



STATE OF DELAWARE

**PUBLIC SERVICE COMMISSION**  
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## **MEMORANDUM**

**TO:** The Chairman and Members of the Commission

**FROM:** Connie McDowell, Senior Regulatory Policy Administrator

**DATE:** September 15, 2016

**SUBJECT:** 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 TO DISTRIBUTE AN EDUCATIONAL BILL INSERT REGARDING THE OPTIONS AVAILABLE UNDER THE CONTRACT AWARDED BY THE STATE OF DELAWARE (FILED JUNE 30, 2016)- PSC Docket No. 16-0744

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### **Background**

Section 68 of the FY2016 Bond and Capital Improvements Act of the State of Delaware created an Electricity Affordability Committee (the "Committee") to evaluate an opt-in electricity affordability program for residential and small business customers based on the potential benefits derived from a combination of a multi-year fixed price per kWh offer, value added products and services to help customers better manage their overall energy bills, and other potential consumer benefits. On January 22, 2016, as authorized by the Committee, the PSC issued a Request for Proposals from electric suppliers seeking the best electric supply offer for residential and small commercial customers. On April 22, 2016, the Committee accepted PSC Staff's recommendation that the Direct Energy Service's proposal offered the most benefits to residential and small business customers. On June 16, 2016, the Secretary of State executed a contract with Direct Energy to provide a State certified voluntary opt-in electric supply product for Delaware residential and small commercial customers.

On June 30, 2016, Direct Energy Services petitioned the Public Service Commission to issue an order directing Delmarva Power & Light Company to distribute an educational bill insert to all residential and small commercial customers describing the options available under the contract. On August 31, 2016, along with other commenting parties, Direct Energy Services filed comment and supporting testimony on behalf of their petition. On September 3, 2016, Delmarva Power & Light Company filed an Emergency Motion to postpone the scheduled September 20 consideration of Direct Energy's petition and to allow for discovery; or as an alternative to strike Direct Energy's written comment and incorporated expert testimony. On September 3, 2016, the Division of the Public Advocate filed comment supporting Delmarva Power & Light Company's motion and asking the Commission to strike Direct Energy's comments and prefiled testimony. Assuming the Commission's discussion on Delmarva

Power's emergency motion can be amicably resolved and the docket proceeds to hearing, Staff would offer the following analysis.

### **Application**

Direct Energy Service's Petition to the Commission was filed, requesting the Commission to issue an order directing Delmarva Power & Light Company to distribute an educational bill insert to all residential and small commercial customers describing the options available under the contract. On July 26, 2016, under Commission Order 8922, the Commission opened this docket authorizing a public notice to solicit written comments and/or interventions from interested persons for the Commission's consideration of the Petition on or before August 31, 2016 and further noticed the Commission would hear this matter directly at its regularly scheduled meeting on September 20, 2016.

By August 31, 2016, responsive comment was received from the Division of the Public Advocate, American Coalition of Competitive Energy Suppliers ("ACCES"), WGL Energy Services, Inc., Direct Energy Services, LLC, Retail Energy Supply Association ("RESA"), and Delmarva Power & Light Company. The Public Advocate intervened by statutory right and both Delmarva Power & Light Company and the Retail Energy Suppliers Association requested intervention.

ACCES comment focused on the need to enhance consumer education on customer choice and recommends enhancing the availability of information via website and other material. WGL expressed concern and recommended that if the Commission elected to include the brochure in Delmarva's bills that other suppliers should be given the same opportunity. Delmarva Power opposed the use of their billing system on several grounds, including the likelihood that customers would sense the offer was somehow recommended by Delmarva Power.

The inclusion of another specific company's brochure materials in Delmarva Power bills has not been requested or conducted previously. At first blush, it would seem to appear inappropriate for the Commission to order Delmarva Power to include unrelated materials in their bills. However, the Legislature did authorize the State to recommend a single preferred electric supply provider in accordance with Section 68 of the Bond and Capital Improvements Act. Within that language, the Secretary of State was given the authority to direct the Public Service Commission to coordinate the implementation of the program including appropriate customer awareness and marketing activities. This is a new assignment of responsibility to the Commission and appears to possibly include the discretion to grant Direct Energy Service's petition.

