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February 23, 2022

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

Re: Interstate Gas Supply, Inc. d/b/a IGS Energy, Direct Energy Services LLC, and Shipley Choice, LLC d/b/a Shipley Energy v. Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and WestPenn Power Company, Docket Nos. C-2019-3013805, C-2019-3013806, C-2019-3013807, and C-2019-3013808; **JOINT COMPLAINANTS' MOTION FOR EXPEDITED TREATMENT OF PETITION FOR RECONSIDERATION**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission is the Joint Complainants' Motion for Expedited Treatment of Petition for Reconsideration in the above-captioned matter. Copies of this Motion have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions related to this filing, please do not hesitate to contact me.

Very truly yours

Todd S. Stewart
Bryce R. Beard
*Counsel for Joint Complainants
Interstate Gas Supply, Inc., dba IGS Energy
Direct Energy Services, LLC and Shipley
Choice, LLC dba Shipley Energy*

TSS/jld

Enclosure

cc: Administrative Law Judge Joel H. Cheskis (via email - jcheskis@pa.gov)
Office of Special Assistants (via email - ra-OSA@pa.gov)
Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party)

VIA ELECTRONIC MAIL ONLY

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DATED: February 23, 2022



Todd S. Stewart
Bryce R. Beard

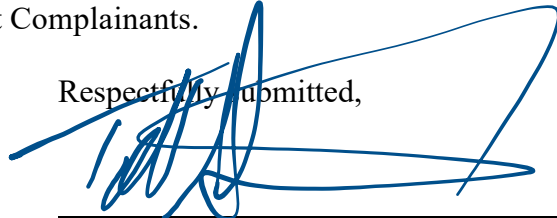
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Interstate Gas Supply, Inc. d/b/a IGS	:	
Energy, Direct Energy Services LLC, and	:	
Shipley Choice, LLC d/b/a Shipley Energy	:	
Complainants	:	Docket Nos. C-2019-3013805
	:	C-2019-3013806
v.	:	C-2019-3013807
	:	C-2019-3013808
Metropolitan Edison Company,	:	
Pennsylvania Electric Company,	:	
Pennsylvania Power Company, and	:	
WestPenn Power Company	:	
Respondents	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.103, you are hereby notified that, if you do not file a written response to the attached Joint Complainants' Motion for Expedited Treatment of Petition for Reconsideration within twenty (20) days from service of this notice, the facts set forth by the Joint Complainants, in the Motion may be deemed true, thereby requiring no other proof. All pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission and served on the undersigned counsel for the Joint Complainants.

Respectfully submitted,



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DATED: February 23, 2022

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Direct Energy Services, LLC and Shipley
Choice, LLC dba Shipley Energy*

**BEFORE THE
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Metropolitan Edison Company,	:	
Pennsylvania Electric Company,	:	
Pennsylvania Power Company, and	:	
WestPenn Power Company	:	
Respondents	:	

**JOINT COMPLAINANTS’
MOTION FOR EXPEDITED TREATMENT OF
PETITION FOR RECONSIDERATION**

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Interstate Gas Supply, Inc., dba IGS Energy
Direct Energy Services, LLC and Shipley
Choice, LLC dba Shipley Energy*

DATED: February 23, 2022

NOW COME, the Joint Complainants in the above-captioned matter (Interstate Gas Supply, Inc., d/b/a IGS Energy, NRG Energy, Inc.,¹ and Shipley Choice, LLC d/b/a Shipley Energy) and hereby submits this Motion for Expedited Treatment of the Petition for Reconsideration filed with the Pennsylvania Public Utility Commission on September 10, 2021, in the above-captioned matter pursuant to 52 Pa. Code § 5.103.

