

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION OF)
DIRECT ENERGY SERVICES, LLC TO)
REQUEST THE PUBLIC SERVICE)
COMMISSION TO ISSUE, ON AN)
EXPEDITED BASIS, AN ORDER DIRECTING)
DELMARVA POWER & LIGHT COMPANY) PSC DOCKET NO. 16-0744
TO DISTRIBUTE AN EDUCATIONAL BILL)
INSERT REGARDING THE OPTIONS)
AVAILABLE UNDER THE CONTRACT)
AWARDED BY THE STATE OF DELAWARE)
(Filed June 30, 2016))

**COMMENTS OF THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE ON
THE PETITION OF DIRECT ENERGY SERVICES, LLC TO REQUEST THE PUBLIC
SERVICE COMMISSION TO ISSUE, ON AN EXPEDITED BASIS, AN ORDER
DIRECTING DELMARVA POWER & LIGHT COMPANY TO DISTRIBUTE AN
EDUCATIONAL BILL INSERT REGARDING THE OPTIONS AVAILABLE UNDER
THE CONTRACT AWARDED BY THE STATE OF DELAWARE**

Pursuant to Order No. 8922 dated July 26, 2016, the Delaware Division of the Public Advocate (“DPA”) hereby submits the following comments on the Petition of Direct Energy Services, LLC (“Direct Energy”) to Request the Public Service Commission (“the “PSC” or “Commission”) to Issue, on an Expedited Basis, an Order Directing Delmarva Power & Light Company to Distribute an Educational Bill Insert Regarding the Options Available Under the Contract Awarded by the State of Delaware (the “Petition”).

Introduction.

As the Commission knows, Section 68 of Senate Substitute No. 1 for Senate Bill 160 of the 148th General Assembly (“Bond Bill”) created the Electricity Affordability Committee (“EAC”)¹ and directed the EAC to evaluate an optional electricity affordability program for

¹ The EAC was chaired by the Delaware Secretary of State and included representatives from the Office of Management and Budget, the Department of Natural Resources and Environmental Control, the Office of the Controller General, and the Commission. Despite Direct Energy’s

residential and small commercial customers. The EAC was tasked with determining whether there were any potential benefits to residential and small commercial customers resulting from a combination of multi-year fixed-per kWh price offers, value-added products and services to help these customers better manage their overall energy bills, as well as evaluating other potential benefits. If the EAC found that a PSC-certified energy provider's program would offer these benefits to residential and small commercial customers, it was instructed to select and contract with that provider.

According to the Petition, six PSC-certified suppliers (including Direct Energy) submitted bids to become the State-designated supplier. The EAC allegedly evaluated the proposals based on the potential benefits from a combination of multi-year fixed-kWh price offers, value-added products and services to help customers manage their overall utility bills; other potential consumer benefits; and the supplier's technical and fiscal experience. (Petition at 3). Direct Energy states that in its proposal, it "indicated that, for the citizens of Delaware to obtain the maximum benefit from the Contract, a Commission sponsored or coordinated consumer education effort would be helpful." (Petition at 3).

On June 22, 2016, the EAC named Direct Energy as the "Electric Retail Supplier Exclusively Contracted by the State of Delaware." In the State-approved Contract, the State authorized the Commission to provide "educational information regarding the products in coordination with Direct Energy." (Petition at 3, quoting Contract, §5.1). According to Direct Energy, such educational efforts are consistent with the Commission's statutory obligation to

assertion that the EAC membership also included a representative of the DPA's office (Petition at 3), it did not. *See* Attachment A.

ensure that eligible customers receive education and information to obtain the benefits of competition. (Petition at 3, citing 26 Del. C. §§1002, 1013(b), 1014).²

Direct Energy’s Petition.

In the Petition, Direct Energy asks the Commission to order Delmarva to distribute a one-time educational bill insert to all eligible residential and small commercial customers in Delmarva’s service territory. The bill insert would provide residential and small commercial customers with the following information:

- The products available under the Contract, identified as “a preferred electric supply product offering for Residential and Small Commercial customers.” (Petition at 4, quoting Contract at §3.7).
- An estimate that residential customers may save an average of \$15 per month with Direct Energy’s low fixed electricity prices, which are set at 10-18% below Delmarva’s current price to compare. (Petition at 4).
- Other benefits are available, and both residential and small commercial customers can potentially save an additional 10-12% on their heating bills and about 15% on their cooling bills by receiving a Nest Learning thermostat at no cost. (*Id.*).
- Small businesses can save 5% off Delmarva’s current price to compare. (*Id.*).
- A “Solarize Delaware” solar offering is available, comprised of a low price per watt rooftop installation and 12 months of free electricity for the balance of consumption not supplied by solar once installed. (*Id.*).

