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July 5, 2013

VIA eFILING

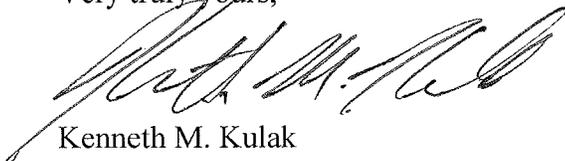
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
400 North Street
Harrisburg, PA 17105-3265

**Re: Petition of PECO Energy Company for Approval of Its Default Service Program
 (Customer Assistance Program Shopping Plan)
 Docket No. P-2012-2283641**

Dear Secretary Chiavetta:

Enclosed for filing on behalf of **PECO Energy Company** is a **Motion to Dismiss Objections and to Compel Answers to PECO Energy Company's Set II Interrogatories Directed to Direct Energy Services, LLC (the "Motion")** in the above captioned matter. As indicated by the Certificate of Service, the Motion has been served on all parties of record, as well as Administrative Law Judge Cynthia Williams Fordham.

Very truly yours,



Kenneth M. Kulak

KMK/tp
Enclosures

cc: Per Certificate of Service (w/encls.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY :
FOR APPROVAL OF ITS DEFAULT : DOCKET NO. P-2012-2283641
SERVICE PROGRAM (CUSTOMER :
ASSISTANCE PROGRAM SHOPPING PLAN) :**

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Motion to Dismiss Objections and to Compel Answers to PECO Energy Company's Set II Interrogatories Directed to Direct Energy Services, LLC** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54.

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

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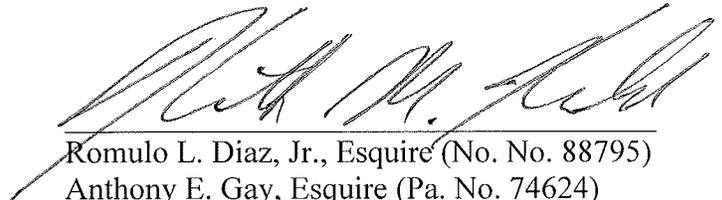
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July 5, 2013

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY :
FOR APPROVAL OF ITS DEFAULT : DOCKET NO. P-2012-2283641
SERVICE PROGRAM :**

**MOTION TO DISMISS OBJECTIONS AND TO COMPEL ANSWERS TO
PECO ENERGY COMPANY'S SET II INTERROGATORIES
DIRECTED TO DIRECT ENERGY SERVICES, LLC**

Pursuant to 52 Pa. Code § 5.432(g) and the Second Prehearing Order of June 14, 2013, PECO Energy Company (“PECO” or the “Company”) hereby requests that the Administrative Law Judge (“ALJ”) dismiss the objections (the “Objections”) filed by Direct Energy Services, LLC (“Direct Energy” or “Direct”) and compel full and complete answers to PECO’s Interrogatories Set II (Direct) Nos. 2 and 3 (“Set II Interrogatories”), which were served on June 27, 2013. A copy of Direct Energy’s Objections, which set forth the relevant Interrogatories, is attached as Exhibit A.

I. SUMMARY OF POSITION

Pursuant to the October 12, 2012 Order (“October 2012 Order”) issued by the Pennsylvania Public Utility Commission (the “Commission”) in this proceeding directing that low income customers participating in PECO’s Customer Assistance Program (“CAP”) be allowed to shop for electric generation supply, PECO submitted a CAP Shopping Plan (the “Plan”) to provide CAP customers with the opportunity to reduce their energy costs by shopping and to continue implementation of the universal service policies set forth in the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801 *et seq.* (the “Competition Act”). To that end, for those EGSs who decide to provide service to CAP customers, PECO has proposed that those EGSs must charge CAP customers a rate that is at or below the PECO Price-to-Compare (“PTC”) for PECO residential customers. This requirement will help preserve

affordability of service for CAP customers and avoid a higher cost burden for the residential customers in PECO's service territory who fund CAP. As PECO's witnesses have explained, costs for generation supply above the PTC can increase the energy burdens of CAP customers and result in significant cost increases for other residential customers.¹

