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November 3, 2011

Via Electronic Filing
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Investigation of Pennsylvania's Retail Electricity Market
Docket No. I-2011-2237952

Dear Secretary Chiavetta:

On behalf of Direct Energy Services LLC ("Direct Energy") enclosed please find the original of its Comments to the Tentative Order of October 14, 2011 along with the electronic filing confirmation page with regard to the above-referenced matter.

Sincerely yours,

Daniel Clearfield

Daniel Clearfield, Esq.

DC/lww
Enclosure

cc: ra-OCMO@state.pa.us w/enc.

BEFORE THE
PENNSYLVANIA UTILITY COMMISSION

Investigation of Pennsylvania's Retail Electricity Market:	:	Docket No. I-2011-2237952
	:	
Recommended Directives on Upcoming Default Service Plans	:	

COMMENTS OF DIRECT ENERGY SERVICES, LLC TO THE TENTATIVE ORDER OF OCTOBER 14, 2011

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Date: November 3, 2011

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I. INTRODUCTION AND SUMMARY OF COMMENTS

Direct Energy Services, LLC ("Direct Energy")[1] respectfully submits these comments to the Tentative Order of October 14, 2011 ("Tentative Order") of the Pennsylvania Public Utility Commission ("Commission" or "PUC") issued in the above-captioned proceeding.

In its Tentative Order, the Commission made a series of recommendations to electric distribution companies ("EDCs") to be incorporated into their next default service plans (for delivery beginning June 1, 2013) regarding the length and nature of the procurements to be used in those plans. The Commission also recommended that the EDCs incorporate into their plans a series of competition enhancing programs, including, retail opt-in auctions, referral programs, hourly pricing for commercial and industrial customers with loads of 100 kW or greater and having Time-of-Use ("TOU") rate plans

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[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 one of North America's largest energy and energy-related service providers with over 6 million Residential and commercial customer relationships. Direct Energy provides customers with choice and support in managing their energy costs through a portfolio of innovative products and services. A subsidiary of Centrica plc, one of the world's leading integrated energy companies, Direct Energy operates in 46 states and 10 provinces in Canada. Direct Energy is committed to Pennsylvania, deciding in 2009 to locate its North American headquarters of Direct Energy Business, in Pittsburgh where it currently has 356 employees. Direct Energy acquired Clockwork Home Services in June 2010, which has 29 small businesses in the state, employing approximately 215 people, and its affinity group members employ another 314 people throughout Pennsylvania. In 2011, Direct Energy Residential has established the headquarters for its Northeast division in Pittsburgh, representing 30 additional jobs, and also acquired Gateway Energy, which has an office in Kingston, with approximately 74 employees. In total, Direct Energy's employment levels have increased from 225 to approximately 1,000 since 2009. Direct Energy has a significant annual economic impact, based on the salaries, taxes and community investment funds paid in the region. It is also active with charitable organizations and its employees provided over 4,000 hours of community volunteering in 2010 across the Commonwealth.

provided by EGSs through a competitive bid process. These recommendations are subject to the filing of comments from stakeholders and interested parties and a final Commission order.

Direct Energy enthusiastically welcomes these recommendations as a significant and material step along the path toward reforming the existing retail electric market structure and, in turn, allowing consumers in the Commonwealth to realize the benefits of fully competitive retail electricity markets. Direct Energy respectfully submits that several clarifications and additions would help to insure that the Commission achieves its goals and that robust, sustained and real retail electric competition, benefitting all Pennsylvanians, will take place as soon as reasonably possible.

The Implementation of Longer Term Reforms Should Occur As Soon As Possible

The Commission should confirm that (consistent with the July 28 Order) it still intends to issue an order in the first quarter of 2012 that will set forth a plan for reforming default service to enhance competition on a long term basis. Direct Energy understands that in order to assure that it has in place the necessary legal and/or regulatory authority and approvals, the PUC elected to direct the EDCs to file two year "bridge" plans with the directive that all procurements would end at that point and the assumption that the Phase II default service reforms would be put in place at the conclusion of the bridge period (June, 2015). But if the necessary authorizations are provided sooner than June 2015, the Commission should clarify that the longer term measures should similarly be implemented more quickly. To give the Commission the opportunity to incorporate longer term reforms as soon as the Commission receives authorization, Direct Energy suggests that the Commission revise its Tentative Order to direct the EDCs to file one year plans with the ability to extend the procurements for an additional year, if required. This would provide greater flexibility to the Commission and the EDCs to accommodate future legislative or regulatory changes.

