

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation of Pennsylvania's Retail
Electricity Market: Intermediate Work Plan

:
: Docket No. I-2011-2237952
:
:

**COMMENTS OF
DIRECT ENERGY SERVICES, LLC,
DOMINION RETAIL, INC.,
AND INTERSTATE GAS SUPPLY, INC
POST MARCH 21, 2012 EN BANC HEARING**

Todd S. Stewart
PA Attorney I.D. #75556
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
E-mail: tsstewart@hmslegal.com
Telephone: (717) 236-1300
Facsimile: (717) 236-4841

Dan Clearfield, Esquire
Attorney ID #26183
Deanne M. O'Dell, Esquire
Attorney ID #81064
Carl Shultz, Esquire
Attorney ID #70328
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000 (phone)
(717) 237-6019 (fax)

Counsel for Dominion Retail, Inc. and
Interstate Gas Supply, Inc.

Counsel for Direct Energy Services, LLC

Date: April 4, 2012

I. INTRODUCTION

Direct Energy Services, LLC (“Direct Energy”), Dominion Retail, Inc. (“Dominion”) and Interstate Gas Supply, Inc. (“IGS”) greatly appreciate the Public Utility Commission’s (“PUC” or “Commission”) continuing efforts to improve the retail energy markets in Pennsylvania, for the benefit of consumers and the Commonwealth’s overall economic health and vitality. They also appreciate the opportunity to comment further on the matters discussed at the March 21 *en banc* hearing. These comments serve two purposes. The first is to set out the jointly-held positions of Direct Energy, Dominion and IGS regarding the transitional models described by Staff in the Discussion Document provided prior to the *en banc* hearing and to summarize the alternative approach that they believe would be best for Pennsylvania. The second is to address the concerns about implementing an optimal end-state that were raised by some of the participants at the hearing.

II. THE OPTIMAL END-STATE

While Direct Energy, Dominion and IGS commend Staff for their hard work and creativity in proposing three alternatives for a new approach to default service, they believe strongly that the true end-state that would best serve the consumers and businesses of Pennsylvania would move the market beyond the confines of default service, and to a construct in which all customers – **all customers** – are served by the competitive market. The policy of the Commonwealth, as expressed in the “Choice Act,”¹ is that “competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.”² Accordingly, default service was designed originally as a mechanism to aid in the transition from a vertically-integrated monopoly system to a fully competitive one by instructing the electric

¹ Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §2801, *et. seq.*

² 66 Pa. C.S. § 2802(5).

distribution companies (“EDCs”), or a PUC determined alternative, to provide electric service to those customers who were not able to avail themselves of the nascent competitive market. In 2008, at a time when, in many service territories, generation rate caps continued to artificially restrain the default service rates that the EDCs were permitted to offer, the General Assembly enacted Act 129 which revised the standards by which wholesale providers would procure power for default service with the goal that the procurement plans would result in customers receiving service at the least cost in the long term. Importantly, however, Act 129 maintained the purpose of default service as a required alternative for those who did not or could not choose (because their supplier has stopped providing service), and maintained the overarching goal of the Commonwealth to use the competitive market – and not regulation – to assure the best possible generation price for consumers.³

With the expiration of rate caps throughout Pennsylvania, all regulatory restraints on the competitive market have been lifted. Moreover, the Commission’s policies have attracted numerous electric generation suppliers (“EGSs”) to all EDC jurisdictions. There are some 30 EGSs currently offering service to residential electricity customers, and 50 EGSs ready to serve commercial and industrial customers.⁴ Pennsylvania customers simply no longer need a default electricity service, regardless of whether that service is provided by a utility or some other entity. The continued presence of a default electricity provider not only serves no useful function, it will hinder the ability of the energy markets to further the Commission’s critical mission of allowing the competition to deliver economic efficiency and expansion, job creation, innovation, and investment in the Commonwealth. So long as there exists a regulatory alternative where the

³ Act 129 of 2008.

⁴ http://www.puc.state.pa.us/electric/electric_suppliers_list.aspx.
<http://www.papowerswitch.com/shop-for-electricity/>.

price is set by periodic auctions and is associated with the existing EDC, the majority of residential and small commercial customers will continue on default service due to regulatory inertia, and EGSs will never be sure that competition will actually be sustainable enough to make material investments in products and services.