Direct Energy vehemently opposes any pricing restrictions on EGSs who choose to serve CAP customers and instead proposes that CAP customers be able to shop in the same manner as higher-income non-CAP residential customers. In light of Direct's opposition and its alternative proposal, PECO's Set II Interrogatories request limited information regarding the percentage of customers in PECO's service territory who receive (or received) service from Direct at a fixed rate greater than the PTC on three specific dates since January 2013 (January 1, May 1, and June 1). Given that Direct is an active provider of generation service to residential customers in PECO's service territory and seeks to serve CAP customers in the same manner, the information requested is highly relevant to consideration of PECO's proposed price restriction, Direct's assertion that such a price restriction should be eliminated, and the potential effects on affordability of electric service for CAP customers and CAP-related costs for non-CAP residential customers.

Nonetheless, Direct Energy objected to the Set II Interrogatories on two grounds: an alleged lack of relevancy and the purported considerable resource expenditures necessary for Direct Energy to respond. As demonstrated below, the straightforward information sought by PECO is directly relevant to the Commission's determination of an appropriate design of the

¹ See PECO St. No. 3-R, pp. 4-5 (providing example of effect on CAP customers and increase in CAP program costs to residential customers where 25% of CAP population is served at a rate which exceeds the PTC by 10%). In light of PECO's purchase of EGS receivables under its existing purchase of receivables program, an EGS serving CAP customers will not be exposed to losses associated with a price above the PTC if the CAP customer does not pay. See PECO St. 2, Exhibit JJM-2, Original Page No. 92 (providing that purchase of EGS receivables is without recourse or discount other than costs for implementation of retail market and CAP shopping programs).

shopping platform for PECO's CAP customers and Direct Energy's objections are entirely without merit.

II. DIRECT ENERGY'S OBJECTIONS ARE WITHOUT MERIT AND DIRECT SHOULD BE COMPELLED TO RESPOND IN FULL TO PECO'S SET II INTERROGATORIES

A. The Information Sought By PECO Is Relevant

1. In accordance with 52 Pa. Code § 5.321(c) of the Commission's regulations, parties may obtain discovery of any unprivileged matter which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party. The Commission applies a liberal standard with respect to relevancy. *See, e.g., Pa. P.U.C. v. Equitable Gas Company*, 61 Pa. P.U.C. 468, 477 (1986).

2. Direct Energy primarily objects to the Set II Interrogatories on the ground that "Direct Energy's fixed rate prices are not a fact of consequence for determining whether to approve PECO's CAP shopping program."² According to Direct Energy, because PECO's Plan is "fundamentally unlike the market for non-CAP customers," data regarding the non-CAP retail market is irrelevant.³

3. Direct's objection is essentially frivolous as Direct's service to residential customers without any price restrictions is plainly relevant to its proposal to serve CAP customers in the same manner. As Mr. Kallaher states, "Direct Energy's alternative proposal is simple: treat CAP customers as one would treat other customers."⁴ The extent to which Direct

² Objections, p. 1.

³ *Id.*, p. 2.

⁴ Direct Energy St. No. 1, p. 7.

may (or may not) be charging other residential customers rates above the PTC is clearly relevant to the likelihood that CAP customers would also be charged rates above the PTC under Direct's proposal and the need for PECO's pricing restriction.

4. Given Direct Energy's emphatic disapproval of any limitation on the rates EGSs may charge CAP customers, the Set II Interrogatories simply ask Direct Energy to identify the percentage of its residential customers in PECO's service territory with a fixed rate for electric generation supply that exceeds PECO's PTC in effect on January 1, May 1, and June 1, 2013. Nothing could be more relevant in assessing Direct's alternative proposal. Indeed, it is unclear how the ALJ or the Commission could evaluate Direct's testimony or find that its proposed alternative design, which would subject CAP customers to unfettered EGS discretion with respect to pricing and other residential customers to increased CAP costs, could be appropriate in the absence of the information requested by PECO.