Direct Energy asks the Commission to “coordinate the provision of a one-time, educational bill insert to all eligible residential and small commercial customers in Delmarva’s territory.” (*Id.*). According to Direct Energy, bill inserts are an effective way to reach eligible customers, and Delmarva uses bill inserts to provide educational information (among other things) to its customers). (*Id.* at 5). Direct Energy wants Delmarva to mail bill inserts (one

² Neither Sections 1002 nor 1013(b) address customer education regarding retail supply competition. Section 1014(c) does provide for such education, but only with respect to the original deregulation of the electric supply function.

insert for residential customers and another insert for small commercial customers) to its customers over Delmarva's existing billing cycle time period. Although Direct Energy expects that the inserts would discuss the information identified above, it states that the bill insert's actual language will be agreed on by it, Delmarva, the DPA staff and the PCS Staff before it is disseminated to customers. (*Id.*). Finally, Direct Energy states that it will pay for all of the incremental costs that Delmarva incurs in connection with this mailing, and that neither Delmarva nor its ratepayers will bear any of the incremental costs. (*Id.*).

Comments

The Commission should not order Delmarva to undertake this "education" on bill inserts coming from Delmarva, and should deny Direct Energy's petition. First, the State-approved contract requires the Commission and Direct Energy to coordinate educating Delmarva SOS customers – not Delmarva and Direct Energy. Direct Energy is capable of sending out a mailing to Delmarva customers informing them of all of the things it wants to tell them in a bill insert coming in a Delmarva envelope. Second, Delmarva currently does not include communications from other retail electricity suppliers in bill inserts. If the Commission orders Delmarva to include bill inserts from Direct Energy, why shouldn't other retail electricity suppliers have the same access to Delmarva's customers through bill inserts? It is insufficient to say that this is a one-time event: when the Direct Energy contract with the State is up, we expect there will be another State-approved supplier, and that supplier will want the same access to Delmarva's SOS customers as Direct Energy wants now. And if Direct Energy wants to use Delmarva's bill inserts to inform potential customers that it is the State-approved retail electricity supplier and inform them about the products it offers, shouldn't it also be able to provide that information to current customers of third-party suppliers that are serving Delaware customers and for whom

Delmarva bills supply charges? Third, the DPA is concerned that such information coming in a Delmarva envelope will cause customers to think (mistakenly) that this information has Delmarva's imprimatur, regardless of what the insert actually says. Moreover, if customers have questions about the bill insert, they are more likely to call Delmarva customer service than they are Direct Energy customer service or the Commission, placing additional stress on Delmarva's customer service representatives – which are paid for by regulated distribution customers. Finally, if the Commission does order Delmarva to publish a bill insert for Direct Energy, the DPA respectfully requests that the mailing of such insert be delayed until the Commission has approved amended regulations governing retail electric suppliers in Regulation Docket No. 49, as the new rules that the Commission approves may affect what the bill insert can say.

1. The State-Approved Contract Requires the Commission and Direct Energy to Coordinate Educating Delmarva SOS Customers – Not Delmarva and Direct Energy.

The state-approved contract with Direct Energy provides that “the Commission may provide limited educational information regarding the product in coordination with Direct Energy.” The use of the word “may” gives the Commission discretion: it does not require the Commission to provide *any* educational information. Nor does the legislation require Delmarva to collaborate with Direct Energy to educate customers about the products Direct Energy is offering as the state-approved retail electric supplier. While the General Assembly has directed Delmarva to provide educational information about retail electric choice to its customers in other contexts (*see 26 Del. C. §1014(c)* when the supply industry was deregulated), it did not do so in the legislation that ultimately led to Direct Energy's selection as the state's approved retail electric supply provider. Essentially, then, Direct Energy is asking this Commission to order Delmarva to be its mouthpiece. This is improper.

Nowhere in its petition has Direct Energy explained why it cannot mail educational information regarding its products to customers without using Delmarva's bill inserts. It says only that bill inserts "would be an effective means of reaching eligible customers" and that Delmarva uses its bill inserts to "provide education information." (Petition at 5). Perhaps bill inserts would be an effective means to reach customers (although the DPA suspects that many customers do not read the inserts), and yes, Delmarva does use its bill inserts to provide educational information to customers. But there are other effective means of reaching customers (i.e., direct mailings), and Delmarva's customers pay for those bill inserts in their rates.

Direct Energy says that it will pay the incremental costs associated with its bill insert. While that eliminates a ground for the DPA's objection, the fact remains that Delmarva's customer have already paid for the facilities by which bill inserts are included in their rates. Direct Energy has not paid for any of those facilities, but nevertheless seeks to use them. Perhaps it will be less expensive for Direct Energy to use Delmarva's facilities to send a mass mailing (although Direct Energy has sent mailings to residential customers in Delmarva's service territory already). But that in and of itself is an insufficient reason for the Commission to force Delmarva to include the bill insert that Direct Energy has requested.

Direct Energy has not proffered any explanation (let alone a convincing one) why it cannot do a direct mailing of its own informing customers of all the things it wants customers to know. Without such an explanation, the Commission has no basis for ordering Delmarva to allow Direct Energy to use the facilities for which ratepayers have paid to broadcast Direct Energy's selection as the state-approved retail electric supply provider.