For these reasons, Direct Energy, Dominion and IGS submit that the three options described in the Secretarial letter are unnecessary and counter-productive compromises compared to what the Commission could achieve if it makes full use of the opportunity before it. Rather than spending up to five years attempting to refine a market structure with inherent limitations, Direct Energy, Dominion and IGS strongly encourage the Commission to recommend the adoption of a market structure in which electricity service is provided only by competitive retailers, with regulated utilities focusing solely on their responsibility to provide safe, reliable, and affordable delivery services. This structure would have the following characteristics:

- Default service, whether provided by the utility or another entity, would be eliminated and all customers on default service at the time of its elimination would be transferred to EGSs (via auction or assignment), if they haven't chosen a competitive alternative by that time.
- All customers who remained on default service as of June 1, 2015 would be assigned to EGSs through a default service auction. Prior to that, on or around June 1, 2014, all default customers would be asked to either choose an EGS or affirmatively choose to stay on default service.
- A "last resort" "Back Stop" service ("BSS") would be available to customers whose EGS intended to cease operations and who had not made other arrangements or had other arrangements made for them before their EGS actually ceased operations.
- Customers who wished to end their relationship with their EGS would choose another supplier; if a customer took no affirmative action he or she would continue to be supplied by her existing supplier at prices, terms and conditions.

- Move-Ins (new or moving customers) would be required to initiate new electric service through a supplier, not through the EDC. The EGS would arrange the service start via EDI.
- For a transitional period, a retailer would be able to make use of utility-consolidated billing, branded with that retailers name and logo, and utility call center operations while it made arrangements to take on the billing and customer service functions on its own.
- After the transitional period, billing for all charges – delivery as well as EGS charges – would be done through retailers, for all customers. All retail-related customer service inquiries would also be handled by EGSs.
- After the transitional period, a utility would be allowed (though not required) to move its billing and customer service functions into a structurally-separated affiliate and offer those services to the market at large at competitive rates. Costs for billing services and customer service operations unrelated to the utility’s distribution function would be removed from distribution rates, for all utilities, without regard to whether the utility had chosen to form a competitive billing and customer service affiliate.

The end state that Direct Energy, Dominion and IGS are advocating would enable the development of a fully competitive market while assuring service access for all customers. Each customer would have the choice of scores of EGSs from which to obtain service. If an EGS were to exit the market or otherwise not be able to provide service that EGSs’ customers would be transferred to another EGS (or group of EGSs) that would be required to take on such customers. The customers would be serviced via a “Back-Stop Service” at hourly market based rate plus adder to cover costs and risks associated with providing this back stop service. If a residential or small commercial customer failed to choose a competitive supplier at the end of a contract term (or because of a dispute with his/her supplier) the customer would continue to be served by his or her existing supplier at rates terms and conditions disclosed to him/her prior to the end of the term. New and moving customers would have the same options – either choose an EGS as part of the process of initiating electric service or be assigned to BSS service for a limited period. If the new/move customer did not make a choice of a supplier, he/she would be randomly assigned to an EGS.

As a transition to this end state, Direct Energy, Dominion and IGS suggest a two-step process: first all customers still on default service at June 1, 2014 would be asked to choose from among a list of participating EGSs (at the EGSs' rate) or the then available default service. Next, at June 1, 2015, customers would be transitioned to EGS service via an auction or assignment, to participating EGS.

III. CONCERNS RAISED AT THE HEARING

Participants in the March 21 *en banc* hearing raised a number of concerns about moving away from the current market structure, even to one that retains the unnecessary feature of default service. In most cases these were fair expressions of concern about how certain functions of the existing structure would be carried out in a new one. In a few instances the concerns seemed to be less substantive and more reflective of a desire to maintain the status quo. In either case, questions about a new market structure should be welcomed, and in every case there are answers to these questions that come either from other jurisdictions that have adopted a market structure similar to that which Direct Energy, Dominion and IGS are suggesting or from the collective experience and problem-solving ability of the stakeholders involved in this process. It should come as no surprise that a system developed over the generations during which Pennsylvania relied on vertically-integrated monopoly utilities retains an extensive functional role for the distribution utility, even 16 years into the restructuring process. The complications from moving to a system that relies more on competitive entities are no reason, however, to avoid this further, necessary transition. Rather, they show the extent to which vestigial inefficiencies of the monopoly era constrain the current structure and must be expunged.