Whether the Commission elects to direct one-year plans as Direct Energy recommends, or maintains its original two-year directive, the final order must specify that the EDC's filed plans should be sufficiently flexible to permit the implementation of longer term reforms sooner than June, 2015, if the PUC obtains the legal or regulatory authority to do so. This means that the Commission should state explicitly that default service may be significantly altered or ultimately restructured during the pendency of the bridge plans. This could occur for all customers or for a segment of default load, such as large commercial and industrial customers, if the Commission determined that it had the legal authority to move forward and that the reforms were operationally feasible for a particular segment of customers. The terms and conditions of wholesale supply contracts solicited by the EDCs must, therefore, not restrict the Commission's ability to order changes to default service, and be flexible enough to permit the transition to a different form of default service prior to June 2015. To provide the Commission this degree of authority and flexibility, the Commission should state explicitly that bridge plans should rely on shorter term and spot contracts, no advanced procurement periods, no contracts extending beyond the end of the default service period (either May 31, 2014 or May 31, 2015), and no expectation that the full procurement schedule must be adhered to. That is, the plans should be comprised of procurements with shorter terms and spot purchases, no advanced procurement periods, no contracts extending beyond the end of the default service period (either May 31, 2014 or May 31, 2015) and no expectation that the full procurement schedule must be adhered to. The Commission should direct the companies to include such flexibility in their plans, subject to final resolution in the default service proceedings.[2]

Intermediate Competition Enhancing Measures

Direct Energy recommends that the Commission also clarify that it intended to direct that intermediate competition enhancing measures mentioned in the Tentative Order (as well as any others recommended by the RMI Stakeholder process or other parties) be implemented as soon as possible after the Commission issues its order in December ruling on these measures. Many intermediate competition enhancing measures can be implemented prior to the end of the existing default service plans. For example, a "traditional" referral program for default service customers who contact the utility for non-emergency, non-termination-related issues,[3] as well as a "new/mover" referral program[4] applying to new or moving customers, can, and should, be implemented right now. There is no need to wait until the beginning of the next default service plan in June, 2013. Other intermediate competition enhancing measures, such as accelerated

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2 Direct Energy continues to believe that the Commission presently has the legal authority to implement many default service reforms, such as transferring the obligation to EGSs and to conduct opt-out auctions of default customers as Direct Energy has recommended. But the Commission would likely be required to amend its existing regulations.

3 As discussed herein, such programs (which are operated by EDCs) offer to refer/enroll customers with an EGS whereby the customers receive a promotional rate.

4 As discussed herein, a "New/Mover" Program is one whereby customers may sign up for service from a competitive supplier when they initiate service. None of the EDCs permit a customer to do so today. Rather than giving the customer a choice when service is initiated, the customer is placed on default service.

switching, opt-in auctions (pilot and full-scale),[5] are also capable of being implemented prior to the end of the existing default service plans. While the tentative recommendation of the sub-group studying this specific issue is to implement full scale opt-in auctions so that customers would be taking service from participating EGSs starting on June 1, 2013, the Commission should make clear that it intends that the steps necessary to implement this measure will have taken place prior to the start of the next default service period so that "power will be flowing" – and the benefits to customers accruing – by June 1, 2013, at the latest. This is important not only to get this program started as soon as possible but also to permit the opt-in auctions to be better incorporated into the planning for the post-June, 2013 default service.

Rather than just "recommending" these steps, the Commission has the authority to, and should, issue these directives as policies that would then be the starting point for each EDC, subject to the outcome of the default service proceedings. Absent issuing such directives as policy statements, the Commission risks losing the opportunity to move forward expeditiously with retail competition reforms, should EDCs submit proposals in response to its "recommendations" that are inconsistent with the Commission's goals and timelines for intermediate measures arrived at through the RMI Stakeholder process.

New/Mover Program

The Commission should also clarify that it intended to direct the EDCs to include in their default service plans proposed procedures that would fully eliminate the

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5 These would be voluntary, opt-in auctions, in which customers could choose to be part of an aggregation pool in return for receipt of a "switching premium" or a promotional rate, or both.

discrimination in favor of default service when customers apply for new service or move to a new residence or business location. The current system elevates default service beyond the status of "provider of first resort" to "provider of only resort," as customers are not permitted (much less encouraged) to begin service with a competitor. This reform has been characterized in the Stakeholder process as a "New/Mover Program." In the RMI Stakeholder process, this issue has been discussed in two phases: first, in the context of traditional "referral programs" (because it appears that it will be recommended that the problem first be addressed by establishing a referral mechanism for new and moving customers); and, second, in a longer-term context. The longer term solution would additionally modify the EDCs' systems so that new or moving customers can immediately take competitive service and do not have to subscribe to default service if they would rather enjoy the benefits of the competitive market from the beginning of their electric service. This longer term solution to the new and moving customer issue should be explicitly directed to be included as part of each EDC's next default service plan, subject to the outcome of those proceedings.

II. BACKGROUND

On April 29, 2011, this Commission issued an Order initiating an Investigation of Pennsylvania's retail electricity market.[6] The April 29 Order articulated the goal "of

[6] *Investigation of Pennsylvania's Retail Electricity Market*, I-2011-2237952 (Order entered April 29, 2011)("April 29 Order"). The resulting investigation is referred to herein as either the "Investigation" or "RMI."