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April 1, 2020

By Electronic Filing

Andrew S. Johnston, Executive Secretary
Maryland Public Service Commission
William Donald Schaefer Tower
6 Saint Paul Street, 16th Floor
Baltimore, MD 21202-6806

**Re: *In the Matter of the Complaint of the Staff of the Public Service Commission v. SmartEnergy Holdings, LLC d/b/a SmartEnergy*
Case No. 9613**

***In the Matter of the Complaint of the Staff of the Public Service Commission v. Direct Energy Services, LLC*
Case No. 9614**

***In the Matter of the Complaint of the Staff of the Public Service Commission v. U.S. Gas & Electric D/B/A Maryland Gas & Electric and Energy Services Providers, Inc. D/B/A Maryland Gas & Electric*
Case No. 9615**

Dear Mr. Johnston:

On behalf of SmartEnergy Holdings, LLC d/b/a SmartEnergy; Direct Energy Services, LLC; and U.S. Gas & Electric D/B/A Maryland Gas & Electric and Energy Services Providers, Inc. D/B/A Maryland Gas & Electric, together with the Office of People's Counsel, I have attached for filing in the above-referenced proceedings a *Joint Agreed Motion for Stay and Continuance*.

Please feel free to contact me if you have any questions.

Sincerely,

/s/ Brian R. Greene

Brian R. Greene

Enclosure

C: Service Lists for Case Nos. 9613, 9614, and 9615 (by e-mail only)

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

In the Matter of:	*	
	*	
The Complaint of the Staff of the Public	*	
Service Commission	*	_____
	*	CASE NO. 9613
v.	*	_____
	*	
SmartEnergy Holdings, LLC d/b/a	*	
SmartEnergy	*	

In the Matter of:	*	
	*	
The Complaint of the Staff of the Public	*	
Service Commission	*	_____
	*	CASE NO. 9614
v.	*	_____
	*	
Direct Energy Services, LLC	*	
	*	

In the Matter of:	*	
	*	
The Complaint of the Staff of the Public	*	
Service Commission	*	_____
	*	CASE NO. 9615
v.	*	_____
	*	
U.S. Gas & Electric, Inc. d/b/a	*	
Maryland Gas & Electric	*	
and	*	
Energy Services Providers, Inc. d/b/a	*	
Maryland Gas & Electric	*	

JOINT AGREED MOTION FOR STAY AND CONTINUANCE

JOINT AGREED MOTION FOR STAY AND CONTINUANCE

SmartEnergy Holdings, LLC d/b/a SmartEnergy (“SmartEnergy”), U.S. Gas & Electric, Inc. d/b/a Maryland Gas & Electric and Energy Services Providers, Inc. d/b/a Maryland Gas & Electric (together, “MDG&E”), and Direct Energy Services, LLC (“Direct Energy”), (the “Responding Parties”)¹, by counsel, and the Office of People’s Counsel (“OPC”) (collectively, “the parties”) jointly move in the above-referenced cases for an order granting at least a 60-day stay of the above-captioned proceedings, and a continuance of the hearings set in each respective case until such time when public health agencies, along with federal and state authorities, determine that the current public health restrictions and pandemic prohibitions are no longer needed. The Responding Parties and OPC are authorized to represent that Commission Staff is not opposed to this Joint Motion. In support of the Joint Motion, the Responding Parties and OPC respectfully state as follows:

INTRODUCTION

1. The Public Utility Law Judges (“PULJs”) for each of the above-captioned cases issued rulings on preliminary motions and notices of procedural schedules (the “Orders”).² The parties have operated according to the Orders for each case governing discovery and testimony up to this point. The hearings in these matters are currently scheduled, as follows:

- a. Case No. 9613 (SmartEnergy): May 18-23, 2020;

¹ The Responding Parties in these three separate dockets, in the interest of efficiency and consistency, make this request in this singular joint motion. However, for the avoidance of doubt, each Responding Party fully reserve their right to independently pursue their respective claims, defenses, and interests in each unrelated docket as the cases present different issues with different underlying factual and legal considerations in each case.

