

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))

**SUPPORT OF THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE FOR THE
EMERGENCY MOTION OF DELMARVA POWER & LIGHT COMPANY TO (A)
POSTPONE THE SCHEDULED SEPTEMBER 20TH CONSIDERATION OF DIRECT
ENERGY'S PETITION TO ALLOW FOR DISCOVERY, OR ALTERNATIVELY,
STRIKE DIRECT ENERGY'S WRITTEN COMMENTS AND INCORPORATED
EXPERT TESTIMONY**

The Delaware Division of the Public Advocate (“DPA”) hereby supports the emergency motion of Delmarva Power & Light Company (“Delmarva”) to Postpone the Scheduled September 20, 2016 Consideration of Direct Energy’s Petition to Allow for Discovery, or Alternatively, to Strike Direct Energy’s Written Comments and Incorporated Expert Testimony (the “Emergency Motion”), and avers as follows:

1. The DPA accepts the facts set forth in Delmarva’s Emergency Motion.
2. Direct Energy’s petition did not include any prefiled testimony. Rather, it proffered legal reasons why the Delaware Public Service Commission (the “Commission”) should direct Delmarva to distribute an “educational” bill insert regarding the options available under the contract awarded by the State of Delaware to Direct Energy as the “Electric Retail Supplier Exclusively Contracted by the State of Delaware” (the “Contract”). Direct Energy’s

petition asked the Commission for affirmative relief in the form of an injunction: directing Delmarva to do something that it would not otherwise be required to do.

3. In Order No. 8922, the Commission opened this docket to consider Direct Energy's petition; directed that comments and objections to the petition be submitted by August 31, 2016; and scheduled a hearing on the petition for September 6, 2016. It did not appoint a hearing examiner; it did not envision that discovery would be required on the petition; it did not request prefiled testimony; and it did not envision a hearing at which witnesses would be presented. Rather, the Commission clearly envisioned that it would decide the matter based on the petition and the comments and objections received regarding the petition.

4. Several commenters, including the DPA and Delmarva, submitted comments on Direct Energy's petition on August 31, 2016. (Staff did not submit any comments; although the DPA has heard that Staff intends to offer comments on September 20, the DPA is not sure whether Staff intends to proffer a witness to testify or whether its counsel will provide its position).

4. The DPA supports Delmarva's Emergency Motion to strike Direct Energy's comments and prefiled testimony. The DPA does not believe that the Commission intended to conduct an evidentiary hearing on what is a purely legal question: whether the Commission should require Delmarva to include the requested bill insert.

5. If the Commission should determine that an evidentiary hearing is necessary, then the DPA supports Delmarva's request to postpone the September 20 hearing; to appoint a Hearing Examiner; and to allow discovery. Attachment B to Delmarva's comments, which comes from Direct Energy's website, shows that Direct Energy has made misstatements with respect to how it came to be selected as the state's exclusively contracted provider. That

attachment states that Direct Energy's status as the state's exclusively contracted provider "was conferred on Direct Energy after a months-long competitive process and a vote ... by the Delaware Electricity Affordability Committee, chaired by Secretary of State Jeffrey Bullock, and with representation from the Department of Natural Resources and Environment [sic], Office of the Controller General, Office of Management and Budget, Office of the Public Advocate and the Public Service Commission." (Delmarva Comments, Exhibit B). However, the DPA was not a member of the Electric Affordability Committee, and although its representatives attended public meetings of the Electricity Affordability Committee, the DPA: (1) was not involved in drafting the request for proposals from bidders; (2) was not privy to the confidential submissions from bidders; (3) did not participate in the review of the bids; (4) does not know the rationale behind Direct Energy's selection; and (5) was not involved in any contract negotiations. While Direct Energy has agreed to remove this language from its website and from any other materials in which it appears (and the DPA appreciates Direct Energy's counsel's prompt attention to the DPA's complaint about this misstatement), the DPA believes that if the Commission is going to consider Direct Energy's prefiled testimony, then the DPA desires to conduct discovery on not only its "expert" testimony, but on what that expert knows about how Direct Energy conducts its business.¹ This latter issue goes directly to the DPA's concern, expressed in its comments, regarding the need for amended regulations governing third-party suppliers to be in place before the Commission allows Direct Energy to communicate with Delmarva customers via Delmarva bill inserts (should the Commission determine that it will grant Direct Energy's petition).

¹ The announcement also states that Direct Energy "will serve" 315,000 Delmarva customers and 84,000 Delaware Electric Cooperative customers. However, representatives of the Cooperative have informed the DPA that its customers have reported that when they call Direct Energy to inquire about service, they are told that Direct Energy does not provide service to Cooperative customers. The DPA has requested Direct Energy to correct that representation.

WHEREFORE, for the foregoing reasons, the Delaware Division of the Public Advocate respectfully requests that the Commission: (1) grant Delmarva's request to strike Direct Energy's comments and prefiled testimony; or (2) alternatively, grant Delmarva's request to postpone the hearing on Direct Energy's petition, appoint a Hearing Examiner, and allow discovery on the allegations in Direct Energy's comments and prefiled testimony.

/s/ Regina A. Iorii

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