### **Staff Recommendation**

Staff has reviewed Direct Energy Service's petition and the comments of the various parties. As has been previously noted, enhanced customer education around customer choice is certainly needed in Delaware. Staff has previously reviewed a Pennsylvania website related to customer choice and recognizes that there is a definite need for more education and information related to customer choice in Delaware. Staff is also aware of the issues surrounding Direct Energy Service's request. While the Legislature provided the Commission with responsibility to coordinate the implementation of the program, including customer awareness and marketing activities, it did not specify how that should occur. Despite Direct Energy Services being the State's exclusively contracted electric supplier, it would seem inappropriate to require Delmarva Power to include a Direct Energy Service's Brochure in their customer mailings. In considering the Electric Supplier Regulations, the Commission has already

authorized electric suppliers to receive customer names, service and mailing addresses by requesting such from the utility. This already provides Direct Energy Services with a mechanism to get their materials out to Delmarva Power customers without creating the appearance of Delmarva Power supporting the customer offering.

Staff recommends the Commission consider the following approach with respect to Direct Energy Service's petition:

1. Rather than including a Direct Energy Service's Brochure, Staff recommends the parties work together to design a generic brochure to help educate Delmarva Power's customers on the availability of customer choice supply options and that Delmarva include such brochure in a one-time monthly mailing to its residential and small commercial customers, at Commission expense.
2. That the generic brochure describe the supply offerings currently available in Delaware and prominently include reference to a new PSC webpage for more information on how to shop for electric supply in Delaware.
3. That Commission Staff be tasked with establishing a new webpage, to prominently display electric supply offerings and ensuring that Direct Energy Services is properly noted as the State's exclusively contracted electric supplier.
4. That Delmarva Power & Light Company provide Direct Energy Services with a residential and small commercial customer name and address listing, based on the Electric Supplier Regulations, Section 3.7.
5. That Direct Energy Services be encouraged to share their proposed educational and marketing approaches, as it relates to the State's contractual effort, with Commission Staff for review and comment.

Attach: Draft Order

**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 ) PSC DOCKET NO. 16-0744  
DELMARVA POWER & LIGHT COMPANY TO )  
DISTRIBUTE AN EDUCATIONAL BILL )  
INSERT REGARDING THE OPTIONS )  
AVAILABLE UNDER THE CONTRACT )  
AWARDED BY THE STATE OF DELAWARE )  
(FILED JUNE 30, 2016) )

**ORDER NO. xxxx**

**AND NOW**, this 20<sup>th</sup> day of September 2016, the Delaware Public Service Commission (the "Commission") determines and orders the following:

**WHEREAS**, The Delaware "Electric Utility Restructuring Act of 1999" provided that customers of a public utility should have the right to purchase electric supply from retail electricity providers. The "Electric Utility Retail Customer Supply Act of 2006" further amended the Delaware Code providing that customers of an electric public utility should have the right, but not necessarily an obligation, to purchase electricity from retail suppliers<sup>1</sup>; and

**WHEREAS**, Section 68 of the FY2016 Bond and Capital Improvements Act of the State of Delaware created an Electricity Affordability Committee (the "Committee") to evaluate an opt-in electricity affordability program for residential and small business

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<sup>1</sup>26 Del. C. §1002(2) and §1003

customers based on the potential benefits derived from a combination of a multi-year fixed price per kWh offer, value added products and services to help customers better manage their overall energy bills, and other potential consumer benefits; and

**WHEREAS**, after issuance and evaluation of a Request for Proposals, the Committee determined that a Direct Energy Services proposal offered the most benefits to residential and small business customers; and

**WHEREAS**, based on the Committee's selection, the Secretary of State was authorized to enter into a contract with a PSC-certified energy provider with sufficient fiscal and technical experience, to implement the program by October 31, 2015; and

**WHEREAS**, the Secretary of State executed a contract with Direct Energy Services on June 16, 2016 to provide a voluntary opt-in electric supply product for Delaware residential and small commercial customers; and

**WHEREAS**, the Contract permits Direct Energy Services to identify itself as "Approved by the State of Delaware" "as a special electric supply product offering for Residential and Small Commercial customers" and as "Electric Retail Supplier Exclusively Contracted by the State of Delaware;" and

**WHEREAS**, Section 68 of the FY2016 Bond and Capital Improvements Act of the State of Delaware further authorized the Secretary to direct the Public Service Commission to coordinate the implementation of the program including appropriate customer awareness and marketing activities; and

