

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Robert Naborn and Cynthia Pronko

Public Meeting February 22, 2024

3037611-OSA

v.

Docket No. F-2023-3037611

**PECO Energy Company and Direct Energy
Services, LLC**

STATEMENT OF COMMISSIONER JOHN F. COLEMAN, JR.

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Direct Energy Services, LLC (Direct Energy) to the Initial Decision (ID) issued on September 6, 2023, in the above-captioned proceeding. The ID sustains the Formal Complaint against Direct Energy related to the Complainant's inadvertent switch from Direct Energy as its Natural Gas Supplier (NGS) to PECO Energy Company (PECO). Among other things, the ID finds that Direct Energy failed to provide reasonable service as required under Section 1501 of the Public Utility Code (Code), 66 Pa. C.S. § 1501. The ID imposes a \$1,000 civil penalty against Direct Energy for this violation.

I agree with the Motion that, as an NGS, Direct Energy is not a public utility and, therefore, is not subject to Section 1501 of the Code. I also believe that, based on the evidentiary record in this case, Direct Energy did not breach any consumer service and protection duties owed to the Complainants.¹ Regarding the Complainants' cancellation order, there is nothing in the record to support that Direct Energy failed to comply with the Commission's regulations applicable to NGSs.²

Because Section 1501 does not apply to Direct Energy and because Direct Energy did not breach any consumer service and protection duties owed to the Complainants, I also agree with the Motion not to assess a civil penalty against Direct Energy in this case.

However, I do not agree with the Motion that the customer did not consent to the switch of his natural gas supply service from Direct Energy to PECO.³ Rather, I believe the event at issue was caused by the Complainants' own cancellation of their account with Direct Energy. Indeed, the NGS change, albeit inadvertent, was initiated by the Complainants. Consequently, the change occurred with their consent. In any event, I concede the inadvertent switch here is a unique circumstance that is not specifically addressed in our regulations. The record evidence is clear though that Direct Energy did not slam the Complainants.

¹ In accordance with Section 2208(e) of the Code, 66 Pa. C.S. § 2208(e), the Commission has authority to determine whether Direct Energy breached any consumer service and protection duties owed to the Complainants here.

² This includes our regulations containing the standards for changing NGSs at 52 Pa. Code §§ 59.91. *et seq.* and our regulations governing the handling of customer complaints by an NGS at 52 Pa. Code § 62.114.

³ The switching of natural gas supply service without the customer's consent is often called slamming.

The Motion opines that a commonsense business practice with re-enrollment here would have been for Direct Energy to offer the original terms and conditions to the Complainants at the outset – and not several months later. I note that Direct Energy did take prompt action after the inadvertent switch and repeatedly attempted to help the Complainants re-enroll with the company.⁴ Moreover, I do not believe the Commission should be micromanaging what ultimately was a business decision of the company.

Therefore, I will be concurring in result only with the Motion.

Date: February 22, 2024



JOHN F. COLEMAN, JR.
COMMISSIONER

⁴ I note the following testimony of Direct Energy from page 67 of the hearing transcript:

Direct Energy attempted to work with PECO to have PECO reinstate Mr. Naborn's account which PECO indicated it was unable to do. We made multiple — we had multiple discussions with Mr. Naborn from August to September 2022. Direct Energy explained that he would have to submit a new enrollment in order to re-enroll his account with Direct Energy and become a customer with us again. We never received an enrollment from Mr. Naborn.