B. The Scope Of The Set II Interrogatories Is Narrow

5. Direct also objects that PECO's Set II Interrogatories Nos. 2 and 3 are "unduly burdensome."⁵ To the contrary, PECO's discovery is carefully tailored to elicit limited data regarding the relationship between fixed rate prices for non-CAP customers and the PTC, and Direct's Objections entirely mischaracterize the data PECO is seeking.

6. PECO's Set II Interrogatory No. 2 seeks a percentage calculation based on data which Direct Energy indisputably has for its customer accounts in PECO's service territory. Contrary to Direct Energy's assertions, PECO does not request information that would require Direct Energy to analyze "every fixed rate product offered to residential customers in PECO's

⁵ Objections, p. 2.

service territory over roughly the past 20 months.”⁶ Instead, the information sought by PECO relates only to the prices of residential fixed rate contracts in effect on three recent dates during 2013. PECO is not asking Direct Energy to provide the actual prices charged to customers, nor is PECO requesting even the total number of customers Direct Energy is serving. PECO is only asking Direct Energy to provide the percentage of customers whose fixed rates actually charged by Direct Energy on three specific dates exceeded PECO’s PTC in effect on those dates.

7. PECO’s Set II Interrogatory No. 3 asks for a second percentage of the customers on fixed rate contracts who are being charged rates above the PTC and who are receiving a “green product” or a time-differentiated fixed rate product. In his direct testimony, Mr. Kallaher underscores that PECO’s price restriction proposal would likely preclude an EGS from offering such products to CAP customers.⁷ The percentage requested in Interrogatory No. 3 is thus plainly relevant to evaluating Direct’s criticisms of PECO’s proposal and assessing whether most above-PTC rates are charged as part of providing such products.

8. Significantly, Direct Energy provides no detail whatsoever to justify its sweeping assertion in its Objections that it would have to “comb through its computer information systems” to collect the data requested by PECO. Direct Energy – one of North America’s largest energy and energy-related services providers with over six million residential customer relationships around the country⁸ – entirely fails to explain how it will have any undue difficulty

⁶ Objections, p. 2.

⁷ See Direct Energy St. 1, p. 5.

⁸ Direct Energy St. 1, p. 2.

in determining the fixed rates for generation service it is has charged (or is charging) customers in PECO's service territory on three days in 2013.⁹

9. Direct Energy's claim that the Set II Interrogatories cannot simply be answered "yes or no" also does not support its Objections and demonstrates a misunderstanding of the Commission's discovery rules and regulations. Discovery that is designed to elicit a narrative response or requires simple calculations hardly amounts to "unreasonable annoyance, embarrassment, oppression, burden or expense" that would warrant a limitation on the scope of discovery under the Commission's regulations at 52 Pa. Code § 5.361(a)(2).¹⁰

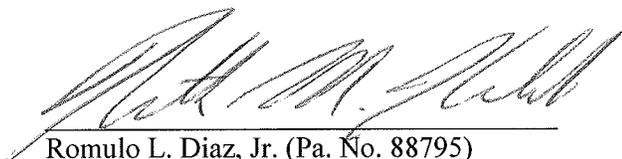
⁹ Direct Energy voluntarily chose to participate as a party in this case. As such, it is subject to the Commission's regulations, as modified by the ALJ's prehearing orders, in the same manner and to the same extent as any other party. Consequently, PECO, as a matter of due process, is entitled to conduct reasonable discovery to explore whether any empirical basis exists for the sweeping assertions Direct Energy has made in opposition to the position PECO is defending. The fact that Direct Energy may have to expend some time and effort to assemble the data PECO has requested does not mean that PECO's interrogatories are unreasonable.