**WHEREAS**, Direct Energy Services on June 30, 2016 petitioned the Public Service Commission to issue an order directing Delmarva Power & Light Company to distribute an educational bill insert to all Residential and Small Commercial customers describing the options available under the contract; and

**WHEREAS**, on July 26, 2016, under Commission Order 8922, the Commission opened this docket authorizing a public notice to solicit written comments and/or interventions from interested persons for the Commission's consideration of the Petition on or before August 31, 2016 and further noticed the Commission would hear this matter directly at its regularly scheduled meeting on September 20, 2016; and

**WHEREAS**, responsive comment was received from the Division of the Public Advocate, American Coalition of Competitive Energy Suppliers ("ACCES"), WGL Energy Services, Inc., Direct Energy Services, LLC, Retail Energy Supply Association ("RESA"), and Delmarva Power & Light Company; and

**WHEREAS**, on September 3, 2016, Delmarva Power & Light Company filed an Emergency Motion to postpone the scheduled September 20 consideration of Direct Energy's petition and to allow for discovery; or as an alternative to strike Direct Energy's written comment and incorporated expert testimony; and

**WHEREAS**, on September 3, 2016, the Division of the Public Advocate filed comment supporting Delmarva Power & Light Company's motion and

asking the Commission to strike Direct Energy's comments and prefiled testimony; and

**WHEREAS**, the Commission declined to discuss the motion at its regularly scheduled meeting of September 6, 2016, citing potential violation of Administrative Procedures as the item had not been properly noticed on the agenda; and

**WHEREAS**, the Commission noted it would address Delmarva Power's motion at its regularly scheduled September 20, 2016 meeting, prior to the conduct of the Hearing; and

**WHEREAS**, Direct Energy Services, after discussion of Delmarva Power & Light Company's emergency motion, agreed to withdraw its comments and prefiled witness testimony as a matter of procedural expediency, agreed to by the parties; and

**WHEREAS**, the Commission ruled on the interventions of the parties present and prepared to participate in the proceeding, conducted a Hearing limited to legal arguments with respect to Direct Energy Service's petition; and

**WHEREAS**, the Commission has reviewed the petition and comments, heard legal argument from Commission Staff and all the intervening parties and has deliberated the merits of the various legal positions in an open public meeting;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF  
NOT FEWER THAN THREE COMMISSIONERS:**

1. That the Commission hereby denies the petition of Direct Energy Services to include their educational brochure in Delmarva Power's residential and small commercial customer utility bills.

2. That the Commission directs Delmarva Power and Light Company, Staff and the intervenors to develop a generic customer choice educational brochure for inclusion in Delmarva Power & Light Company Residential and Small Commercial bills, expenses of which will be paid by the Commission, which shall reference a Commission webpage for additional information, and be completed no later than November 30, 2016.

3. That the Commission further directs Delmarva Power & Light Company to include such brochure in a full cycle of monthly billings within 60 days of brochure availability.

4. That the Commission further directs Delmarva Power & Light Company to provide Direct Energy with a listing of each Residential and Small Commercial retail customer's name and mailing address, withholding only those customers who have elected to opt out of such list in accordance with 26 *Del.C.Admin.*§3001,3.7.<sup>2</sup>

5. That the Commission further directs that Staff shall immediately develop and implement a webpage on the Commission's website, that details the customer choice offerings available for

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<sup>2</sup> 3.7 Customer Information. An Electric Supplier may request a list from an Electric Distribution Company which contains Retail Electric Customer's name, service address and mailing address. A Retail Electric Customer may elect to opt out of the list.

Residential and Small Commercial customers, identifies the price to compare for the various rate classes and highlights the fact that Direct Energy is the "Electric Retail Supplier Exclusively Contracted by the State of Delaware" to provide an economical and beneficial supply offer to residential and small commercial customers.

6. That although the Commission authority with respect to electric supplier marketing and educational practices may be limited, the Commission suggests that Direct Energy should review its State related marketing and educational plans with Commission Staff to ensure a proper representation on the Commission website.

7. That this docket shall be considered closed at such time as Delmarva Power & Light Company has mailed the generic brochures and Staff has added an appropriate webpage for residential and small commercial customer reference.

8. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary and proper.

BY ORDER OF THE COMMISSION:

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Chair

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Commissioner

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Commissioner

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Commissioner

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Commissioner

DRAFT

ATTEST:

/s/ Donna Nickerson

Secretary