I. Introduction and Background

1. On October 25, 2019, the Joint Complainants filed a formal Complaint with the Commission contending that the FirstEnergy Companies (“FirstEnergy” or “EDCs”) provide on-bill billing services to themselves and that such provision violates the Public Utility Code and the holding in the Commission’s decision in the recently decided Pa. PUC et al. v. Columbia Gas of Pennsylvania, Inc.; Docket No. R-2018-2647577 (Opinion and Order entered December 6, 2018) (“Columbia”). On November 18, 2020, Presiding Administrative Law Judge, Deputy Chief ALJ Joel H. Cheskis, issued an Initial decision sustaining the Complaint. On August 26, 2021, the Commission issued an Opinion and Order reversing the ALJ, holding that provision of on-bill billing for its own products and services does not constitute discrimination under the Public Utility Code, 66 Pa. C.S. § 1502.

2. On September 10, 2021, the Joint Complainants submitted a Petition for Reconsideration of the Commission’s August 26, 2021 Order (“Order”) and/or for Reopening the Record (“the Petition”) in this proceeding on the basis that newly discovered evidence, which neither the Joint Complainants, the ALJ, nor the Commission had taken into consideration, shows that the FirstEnergy Companies (“FirstEnergy” or “EDCs”) are in-fact providing “on-bill billing”

¹ On January 5, 2021, NRG Energy, Inc. acquired 100% of the membership interest in Centrica US Holdings Inc., the parent company of Direct Energy Services, LLC, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Gateway Energy Services Corporation and Bounce Energy, Inc. (“Direct Energy”).

services to a non-affiliated third-party, HomeServe USA, for a myriad of non-commodity products and services. *See* Petition at 2-11. The Joint Complainants, pursuant to *Duick v. Pennsylvania Gas and Water Co.* Docket No. C-R0597001 et al., 56 Pa. P.U.C. 553, 559, (1982) (“*Duick*”), established that based on the newly discovered evidence presented in the petition, there are clear “new or novel arguments” that neither the ALJ nor the Commission considered which are central to the legal basis upon which the Commission’s Order was made. As discussed in the Petition, throughout the proceeding FirstEnergy misrepresented, in sworn pleadings, testimony, and briefing, that the EDCs billed *only* for their own products and services. *See* Petition at 4-6, 9-10. The Joint Complainants clearly discussed that newly discovered evidence shows that in-fact FirstEnergy provides “on-bill” billing for an unaffiliated third-party, HomeServe USA (“HomeServe”), which sells competitive, non-commodity products and services, while refusing to provide the same “on-bill” billing service for any other third-party, including the Joint Complainants. The Petition established clear evidence of discrimination in “service” as defined in 66 Pa. C.S. § 102 which warrants the commission to reconsider its August 26, 2021 Order and/or reopen the record in this proceeding. *See* the Petition at 9-10.

3. On September 15, 2021, the Commission entered an Order granting reconsideration within the meaning of PA R.A.P. 1701(b)(3) pending review on the merits.

4. On September 20, 2021, FirstEnergy filed an answer to the Petition, arguing, *inter alia*:

- that the Joint Complainants did not meet the *Duick* standard for reconsideration;²
- that because FirstEnergy identified its “on-bill” billing of non-commodity products and services for the unaffiliated third-party, HomeServe, in various other proceedings

² See FirstEnergy’s Sept. 20, 2021 Answer to Petition at 6-7.

- unrelated to the instant matter, the Joint Complainant's knew or should have known about the EDC's discriminatory practices thus making such evidence not "recently discovered" in this proceeding and that the Joint Complainants should have provided such evidence before the close of the record;³
- that on the basis of unsworn argument/extra-record evidence that a *contractual relationship* between FirstEnergy and HomeServe somehow exempts FirstEnergy's billing for HomeServe's third-party products and services from being discriminatory;⁴
 - or that FirstEnergy's "on-bill" billing for the unaffiliated, third-party HomeServe's products is not discriminatory simply because HomeServe's products were explained in the Companies' DSP V proceeding.⁵

Each of these arguments, notably that a mere *contractual relationship* can permit discrimination in service by an EDC, lack all merit and the FirstEnergy Companies' misrepresentations⁶ on the record to obfuscate the services it provides HomeServe should not be condoned. The serious discriminatory allegations raised in the Petition warrant further investigation by the Commission despite FirstEnergy's desire to conceal its discriminatory conduct to maintain a market advantage.

