

**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) :**

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

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**I. INTRODUCTION**

Direct Energy Services, LLC (“Direct Energy”) respectfully requests the Administrative Law Judge (“ALJ”) deny the Motion to Dismiss Objections and Motion to Compel (“Motion”), affirm the objections of Direct Energy to the irrelevant discovery propounded on Direct Energy in this proceeding by PECO Energy Company (“PECO”), and find that Direct Energy does not have to answer such interrogatories. If the ALJ grants PECO’s Motion, Direct Energy respectfully requests the ALJ provide the directive requested in Section III of this Answer regarding service of this confidential, proprietary information.

**II. ANSWER**

1. Direct Energy disputes PECO’s characterization of the discovery rules of the Pennsylvania Public Utility Commission (“Commission”) related to relevance. The “liberal standard” applied by the Commission does not stretch to the interrogatories propounded by PECO. Under the Commission’s rules, the scope of discovery is limited only to matters that are

relevant to the pending action. 52 Pa. Code §5.321(c). A Motion to Compel should be denied when the discovery sought is not relevant to the case at hand.

2. The Commission's October 12, 2012 Opinion and Order clearly states that CAP program customers should be afforded the opportunity to shop and "avail themselves of the full benefits of retail electric competition." October 12, 2012 Opinion and Order at 131-132. The Commission must determine whether PECO's proposed price cap provision and a proposed market fundamentally unlike that for non-CAP customers is consistent with the October 12, 2012 Opinion and Order from a policy perspective. The Commission never indicated in its October 12, 2012 Opinion and Order that the fixed price contract prices (or the various pricing provisions of any EGS contracts for any product type) would be relevant to the Commission making this policy call. Therefore the information requested in the interrogatories are not relevant inasmuch as such information is not a fact of consequence for determining whether to approve PECO's proposed program, including the proposed price cap.

3. These interrogatories have nothing to do with the policy question at hand for the Pennsylvania Public Utility Commission ("Commission") and are therefore irrelevant. PECO's Motion is based solely on its apparent assumption that in directing PECO to file a plan that would allow CAP customers to shop the Commission intended that service to CAP customers would be price-regulated. According to PECO, "[t]he extent to which Direct 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." Motion at ¶ 3. Yet there is nothing in the Commission's order that supports the notion that EGS service to CAP customers should be price-regulated or

different from non-CAP customers and, thus, there is no basis in the Commission's order upon which one could find that the evidence PECO seeks is relevant to the issue at hand, even under the liberal construction standard for relevancy relied on by PECO. In fact, in Direct Energy's view, there are no factual determinations regarding the price cap provision proposed by PECO that the Commission needs to determine. The question posed by the PECO filing is a pure policy question: should EGS service to CAP customers be price-regulated? Such a policy question can and should be answered without regard to whether any particular EGS has historical prices above or below the PTC during some period of time. That is, even assuming, *arguendo*, that Direct Energy (or any electric generation supplier or EGS) had fixed rate contract prices on the three dates chosen by PECO (or at any time) that were higher than the then-current PTC, these facts are not facts of consequence for determining whether to approve the rate cap proposed for PECO's CAP shopping program. Whether the Commission intends to regulate prices at which EGSs serve CAP customers is a pure policy question regarding the establishment of the marketplace parameters for CAP program customers. Whether the prices of one EGS (out of many dozens of EGSs serving residential customers in Pennsylvania) exceeded the PTC on the dates chosen by PECO should have no bearing on the policy question the Commission confronts in this case.

4. Direct Energy incorporates by reference its response and explanation found in paragraph 3 of this Answer.

5-9. Direct Energy no longer objects to the discovery on unduly burdensome grounds. In an attempt to make a good faith effort to respond despite its objections, and after diligent work on

behalf of Direct Energy personnel to respond to PECO's irrelevant interrogatories, Direct Energy now has the information necessary to answer PECO's interrogatories

### **III. SERVICE OF PARTIES IF PECO MOTION IS GRANTED**

Finally, if the ALJ does grant PECO's Motion, Direct Energy respectfully asks for an Order that Direct Energy may serve only those parties actively participating in this phase instead of all parties to the default service plan ("DSP") docket. Direct Energy requests permission to serve a limited service list made up of active parties in this phase of the case inasmuch as no other EGS is participating in this phase of the proceeding and such a directive would prevent confidential, proprietary information from being provided (at least through discovery) to Direct Energy's competitors who are also parties to this case.

#### IV. CONCLUSION

WHEREFORE, for the reasons set forth above, Direct Energy respectfully requests the Presiding Officer (1) deny PECO's Motion; (2) affirm the Objections of Direct Energy to the irrelevant discovery propounded on Direct Energy in this proceeding and find that Direct Energy does not have to answer such interrogatories; and (3) if the Commission grants PECO's Motion, permit Direct Energy to only serve its confidential, proprietary information on those parties active in this phase of the proceeding.

Respectfully submitted,



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Date: July 8, 2013

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of Direct Energy Services, LLC's Answer to PECO's Motion to Compel, upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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