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August 30, 2016

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Proceeding to Evaluate Transition to Corrected Non-Solar Tier I Calculation
Methodology, Docket No. M-2009-2093383

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Comments to the Tentative Order dated August 15, 2016 of Direct Energy with regard to the above-referenced matter.

Sincerely,



Deanne M. O'Dell

DMO/lww
Enclosure

cc: Scott Gebhardt, TUS, w/enc. (via email only)
Kriss Brown, Law Bureau, w/enc. (via email only)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proceeding to Evaluate Transition to :
Corrected Non-Solar Tier I Calculation : Docket No. M-2009-2093383
Methodology :

**COMMENTS OF DIRECT ENERGY
TO TENTATIVE ORDER ENTERED AUGUST 15, 2016**

I. INTRODUCTION

In its August 15, 2016 Tentative Order (“Tentative Order”), the Commission invited comments regarding the impact of an unanticipated seven percent increase in the compliance obligations related to the Alternative Energy Portfolio Standards (“AEPS”) Act.¹ The AEPS Act requires electric distribution companies (“EDCs”) and electric generation suppliers (“EGSs”) (collectively, Load Serving Entities or “LSEs”) to ensure that the electric energy they sell to retail customers is comprised of electricity generated from alternative energy sources (“AECs”) in the percentage amounts set forth in the law.² Due to a calculation error, a portion of the annual non-solar Tier I obligation for the 2016 compliance year has increased by seven percent beyond expectations. Consequently, all LSEs are facing an increased cost of compliance due to the flawed calculation. While LSEs can meet this obligation through the purchase of additional AECs, retiring banked AECs they already own or making an alternative compliance payment, all of these options impose unanticipated costs on the LSEs that could not have been factored into their estimations of the costs of AEPS compliance for 2016. Because the increased obligations

¹ 73 P.S. § 1648.3.

² 73 P.S. § 1648.3.

could not have been anticipated, LSEs are likewise facing unanticipated increased costs which they need to determine how to recover.

Direct Energy Services, LLC, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Small Business, LLC, Bounce Energy PA LLC, and Gateway Energy Services Corporation (collectively, “Direct Energy”) maintain EGS licenses to provide electricity and related services to retail customers throughout Pennsylvania. As such, Direct Energy is required to comply with the AEPS Act and will need to determine how to handle the unanticipated 7% increase in compliance costs for the 2016 compliance year. For the reasons discussed further below, Direct Energy supports the Commission’s proposed remedial option of leveraging the purchasing power and billing functionality of the EDCs to ameliorate the market effects of the miscalculation.³ The result of this option will be to fairly and equally distribute the costs of the miscalculation to all customers (shopping and non-shopping) in the same manner and at the same point in time. It avoids complicated contracting and timing issues and presents a reasonable current way to address the situation and move forward.

II. COMMENTS

As noted above, the impact of the 7% miscalculation of the non-solar Tier I compliance obligations for 2016 will require Direct Energy to incur costs to comply – regardless of the method elected by Direct Energy to comply. Calculating the costs of AEPS compliance does involve some variances between the anticipated costs and the actual, year-end trued-up costs. However, before now, those variances have been within a reasonable margin and costs to comply with the variances have been minimal. The situation presented here is very different because the

³ Tentative Order at 5.

adjustment is so much higher than could have been anticipated and far beyond any prior needed adjustments. Because this dramatic increase in costs could not have been anticipated, Direct Energy had no reason to factor in such a significant increase in costs into contracts entered into with its customers during the 2016 AEPS compliance year (which covers the period of June 1, 2015 through May 31, 2016). Therefore, Direct Energy is left with no good option to recover these costs at this point from customers. Many of Direct Energy's customers who received power from Direct Energy during the June 1, 2015 through May 31, 2016 time period may no longer be Direct Energy customers. To the extent these customers are still with Direct Energy, reopening existing contracts and attempting to retroactively impose these costs on them is risky (to the extent that it is even possible).

Given these realities, the only other option would be for Direct Energy to include the costs of the AEPS 2016 compliance year error calculation in the customer contracts that are being priced today. Doing so, however, would distort the actual market price for this power because the pricing would include retroactive costs. Also, by embedding these costs into future contracts, there is a misalignment of the customers who received the power during the compliance year and the payment of those costs by other customers. Moreover, contracts that are being priced today include power flow for the 2017 AEPS compliance year (June 1, 2016 through May 31, 2017) and likely the 2018 AEPS compliance year (June 1, 2017 through May 31, 2018) as well. All of this results in a misalignment of costs and payment of the AEPS 2016 error calculation. Because of the structure of the market and contracting,⁴ there is no other reasonable option for Direct Energy to seek to recover these costs.

⁴ These barriers include: (1) the fact that EGS contracts with customers have varying term lengths; (2) contracts entered into today are for future power flow dates into at least the current AEPS compliance year and likely ones further out into the future; and, the restrictions on the ability of

While Direct Energy recognizes that the Commission's second option would provide some time for Direct Energy to spread out the unanticipated costs it needs to recover, this option does not address any of the concerns discussed above. Thus, for these reasons, Direct Energy supports the Commission's first option to leverage the purchasing power and billing functionality of the EDCs to ameliorate the market effects of the miscalculation. Importantly all of Direct Energy's generation customers (past, present and future) are distribution customers of the EDCs. Therefore, by requiring each EDC to procure the AECs, transfer them to all LSEs operating in the respective EDC service territory and then recovering the costs of the procurement from all the EDC customers, the costs of the error calculation are fairly and equitably passed on to all customers. This approach does not require determining what entity provided generation to the customer during the AEPS 2016 compliance period nor does it unreasonably delay addressing the issue and moving forward. As such, this option is a reasonable and fair way to address this issue and Direct Energy recommends that the Commission move forward to implement it.

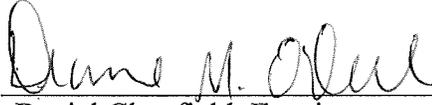
III. CONCLUSION

Direct Energy appreciates the Commission's initiative to seek comments on how to reasonably remediate the erred calculation in 2016 AEPS obligations. For reasons discussed above, Direct Energy supports the option of requiring the EDCs to procure the credits, transfer them to all LSEs and then recover the costs from all customers through a non-bypassable charge. This option would fairly and equitably spread among all customers the costs resulting from the

EGSs to pass-through unanticipated costs to existing mass market customers consistent with the *Fixed Price Label Order*. See, *Guidelines for Use of Fixed Price Labels for Products With a Pass-through Clause*, Docket No. M-2011-2362961, Final Order entered November 14, 2013.

miscalculation which was unanticipated and could not have been factored into the contracts
Direct Energy priced for customers receiving service during the 2016 AEPS compliance year.

Respectfully submitted,



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