The concerns raised at the hearing fall into two broad categories: (1) those in which a solution is readily available from another jurisdiction, and (2) those for which a solution will

have to be chosen from among options proposed by the stakeholders in this process working together in good faith.

Among the former are:

- Design and implementation of a POLR service provided by an entity other than the distribution utility. This has been done in Texas. Each EGS would have to agree to being part of the pool of EGSs available to provide whatever backstop services are authorized. The PUC would seek volunteers to provide service to customers of an EGS that exits the market. If no volunteers step forward, then EGSs would be assigned the responsibility by the PUC on a random basis.
- Re-orientation of the customer-facing retail functions (such as billing and customer service) away from the distribution utility and toward competitive suppliers.
- Compassionate treatment of low-income customers and other customers facing hardships. The best approach would be to authorize the PUC to establish a state-wide, low income assistance fund that would be funded by a non-bypassable charge on all distribution bills and provide a credit to eligible customers. The most efficient approach would be to have the fund administered on a state-wide basis, similar to the Universal Service Fund to assist low-income telephone customers. In this way, all low income customers will be able to obtain the benefits of the competitive market.
- Fair treatment of non-paying customers. Similar to purchase of receivables (“POR”) customers today, an EGS would authorize the EDC to terminate service to a customer who was in arrears (with the same notice and due process protections that exist today). When a terminated customer desired to re-establish service, the customer would have to enter into a payment agreement to pay off any previous arrearage (just as today). To prevent “EGS shopping,” a customer would be required to reinstate service with his or her EGS until the arrearage is paid off (“switch hold”).
- Provision of net metering for customers with behind-the-meter generation. The customer’s chosen EGS would be required to provide power in a net metering situation. However, any subsidy provided to the net metering customer (difference between the payment at generation and transmission rates for excess power sold back into the grid and the existing wholesale market price for power) would be recovered through a non-bypassable charge in distribution rates.
- ISO settlement processes. EDCs would continue to conduct settlements as they do today, unless that process can be “subcontracted” to PJM.

Among the latter are:

- Accommodation of existing long-term contracts for facilities eligible to meet the Alternative Energy Portfolio Standard. Procurement of the RECs should be done by the load serving entity.
- Details of mechanism by which customers are transitioned away from default service to competitive suppliers (though several options shown to be viable elsewhere are available for consideration and have been discussed above.
- Treatment of energy efficiency and load management programs put in place by utilities in compliance with Act 129. These programs would continue to be run and administered through the EDC; however the PUC should be charged with attempting to identify opportunities to contract with EGSs or ESCOs to provide the load reduction services and activities which are now the obligation of the EDCs.

We conclude by noting that while many of the changes Direct Energy, Dominion and IGS believe should be implemented may be technically within the Commission's existing statutory authority, the end-state we recommend and the cumulative changes require to achieve that end-state will certainly require changes to the organic statutes that describe the Commission's authority. We believe strongly that it is important to recognize this fact at the outset so that the Commission does not err on the side of acting in too limited a fashion in an attempt to stay within the existing statutory framework. It would be far better to present to the Legislature a coherent vision of the end-state that would best serve the Commonwealth's interest, and seek its approval to implement that vision, rather than settle for minor alterations that would fail to take full advantage of the expansive opportunity available to the Commission today.

[Signatures appear on next page]

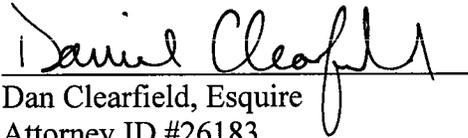


Todd S. Stewart
PA Attorney I.D. #75556
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
E-mail: tsstewart@hmslegal.com
Telephone: (717) 236-1300
Facsimile: (717) 236-4841

Counsel for Dominion Retail, Inc. and
Interstate Gas Supply, Inc.

Date: April 4, 2012

Respectfully submitted



Dan Clearfield, Esquire
Attorney ID #26183
Deanne M. O'Dell, Esquire
Attorney ID #81064
Carl Shultz, Esquire
Attorney ID #70328
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000 (phone)
(717) 237-6019 (fax)

Counsel for Direct Energy Services, LLC