



Direct Energy

Corresp.
05-M-0858
OGC
ORMO

May 31, 2006

Hon. Jaclyn Brilling
Secretary
State of New York Public Service Commission
Three Empire State Plaza, 14th Floor
Albany, New York 12223-1350

2006 JUN -2 AM 11: 00

RECEIVED
PUBLIC SERVICE
COMMISSION
OSEC FILES-ALBANY

Re: Case 05-M-0858 – In the Matter of State-Wide Energy Services Company Referral Programs.

Dear Secretary Brilling:

Enclosed please find an original and five copies of Direct Energy Services, LLC's proposed agreements for use in enrolling residential and small commercial customers in Con Edison's ESCO referral program.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Enver Acevedo
Manager, Government and Regulatory Affairs
203-328-3568

**Direct Energy Services, LLC ("DIRECT ENERGY")
RESIDENTIAL SALES AGREEMENT ("Agreement")**

Agency and Agreement to Sell and Purchase Energy. Customer hereby appoints DIRECT ENERGY as its limited agent for the purposes of acquiring the supplies necessary to meet its electricity needs, arranging, contracting for and administering transmission and related services over interstate facilities and those of the Local Distribution Utility ("LDU") needed to deliver electricity to the Customer's premises. These services are provided on an arm's length basis and market-based compensation is included in the price noted above. DIRECT ENERGY agrees to sell and deliver and Customer agrees to purchase and accept the quantity of electricity, as estimated by DIRECT ENERGY, necessary to meet Customer's requirements based upon consumption data obtained by DIRECT ENERGY or the delivery schedule of the LDU. The amount of electricity delivered is subject to change based upon data affecting consumption obtained by DIRECT ENERGY or the LDU's delivery schedule.

Term. This Agreement shall commence on the date the change of provider to DIRECT ENERGY is deemed effective by the LDU. This Agreement will continue on a month to month basis until either party cancels or terminates the Agreement as per the Cancellation Section, below.

Cancellation. Upon receipt, Customer may rescind this Agreement upon three days notice. Thereafter, the Customer may cancel this Agreement at any time without penalty as long as DIRECT ENERGY is provided with thirty (30) calendar days' prior notice. Customer shall also be allowed to cancel the Agreement within the 15-day notice period of a price change from DIRECT ENERGY. Customer may also cancel the Agreement in the event Time of Use Service is selected, as provided in the "Eligibility" section below. Customer shall be provided a cancellation number upon any cancellation. Cancellation may be done by contacting DIRECT ENERGY at 1-866-348-4194 or in writing at the address provided in the "DIRECT ENERGY Contact Information" section below. DIRECT ENERGY has the right to cancel this Agreement for convenience and without any liability to Customer in the event Customer rescinds its information release authorization, as provided in the "Information Release Authorization" section below. DIRECT ENERGY shall provide at least fifteen (15) calendar days' notice prior to any cancellation of service to Customer. If notice of cancellation is not given at least 15 days prior to the next scheduled meter reading, the customer may request a special meter reading, which is typically subject to a service charge. Upon cancellation, Customer will be required either to select another energy service company or return to LDU service. In the event of any cancellation of this Agreement by Customer or DIRECT ENERGY after Customer has been switched to DIRECT ENERGY, cancellation will not be effective until the next regularly scheduled meter reading date following required notice to the LDU by DIRECT ENERGY. Customer is liable for all DIRECT ENERGY charges until the LDU has duly switched the Customer to the LDU or another energy supplier. A final bill will be rendered within twenty (20) calendar days after the final scheduled meter reading by the LDU or if access is unavailable, an estimate of usage will be used for the final bill, which will be true-up when the final meter reading is provided.

Eligibility. This Agreement is conditioned upon the Customer receiving service from the LDU for residential service. Should this Agreement be entered into without meeting the aforementioned condition, DIRECT ENERGY and the Customer reserve the right to terminate this Agreement without penalty as long as the other party is provided with fifteen (15) days' written notice prior to the effective day of the termination.