2. Allowing Only Direct Energy to Disseminate Information to Customers in Delmarva's Bill Inserts Is Discriminatory.

Delmarva does not currently include bill inserts for third-party retail electric suppliers that wish to tout their offerings to SOS customers. Notwithstanding that Direct Energy is the state's "approved" or "preferred" retail electric supplier, allowing Direct Energy to use Delmarva's bill inserts to inform customers of Direct Energy's products would discriminate against those other third-party suppliers. Those suppliers might have offerings that are competitive with Direct Energy or that provide customers with benefits that are different than, but equally as good as (in the minds of customers) Direct Energy's offerings. Why should they not have the same opportunity to educate Delmarva SOS customers on those offerings using Delmarva bill inserts?

Furthermore, this may not be a one-time-only event. Assuming that the General Assembly decides to bid the "state-approved retail electricity supplier" contract out again after the contract with Direct Energy ends, the winning electricity supplier in this solicitation will no doubt want to use Delmarva's bill inserts to educate SOS customers.

If one retail electric supplier is permitted to use Delmarva's bill inserts to educate Delmarva SOS customers on its offerings, all retail electric suppliers should be able to do so as long as they pay for it. But none of those suppliers paid anything for the facilities Delmarva uses to include bill inserts in its customers' bills. This is unfair to Delmarva distribution customers, all of whom pay (or paid) for those facilities.

Furthermore, if the Commission is inclined to grant Direct Energy's request, why should the bill inserts be limited to Delmarva SOS customers? Why shouldn't end-use consumers who receive their supply from a retail electric supplier that is not Direct Energy also be provided with the educational information from Direct Energy? Direct Energy may be offering a better deal than those customers are currently getting. If these customers are not receiving the educational

information, they are being treated discriminatorily. If the idea is to encourage customers to shop so that they can reduce their electricity bills, then those customers should be included as recipients of the educational information.

3. Including Direct Energy’s Educational Information in a Delmarva Bill Insert May Cause Customer Confusion.

The DPA is concerned that including Direct Energy’s educational information in a Delmarva bill insert may cause customers to believe that Delmarva has blessed the Direct Energy offering, or that the customer must change his electric supplier to Direct Energy. Such confusion could generate an influx of calls to Delmarva’s customer service representatives, which are a resource for which Delmarva ratepayers pay in their rates. If Delmarva is forced to hire more customer service representatives to handle calls, or if Delmarva has to hire an outside company to take the calls, the costs to ratepayers will increase. And we do not understand Direct Energy to include these costs in its offer to pay the incremental costs of the bill insert.

Direct Energy’s proposal to include Delmarva, the DPA and the Commission Staff in drafting the bill insert’s language does not assuage this concern. If something is coming in a Delmarva envelope, customers are going to assume that it is a Delmarva communication, regardless of what the insert actually says. And those customers are going to be more likely to call Delmarva customer service than they are to call Direct Energy or the Commission.

4. If the Commission Is Inclined to Grant Direct Energy’s Request, Direct Energy Should Not Be Permitted to Mail Its Educational Information Until the Commission Has Approved Amended Regulations Governing the Solicitation of Customers.

As the Commission is aware, amendments to the regulations governing retail electric suppliers have been proposed. The DPA understands that the Commission will consider publication of amended regulations on September 6 – the same day as the hearing in this docket

– and that if the Commission approves publication of those proposed regulations, they will be published in the October 2016 Register of Regulations for public comment. Finally, the Commission will hold a hearing on the proposed amended regulations sometime in November. The amended regulations contain specific consumer protection provisions addressing communications with customers.

The DPA respectfully suggests that any bill inserts containing Direct Energy-proposed educational information be postponed until the Commission has finally approved new supplier regulations. Direct Energy will not be harmed by this short delay – as discussed previously, Direct Energy is free now to provide its educational information to customers on its own. And customers will be better protected after the new regulations are in place.

* * *

The DPA believes that it would be improper for the Commission to require Delmarva to include Direct Energy’s educational information in inserts included in Delmarva’s bills. Nothing requires Delmarva to provide its facilities to Direct Energy for this purpose; it discriminates against other retail electric suppliers and customers that are not Delmarva SOS customers; and it could generate customer confusion. If the Commission should require Delmarva to include Direct Energy’s proposed information in a bill insert, however, it should postpone sending such information to customers until the Commission has approved final rules regulating retail electric suppliers.

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Dated: August 31, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2016, I caused a copy of the **COMMENTS OF THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE ON THE PETITION OF DIRECT ENERGY SERVICES, LLC TO REQUEST THE PUBLIC SERVICE COMMISSION TO ISSUE, ON AN EXPEDITED BASIS, AN ORDER DIRECTING DELMARVA POWER & LIGHT COMPANY TO DISTRIBUTE AN EDUCATIONAL BILL INSERT REGARDING THE OPTIONS AVAIOLABLE UNDER THE CONTRACT AWARDED BY THE STATE OF DELAWARE** to be served on the following persons via electronic mail and to be filed with the Delaware Public Service Commission using Delafile.

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Dated: August 31, 2016

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