¹⁰ PECO acknowledges that it has requested Direct to calculate percentages instead of providing actual numbers. If Direct prefers, PECO is willing to accept the underlying price and customer count data to mitigate any burden imposed on Direct Energy in calculating the requested customer percentages.

WHEREFORE, for the reasons set forth above, PECO respectfully requests the Administrative Law Judge and Pennsylvania Public Utility Commission:

1. Grant this Motion;
2. Overrule the Objections of Direct Energy; and
3. Compel Direct Energy to answer PECO's Set II Interrogatories Nos. 2 and 3 no later than 5:00 pm on Tuesday, July 9, 2013, in light of hearings presently scheduled for July 10-11, 2013.

Respectfully submitted,



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For PECO Energy Company

July 5, 2013

EXHIBIT A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition Of PECO Energy Company For :
Approval Of Its Default Service Program : Docket No. P-2012-2283641
:

**OBJECTIONS OF
DIRECT ENERGY SERVICES, LLC TO
PECO'S INTERROGATORIES, SET II, NOS. 2 & 3.**

Pursuant to 52 Pa. Code §§ 5.342 and 5.349, the Direct Energy Services, LLC ("Direct Energy") objects to Interrogatories II-2 and II-3 of the Second Set of Interrogatories propounded by PECO Energy Company ("PECO") as follows:

PECO (Direct) II-2 Reference Direct Energy St. 1, p. 5, lines 12-23. For each of the dates below, please provide the number of residential customers (as a percentage of all residential customers served by Direct Energy in PECO's service territory on such date) with a fixed per kWh rate for electric generation supply from Direct Energy which exceeds PECO's Price-to-Compare in effect on such date:

- a. June 1, 2013
- b. May 1, 2013
- c. January 1, 2013

OBJECTION: Direct Energy objects to this question on the basis that it falls outside the scope of permissible discovery and is not relevant to the subject matter involved in this proceeding nor is it reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). Direct Energy's fixed rate prices do not have any tendency to make any fact sought to be proven by PECO more or less probable without this evidence. Further, Direct Energy's fixed rate prices are not a fact of consequence for determining whether to approve PECO's CAP shopping program.

PECO has proposed a CAP shopping program that is fundamentally unlike the market for non-CAP customers and is essentially a separate and distinct market CAP customers. The proposed CAP shopping program contains several aspects not applicable to the market for non-CAP customers that make pricing a fixed price contract for non-CAP customers fundamentally different than for CAP customers, including (but not

limited to) a price ceiling at the prevailing PTC and proposed regulations for modification of contract prices (including fixed price contracts) if the customer enters the CAP program. These differences make any comparison of data regarding the market for non-CAP customers irrelevant and of no relevant comparison or factual value. Nor would an answer lead to the discovery of relevant evidence, for the same reasons stated above.

Direct Energy further objects inasmuch as the request is unduly burdensome. Direct Energy would have to expend considerable resources to comb through our computer information systems, looking at every fixed rate product offered to residential customers in PECO's service territory over roughly the past twenty months (the majority of Direct Energy fixed rate contracts are 12 month fixed rate contracts) Then we would be required to locate the customers who were still on those fixed rates. Then we would have to perform a comparison of those rates to the Price to Compare in effect on the three dates requested by PECO. And from there we would then have to calculate the percentage requested by PECO. This is not a simple clarifying or explanatory question or one that can be answered yes or no.

PECO (Direct) II-3 Reference Direct Energy St. 1, p. 5, lines 12-23. For each of the percentages provided in response to Interrogatory Set II-2, please provide the number of customers (as a percentage of those customers with a fixed per kWh price for electric generation supply from Direct Energy which exceeds PECO's Price-to-Compare on the applicable date) who are receiving a "green" product or on a time-differentiated fixed rate

OBJECTION: Direct Energy maintains the same objections to this question as to PECO (Direct) II-2, and hereby incorporates by reference those objections.

Respectfully submitted,



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