Pricing and Billing. The monthly price for electricity sold under this Agreement through the Customer's first two billing cycles shall be 7% off the LDU's applicable standard commodity price plus all applicable taxes ("Introductory Price"). After the first two billing cycles, the price for electricity sold under this Agreement shall be a variable \$/KWH price, established each month by DIRECT ENERGY based upon the market price of electricity and related market conditions. DIRECT ENERGY may change its pricing methodology upon 15 days notice to Customer. Such notice shall be provided at least 30 days prior to the Customer's next scheduled meter read. DIRECT ENERGY will invoice monthly via Customer's standard LDU bill for electricity sold under this Agreement, as measured by the LDU. The LDU may also issue invoices on behalf of DIRECT ENERGY at other times. Payment will be due and payable as specified in the LDU bill. Budget, levelized, or other payment plans may be available from Customer's LDU, as provided in the Home Energy Fair Practices Act ("HEFPA"). Customer payments remitted in response to the LDU's consolidated bill shall be pro-rated in accordance with procedures adopted by the Public Service Commission ("PSC").

Changes. Other than price changes, the terms of this Agreement can be changed by DIRECT ENERGY only with the Customer's affirmative consent.

Assignment. The Customer may not assign its interests in and obligations under this Agreement without the express written consent of DIRECT ENERGY. DIRECT ENERGY may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof in connection with any financial agreement and may assign this Agreement to another energy supplier, energy services company or other entity upon 30 days notice to Customer prior to the Customer's scheduled meter read date.

Information Release Authorization. Customer hereby authorizes DIRECT ENERGY to obtain and review information regarding the Customer's consumption history from the LDU. This information may be used by DIRECT ENERGY and any of its affiliates, agents or representatives to determine whether it will commence and/or continue to provide energy supply service to Customer and shall not be disclosed to a third-party unless required by law. Customer's execution of this Agreement shall constitute authorization for the release of this information to DIRECT ENERGY. This authorization will remain in effect during the Initial Term and any Renewal Term of this Agreement. Customer may rescind this authorization

at any time by providing written notice thereof to DIRECT ENERGY or calling DIRECT ENERGY at 1-866-348-4194. DIRECT ENERGY reserves the right to cancel this Agreement in the event Customer rescinds the authorization upon fifteen (15) calendar days' prior written notice.

Consumer Protections. The services provided by DIRECT ENERGY to Customer for residential purposes are protected under the Terms and Conditions of this Agreement and HEFPA. HEFPA deals, among other matters, with the time and form of the Final Termination Notice and Final Suspension Notice, physical termination and suspension of service, ending termination and suspension of service, restoration of service, deferred payment agreements, billing adjustments, multiple and two-family dwellings, persons receiving social services assistance and special procedures for medical emergencies, the elderly, blind or disabled and during cold weather. Customer may obtain additional information regarding consumer protections by contacting DIRECT ENERGY at (866)-348-4194, or the DPS at 1-800-342-3377, or by writing to the DPS at: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, or through its website at: <http://www.dps.state.ny.us>. The DPS monitors complaints against all energy companies, and an excessive number of complaints may result in an energy company no longer being eligible to supply electricity in New York State. The telephone number for inquiries and complaints about alternative suppliers is 1-888-697-7728.

Title. All electricity sold under this Agreement shall be delivered to a location considered the "Point of Delivery", which for electricity shall be at the NY ISO DIRECT ENERGY load bus (located outside of the municipality where Customer resides), and shall constitute the point at which title transfers and the sale occurs. DIRECT ENERGY shall indemnify and hold harmless Customer from all taxes, royalties, fees or other charges incurred with respect to the electricity before title passes.

Warranty. This Agreement makes up the entire Agreement with DIRECT ENERGY. **DIRECT ENERGY MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, AND DIRECT ENERGY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE.**

Force Majeure. DIRECT ENERGY shall make commercially reasonable efforts to provide service, but does not guarantee a continuous supply of electricity. Certain causes and events out of the control of DIRECT ENERGY ("Force Majeure Events") may result in interruptions in service. DIRECT ENERGY shall not be liable for any such interruptions caused by a Force Majeure Event. DIRECT ENERGY does not transmit or distribute electricity. Therefore, DIRECT ENERGY is not and shall not be liable for damages caused by Force Majeure Events, including acts of God, acts of any governmental authority, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the local distribution utility system, non-performance by the LDU including but not limited to a facility outage on its distribution lines, changes in laws, rules, or regulations of any governmental authority or any cause beyond DIRECT ENERGY's control.

Liability. The remedy in any claim or suit by Customer against DIRECT ENERGY shall be solely limited to direct actual damages. By entering into this Agreement, Customer waives any right to any other remedy in law or equity. In no event shall either DIRECT ENERGY or Customer be liable for consequential, incidental, or punitive damages. These limitations apply without regard to the cause of any liability or damages. There are no third-party beneficiaries to this Agreement.

