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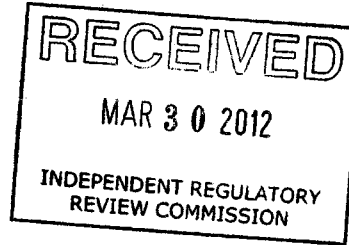
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March 27, 2012

2929



**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: Revision of Code of Conduct for Electric Distribution Companies and Electric  
Generation Suppliers, Docket No. L-2010-2160942

Dear Secretary Chiavetta:

On behalf of Direct Energy Services, LLC enclosed please find the original of its Comments along with the electronic filing confirmation with regard to the above-referenced matter.

Sincerely,

A handwritten signature in cursive script that reads "Dan Clearfield".

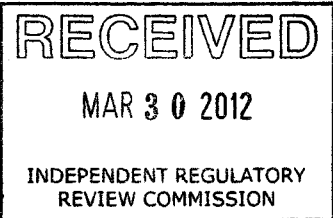
Daniel Clearfield

DC/lww  
Enclosure

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION



Revision of Code of Conduct )  
for Electric Distribution Companies )  
and Electric Generation Suppliers )

Docket No. L-2010-2160942

COMMENTS OF DIRECT ENERGY SERVICES, LLC

I. INTRODUCTION

On August 25, 2011, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) issued for comments proposed changes to the Competitive Safeguards chapter of its customer choice regulations. The proposed rules were published in the *Pennsylvania Bulletin* on February 11, 2012, thereby kicking off the comment period for interested parties in this proceeding. Direct Energy Services, LLC (“Direct Energy”) hereby files its comments related to the Commission’s proposed rules.

II. COMMENTS

A. Direct Energy Supports the PUC Proposal Regarding the Use of the EDC Name

Direct Energy generally affirms and supports the comments made by the Retail Energy Supply Association (“RESA”) which represent the consensus of a diverse group of suppliers. However, Direct Energy does wish to express its own view as it relates to § 54.122 (3) (iv) and § 54.122 (3) (v). Under § 54.122 (3) (iv), it appears that an electricity generation supplier (“EGS”) could use an electric distribution company (“EDC”) Identifier (“EDC Identifier”) provided that appropriate disclosures are made to the customer. However, § 54.122 (3) (v) appears to say the opposite – that an EGS (including those affiliated and unaffiliated with the EDC) must have a name or fictitious name that is dissimilar to the EDC and the EDC’s corporate parent.

While RESA recommends that the Commission settle this discrepancy by permitting any EGS to use a name similar to the EDC on the condition that appropriate disclosures are present, Direct Energy recommends that the Commission delete proposed § 54.122 (3) (iv) and adopt proposed § 54.122 (3) (v), thereby preventing all EGSs, whether affiliated with an EDC or not, from having the same or substantially similar name or fictitious name as an EDC. Stated differently, Direct Energy supports the PUC's proposal to prevent any EGS from marketing using the name of the EDC. Direct Energy believes this approach would provide several benefits. Specifically, preventing use of the same or substantially similar EDC name or fictitious name would level the playing field and prevent exploitation of the name recognition and brand loyalty associated with an EDC's name by any entity. Switching statistics in Pennsylvania and Ohio prove the advantage that such a name confers<sup>1</sup> and the EDCs have acknowledged this advantage.<sup>2</sup> Additionally, eliminating this option would negate any concerns about customers signing up with an EGS using an EDC's name or fictitious name in the wrongful belief they were simply getting a different rate from their utility. Such a rule would also help curb customer confusion whereby customers often times wrongly believe that an affiliated EGS provides a greater service quality level than if they enroll with an unaffiliated EGS. Third, when one reviews statewide customer awareness and understanding surveys, 15% of customers in some of the utility territories did not even know that they had the ability to choose a competitive supplier

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<sup>1</sup> See *Investigation of Pennsylvania's Retail Electric Market*, PA Docket No. I-2011-2237952, Comments of Direct Energy Services at 9, FN 13 (June 3, 2011), noting that FirstEnergy Solutions enjoys an 81.4% market share in its Ohio service territories. See also *Id.* at 42-43. Additionally, in Pennsylvania, FirstEnergy Solutions has secured 428 GWh (approximately 171,200 residential customers assuming 2500 kWh usage per quarter) as of the third quarter of 2011 versus 26 GWh (10,400 residential customers) as of the fourth quarter of 2010, most of which in the four FirstEnergy utility territories where there were few competitive offerings as the only other territory they are active in is in Duquesne with much more robust offerings for residential customers. *Energy Choice Matters* (November 2, 2011).

<sup>2</sup> *Joint Application of West Penn Power Company d/b/a Allegheny Energy Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520 and A-2010-2176732, Main Brief of The Retail Energy Supply Association at 15-18 (November 3, 2010).

and in another survey, 66% of residential and small business customers stated that they have not switched, with the majority of those customers expressing reasons for their decision that were not factually correct or because they had inadequate information. These are very disturbing results in light of the substantial publicity customer choice has received in 2010 and 2011. Two such reasons for not switching, which seem to provide an advantage to an affiliated EGS, include fearing that a switch will financially harm the utility and that they will receive a lower level of service reliability from the utility when switching to a competitor of theirs.<sup>3</sup> It stands to reason that customers who have these beliefs might view the EDC affiliated EGS as the “least offensive” choice.

Finally, this rule would eliminate the administrative burden placed on Staff and the Commission to police the use and placement of disclaimers related to use of EDCs’ names or fictitious names and entirely avoid the thorny issues associated with this marketing topic.

**B. Direct Energy Urges Active and Engaged Enforcement of the Code of Conduct**

In addition to enacting these new, enhanced Code of Conduct rules, Direct Energy urges the Commission to establish an active and engaged review and enforcement process to assure compliance generally, and particularly with respect to relationships with affiliates. Such an enforcement scheme should include spot checks, audits and a “tip line” that would permit EGSs or others to report suspicious conduct for investigation without fear of retribution or other negative consequences. Recall that EGSs must work with EDCs every day to initiate or change service bill and collect and coordinate deliveries. EGSs many times do not wish to threaten their relationship with EDC employees by alleging that the same employee was that hypothetically providing customer information to its affiliated EGS, giving them a competitive advantage.

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<sup>3</sup> *Investigation of Pennsylvania’s Retail Electricity Markets Investigation*, Docket No. I-2011-2237952, Comments filed by Direct Energy Services, LLC at Appendix A and Appendix B, June 3, 2011.

RESA's recommendation that the Commission institute an Abbreviated Dispute Resolution Process ("ADRP") which would permit EGSs to utilize a less costly, more formal and expedited process to bring disputes before the Commission is another useful tool that would assist in ensuring compliance with these regulations.

### III. CONCLUSION

Direct Energy again thanks the Commission for its strong leadership towards advancing the competitive market in Pennsylvania and supports its recommendation that the affiliated EGS cannot operate utilizing the same or substantially similar name as the EDC. The Commission's good work in this case complements and enhances the work undertaken by the Commission in its other dockets to find an appropriate end state for Pennsylvania's competitive generation function. Direct Energy looks forward to continuing to work with the Commission on these very important issues.

Respectfully submitted,



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Date: March 27, 2012

Attorneys for the Direct Energy Services LLC