argues that even if an alternative DSP obtained a certificate of public convenience, as contemplated in the proposed regulations,<sup>15</sup> the Commission would have "more leverage" over an EDC's *supply* performance by reason of the Commission's authority over the return on the EDC's *distribution* service.<sup>16</sup> This argument is questionable to say the least,<sup>17</sup> and, at most, a red herring and should be ignored. The Commission has ample powers to ensure that an alternative DSP abides by the Commission's rules for Default Service to the same extent as an EDC, without requiring the alternative DSP to obtain a certificate of public convenience. The OSBA's comments, in essence, amount to a rejection of the concept of an alternative DSP for the foreseeable future, similar to the reasons relied upon by the Commission in not adopting a retail default service bid out model in the

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<sup>13</sup> Direct Energy Comments at 6.

<sup>14</sup> OSBA Comments at 7.

<sup>15</sup> A certificate of public convenience is not required for the Commission to protect customers against an alternative DSP's abandonment of service without Commission approval. Direct Energy Comments at 9.

<sup>16</sup> *Id.* at 8. In its initial comments, Direct Energy explained why the proposed requirement that an alternative DSP obtain a public utility certificate of public convenience is contrary to the Electric Choice Act and not good policy – and unnecessary. Direct Energy Comments at 9.

<sup>17</sup> It is not clear that the Commission would be able to take any legally supportable action against an EDC's separate distribution service if the EDC failed to adequately live up to its separate DSP supply obligation.

proposed regulations.<sup>18</sup> The OSBA's position should be rejected for the reasons explained in Direct Energy's initial comments.<sup>19</sup>

2. There is no need to "reinvent the wheel" concerning the appointment of an alternative DSP.

Although some EDCs acknowledged the Commission's authority to appoint an alternate DSP, they argue that there are a host of issues that must be examined and resolved before the Commission can even consider appointing an alternative DSP.<sup>20</sup> The Industrial customer groups argue that issues concerning separation of customer care functions (no "double-dipping" by the DSP and EDC) must be addressed, adding that Section 2807(d) suggests that EDCs will continue to perform all customer care functions in the post-transition period even if an alternative DSP is appointed.<sup>21</sup> This argument fails to recognize that Section 2807(d) provides that EDCs shall continue to provide customer care functions "consistent with the regulations of the commission." Clearly, the Commission could provide for alternative DSPs to provide customer care functions in the regulations established in this rulemaking.

PPL argues that "the administrative burdens associated with approving another entity as the default service provider are enormous,"<sup>22</sup> while the OCA argues that "there are insufficient

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<sup>18</sup> The Commission rejected the retail bid out model because "the competitive market is still in transition." December 16, 2004 Rulemaking Order at 9.

<sup>19</sup> The Commission's rationale for not adopting a retail bid out model is inconsistent with the Electric Choice Act and the Commission's other determinations concerning the purpose of post-transition Default Service, and the state of the current shopping market actually supports adoption of a retail bid out model. Direct Energy Comments at 3-4.

<sup>20</sup> Industrial customer groups' Comments at 7-10; Exelon Companies' Comments at 8-9; PPL Comments at 4; OCA Comments at 31.

<sup>21</sup> Industrial Customer Groups' Comments at 8-9. Their comments that "the PUC must ensure that the rates charged by the DSP do not go above any rate caps that are in place" should be ignored because these regulations are to apply in the post-transition period when there are no rate caps.

<sup>22</sup> PPL Comments at 4.

procedural steps, standards, and restrictions" for a retail POLR approach.<sup>23</sup> Direct Energy believes that its comprehensive Retail Default Service Bid Out proposal submitted with its initial comments adequately addressed the relevant issues raised by these commentators. However, to the extent some implementation questions remain unanswered, Direct Energy submits that the experience with Competitive Default Service plans included in some EDCs' restructuring plans<sup>24</sup> demonstrate that these comments exaggerate the implementation issues, and that such implementation details can be examined and resolved with much less controversy than implied by these comments.

However, Direct Energy agrees with the Industrial customer groups' recommendation that an alternative DSP be required to meet the credit requirements in PJM's Tariff, which all EGSs operating as Load Serving Entities ("LSEs") in PJM must do.

3. At a minimum, the Commission should provide for a Retail Default Service Bid Out to ensure a minimum level of shopping in the Post-Transition Period.

In its initial comments, Direct Energy proposed a Retail Default Service pilot in each EDC territory for about 20% of residential and small commercial customers, as an alternative to a bid out of the entire Retail Default Service function.<sup>25</sup> In its initial comments, Dominion Retail suggested that the Commission should "specifically link the EDC's privileged and incumbent position as the default service provider to the degree of customer switching."<sup>26</sup> Dominion Retail recommended that the Commission do so either by: (1) giving competitive suppliers first priority

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<sup>23</sup> OCA Comments at 31. The Exelon Companies argue that the implications of an alternative DSP's "public utility" status in obtaining a certificate of public convenience must be "carefully explored." Exelon Companies' Comments at 9.

<sup>24</sup> *E.g.*, PECO, MetEd and Penelec.

<sup>25</sup> Direct Energy Comments at 11-12.

<sup>26</sup> Dominion Retail Comments at 9.

to serve small customers if at least 20% of small customers are not shopping at the end of the EDC's transition period; or (2) setting forth in the regulation the conditions under which the Commission would mandate a Retail Default Service bid out, such as where "small customer shopping is non-existent or sluggish (i.e., less than 10%)." <sup>27</sup> Direct Energy wholeheartedly agrees with this approach as reasonable first steps for the Commission to take if it is not inclined to adopt Direct Energy's proposals.

Direct Energy also agrees with the comments of the National Energy Marketers Association ("NEM") that the Commission should require EDCs to exit the merchant function. <sup>28</sup> However, in light of the Commission's views expressed in its Rulemaking Order, Direct Energy believes that adoption of its Retail Default Service Bid Out model, either in whole or in part or in conjunction with Dominion Retail's proposals, would be alternatives to NEM's proposal that would be more acceptable to the Commission at this time and provide more benefits and nurture the development of the retail market more than a wholesale bid out model.

## **II. Modifications to the Commission's Wholesale Bid Out Proposal**

Direct Energy supports the Reply Comments of the Retail Energy Supply Association ("RESA") concerning modifications to the Commission's wholesale bid out proposal recommended by other commentators, with the exception of the 200 kW threshold for large customers subject to hourly pricing. As explained in Direct Energy's initial comments, the threshold should be 25 kW. <sup>29</sup>

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<sup>27</sup> *Id.* at 9-10.

<sup>28</sup> NEM Comments at 2-4.

<sup>29</sup> Direct Energy Comments at 13-14.

### **III. Conclusion**

Direct Energy emphasizes once again that the Commission has the opportunity to set the framework for a successful competitive electric market that will benefit all Pennsylvania consumers while ensuring that these customers will have access to reliable service. Direct Energy believes that the ultimate framework should foster a robust retail market and, wherever possible, should foster more competition. Direct Energy's primary and alternative proposals for the Commission's post-transition Default Service rules will accomplish these goals and should be incorporated into the final product.

Respectfully submitted,

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