DIRECT ENERGY Contact Information. The Customer may contact DIRECT ENERGY's Customer Service Contact Center at 1-866-348-4194, Monday through Friday 8:00 a.m. - 8:00 p.m. EST and Saturday 8:00 a.m. - 3:00 p.m. EST (contact center hours subject to change), or write to DIRECT ENERGY at: P.O. Box 642156, Omaha, Nebraska, 68164.

Disputes. In the event of a billing dispute or a disagreement involving DIRECT ENERGY's service, the parties will use their best efforts to resolve the dispute. Customer should contact DIRECT ENERGY in writing at P.O. Box 642156, Omaha, Nebraska, 68164 or by telephone at 1-866-348-4194. DIRECT ENERGY shall endeavor to resolve any Customer inquiry fairly and in an efficient and timely manner. DIRECT ENERGY shall provide an acknowledgment or response to a Customer inquiry within two days, and, if only an acknowledgment is provided, a response within fourteen (14) calendar days. DIRECT ENERGY shall report the results of its investigation to the Customer. A written report will be available on request. If the dispute is not resolved within 45 days, Customer has the right to seek DPS review, as described in the "Consumer Protections" section above.

Choice of Laws. Venue for any lawsuit brought to enforce any term or condition of this Agreement or to construe the terms hereof shall lie exclusively in the State of New York. This Agreement shall be construed under and shall be governed by the laws of the State of New York without regard to the application of its conflicts of law principles.

Taxes and Laws. Except as otherwise provided in the Agreement or provided by law, all taxes of whatsoever kind, nature and description, due and payable with respect to Customer's performance of its obligations under this Agreement, shall be paid by the Customer. The parties' obligations under this Agreement are subject to any validly issued present and future legislation, orders, rules or regulations of a duly constituted governmental authority having jurisdiction over this Agreement or the services to be provided herein.

Emergency Service. In the event of an electric outage, service interruption or other emergency, Customer should immediately call Con Edison at 1-800-752-6633.

Parties Bound. This Agreement is binding upon the parties hereto and their respective successors and legal assigns.

**Direct Energy Services, LLC ("DIRECT ENERGY")
COMMERCIAL SALES AGREEMENT ("Agreement")**

Agency and Agreement to Sell and Purchase Energy. Customer hereby appoints DIRECT ENERGY as its limited agent for the purposes of acquiring the supplies necessary to meet its electricity needs, arranging, contracting for and administering transmission and related services over interstate facilities and those of the Local Distribution Utility ("LDU") needed to deliver electricity to the Customer's premises. These services are provided on an arm's length basis and market-based compensation is included in the price noted above. DIRECT ENERGY agrees to sell and deliver and Customer agrees to purchase and accept the quantity of electricity, as estimated by DIRECT ENERGY, necessary to meet Customer's requirements based upon consumption data obtained by DIRECT ENERGY or the delivery schedule of the LDU. The amount of electricity delivered is subject to change based upon data affecting consumption obtained by DIRECT ENERGY or the LDU's delivery schedule.

Term. This Agreement shall commence on the date the change of provider to DIRECT ENERGY is deemed effective by the LDU. This Agreement will continue on a month to month basis until either party cancels or terminates the Agreement as per the Cancellation Section, below.

Cancellation. Upon receipt, Customer may rescind this Agreement upon three business days notice. Thereafter, the Customer may cancel this Agreement at any time without penalty as long as DIRECT ENERGY is provided with thirty (30) calendar days' prior notice. Customer shall also be allowed to cancel the Agreement within the 15-day notice period of a price change from DIRECT ENERGY. Customer may also cancel the Agreement in the event Time of Use Service is selected, as provided in the "Eligibility" section below. Customer shall be provided a cancellation number upon any cancellation. Cancellation may be done by contacting DIRECT ENERGY at 1-866-348-4194 or in writing at the address provided in the "DIRECT ENERGY Contact Information" section below. DIRECT ENERGY has the right to cancel this Agreement for convenience and without any liability to Customer in the event Customer rescinds its information release authorization, as provided in the "Information Release Authorization" section below. DIRECT ENERGY shall provide at least fifteen (15) calendar days' notice prior to any cancellation of service to Customer. If notice of cancellation is not given at least 15 days prior to the next scheduled meter reading, the customer may request a special meter reading, which is typically subject to a service charge. Upon cancellation, Customer will be required either to select another energy service company or return to LDU service. In the event of any cancellation of this Agreement by Customer or DIRECT ENERGY after Customer has been switched to DIRECT ENERGY, cancellation will not be effective until the next regularly scheduled meter reading date following required notice to the LDU by DIRECT ENERGY. Customer is liable for all DIRECT ENERGY charges until the LDU has duly switched the Customer to the LDU or another energy supplier. A final bill will be rendered within twenty (20) calendar days after the final scheduled meter reading by the LDU or if access is unavailable, an estimate of usage will be used for the final bill, which will be true-up when the final meter reading is provided.