5. Also on September 20, 2021, the Retail Energy Supply Association ("RESA") filed an answer in support of the Joint Complainant's Petition, further arguing that the new facts contained in the Joint Complainant's petition show that First Energy is providing "on-bill" billing services to a third party, other than the EDCs themselves, while refusing to provide this same service to EGSs. *See* RESA's Answer, dated September 20, 2021, at 3-4. RESA further discussed

³ See FirstEnergy's Sept. 20, 2021 Answer to Petition at 7-9.

⁴ See FirstEnergy's Sept. 20, 2021 Answer to Petition at 9-11.

⁵ *Id.*

⁶ See Joint Complainant's Petition at 4-6.

that, based on the fact that FirstEnergy is providing on-bill billing for HomeServe, the Complaint should be sustained and significant portions of the Commission's August 26, 2021, Order must be reconsidered based on the new-evidence and overall protections to the competitive market. *Id.* at 4-7.

6. Since then, over 5 months have passed without the Commission ruling on the outstanding Petition for Reconsideration.

II. Expedited treatment is merited to abate the continuing discrimination in service and harm to the Joint Complainants.

7. As established in the Joint Complainant's Petition, the newly discovered evidence that FirstEnergy is billing for an unaffiliated third-party's non-commodity products and services, shows that discrimination in violation of Sections 1502 and 2804(6) of the Public Utility Code is continuing to this day by the Companies refusing to provide the same services to the Joint Complainants on an equal playing field.

8. Like HomeServe, the Joint Complainants provide non-commodity products and services to customers in the FirstEnergy Companies' territories. The thrust of this complaint matter was that the Joint Complainants requested that FirstEnergy provide "on-bill" billing services as the EDCs do for their own products but were denied. The Joint Complainant's reconsideration petition established a clear, newly discovered fact that the EDCs are also providing on-bill billing services for an unaffiliated third-party, HomeServe, which was not considered by the ALJ or the Commission. As discussed in the Petition, the Commission's Order was made without the benefit of certain facts that were central to the legal basis upon which the Commission's Order was made, as these facts show a clear violation of "service" as defined under 66 Pa. C.S. § 102, and discriminatory conduct clearly in violation of 66 Pa. C.S. §§ 1502 and 2804(6).

9. Every day that passes where FirstEnergy's discriminatory and anti-competitive conduct is allowed by the Commission negatively impacts the Joint Complainants as well as the wider competitive market, suppliers, and ultimately the legislature's intent at the core purpose of the Competition Act.

10. The Joint Complainants aver that further delay of the resolution of the Petition has the potential to inhibit any new or innovative products and services from being offered where a Utility maintains a discriminatory, anti-competitive advantage over the billing of non-commodity products and services – especially where the Utility seeks that the Commission enshrine conduct of third-party preference on the basis of a mere *contractual relationship*. Such advantages cannot, and do not, encourage competition in Pennsylvania, but rather enforce the monopoly driven status quo of FirstEnergy's services power predating the competition act.

11. Further delay in ruling on the Petition will also inhibit the offering of competitive products and services which in some cases could financially benefit the consumer. Suppliers such as the petitioners, are constantly expanding their array of products and services to help the consumer with energy management and savings. Not having the ability to bill for these services utilizing the FirstEnergy billing platform as the Petition shows FirstEnergy does for the third-party, HomeServe, simply deprives the consumer from taking advantage of these offerings.

12. The Joint Complainants, therefore, request expedited treatment of their September 10, 2021, Petition for Reconsideration to afford a just and speedy resolution of this matter on a full and complete record.

WHEREFORE, the Joint Complainants respectfully request that the Pennsylvania Public Utility Commission grant the September 10, 2021, Petition for Reconsideration in an expedited manner.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'TS Stewart', is written over a horizontal line.

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DATED: February 23, 2022