Eligibility. This Agreement is conditioned upon the Customer receiving service from the LDU for commercial service. Should this Agreement be entered into without meeting the aforementioned condition, DIRECT ENERGY and the Customer reserve the right to terminate this Agreement without penalty as long as the other party is provided with fifteen (15) days' written notice prior to the effective day of the termination.

Pricing and Billing. The monthly price for electricity sold under this Agreement through the Customer's first two billing cycles shall be 7% off the LDU's applicable standard commodity price plus all applicable taxes ("Introductory Price"). After the first two billing cycles, the price for electricity sold under this Agreement shall be a variable \$/KWH price, established each month by DIRECT ENERGY based upon the market price of electricity and related market conditions. DIRECT ENERGY may change its pricing methodology upon 15 days notice to Customer. Such notice shall be provided at least 30 days prior to the Customer's next scheduled meter read. DIRECT ENERGY will invoice monthly via Customer's standard LDU bill for electricity sold under this Agreement, as measured by the LDU. The LDU may also issue invoices on behalf of DIRECT ENERGY at other times. Payment will be due and payable as specified in the LDU bill. Customer payments remitted in response to the LDU's consolidated bill shall be pro-rated in accordance with procedures adopted by the Public Service Commission ("PSC").

Changes. Other than price changes, the terms of this Agreement can be changed by DIRECT ENERGY only with the Customer's affirmative consent.

Assignment. The Customer may not assign its interests in and obligations under this Agreement without the express written consent of DIRECT ENERGY. DIRECT ENERGY may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof in connection with any financial agreement and may assign this Agreement to another energy supplier, energy services company or other entity upon 30 days notice to Customer prior to the Customer's scheduled meter read date.

Information Release Authorization. Customer hereby authorizes DIRECT ENERGY to obtain and review information regarding the Customer's consumption history from the LDU. This information may be used by DIRECT ENERGY and any of its affiliates, agents or representatives to determine whether it will commence and/or continue to provide energy supply service to Customer and shall not be disclosed to a third-party unless required by law. Customer's execution of this Agreement shall constitute authorization for the release of this information to DIRECT ENERGY. This authorization will remain in effect during the Initial Term and any Renewal Term of this Agreement. Customer may rescind this authorization at any time by providing written notice thereof to DIRECT ENERGY or calling DIRECT ENERGY at

~~1-866-348-4194~~ DIRECT ENERGY reserves the right to cancel this Agreement in the event Customer rescinds the authorization upon fifteen (15) calendar days' prior written notice.

Consumer Protections. The services provided by DIRECT ENERGY are governed by the terms and conditions of this Agreement. The services provided by the LDU are governed by the Non-Residential Regulations enforced by the PSC. Customer may obtain additional information regarding consumer protections by contacting DIRECT ENERGY at (866)-348-4194, or the DPS at 1-800-342-3377, or by writing to the DPS at: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, or through its website at: <http://www.dps.state.ny.us>. The DPS monitors complaints against all energy companies, and an excessive number of complaints may result in an energy company no longer being eligible to supply electricity in New York State. The telephone number for inquiries and complaints about alternative suppliers is 1-888-697-7728.

Confidentiality. Each Party shall keep the terms and conditions of this Agreement confidential except as may be required in order to provide the retail electric energy services hereunder or to meet the lawful requirements of any regulatory body having jurisdiction.

Title. All electricity sold under this Agreement shall be delivered to a location considered the "Point of Delivery", which for electricity shall be at the NY ISO DIRECT ENERGY load bus (located outside of the municipality where Customer resides), and shall constitute the point at which title transfers and the sale occurs. DIRECT ENERGY shall indemnify and hold harmless Customer from all taxes, royalties, fees or other charges incurred with respect to the electricity before title passes.

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Liability. The remedy in any claim or suit by Customer against DIRECT ENERGY shall be solely limited to direct actual damages. By entering into this Agreement, Customer waives any right to any other remedy in law or equity. In no event shall either DIRECT ENERGY or Customer be liable for consequential, incidental, or punitive damages. These limitations apply without regard to the cause of any liability or damages. There are no third-party beneficiaries to this Agreement.

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