² Case No. 9613: September 12, 2019, Ruling on Preliminary Motions and Notice of Procedural Schedule (ML 226736). Case No. 9614: January 6, 2020, Notice of Procedural Schedule (ML 228059). Case No. 9615: September 16, 2019, Public Utility Law Judge’s Ruling on Preliminary Motions and Scheduling Order (ML 226844).

- b. Case No. 9615 (MDG&E): May 26-29, 2020; and
- c. Case No. 9614 (Direct Energy): June 8-12, 2020.

2. Given the rapid spread of the Coronavirus (“COVID-19”), which was classified as a worldwide pandemic by the World Health Organization as of March 11, 2020, and the attendant mandatory restrictions on movement in many cities and states in which the above-referenced parties are headquartered and/or operating, the parties have been experiencing, and expect to continue to experience, varying levels of difficulty in continuing to operate their business and performing tasks necessary to prepare each of their respective cases for hearings in these dockets.

3. Governor Lawrence J. Hogan, Jr., declared a state of emergency and catastrophic health emergency on March 5, 2020, renewed on March 17, 2020, to control and prevent the spread of COVID-19 within Maryland. Since then, Gov. Hogan has issued orders, among other things, prohibiting gatherings of 10 persons or larger, closing non-essential businesses and certain other businesses, and closing schools. In addition, on March 30, 2020, Governor Hogan issued a general directive for all Maryland citizens to “stay at home” except for “Essential Activities.”³

4. Other states have issued similar states of emergencies and implemented similar restrictions to control and prevent the spread of COVID-19.⁴

5. In recognition of:

- a. The health and safety issues surrounding the spread of the virus;
- b. Challenges presented by remote work, furloughed employees, children out of school, travel restrictions, and more; and

³ Order Of The Governor Of The State Of Maryland, Number 20-03-30-01, March 30, 2020.

⁴ The Kaiser Family Foundation, a non-profit organization focusing on national health issues, maintains a website dedicated to COVID-19, including data related to actions taken by states to control the spread of the virus. The website is available at: <https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/>.

- c. All parties' insurmountable difficulties in preparing their respective cases, responding to written testimony and discovery, as well as meeting various procedural deadlines in light of the current health pandemic;

OPC and the Responding Parties agree that it would be prejudicial to the parties' relative abilities to continue discovery, fully prepare for the hearings, and proceed with the May and June hearings as currently scheduled.

6. Accordingly, OPC and the Responding Parties jointly request that the respective PULJs stay Case Nos. 9613, 9614, and 9615 for at least 60 days, and continue the previously scheduled hearings to such time when public health agencies, along with federal and state lawmakers, determine that the restrictions and prohibitions are no longer needed, including allowing for free travel and gatherings of more than 10 people, and the parties and Commission are assured that lifting the temporary stay will not impact the health and safety of the participants to these proceedings and to the Commission generally.

LEGAL STANDARD

7. Maryland Rule 2-508 governs Continuance or Postponement of proceedings. Md. R. Civ. P. Cir. Ct. 2-508. Section (a) of the rule states: "On motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require." *Id.* Although the Court of Appeals has declined to define the phrase "as justice may require," it has held "that the decision to grant a continuance lies within the sound discretion of the trial judge." *Touzeau v. Deffinbaugh*, 394 Md. 654, 669, 907 A.2d 807 (2006); *cf. Jones v. State*, 403 Md. 267, 293, 941 A.2d 1082 (2008) (noting that the similar phrase "'In the interest of justice' grants wide discretion").

ARGUMENT

8. COVID-19 continues to cause varying degrees of disruption to the business functions and capabilities of the Responding Parties and has impacted their relative abilities to allocate critical business resources to preparing their cases, including responding to discovery and preparing testimony in these matters. For example:

- a. SmartEnergy, headquartered in New York City, the current epicenter of the pandemic, and with an operations center in the Dominican Republic, had to, in the course of a few days close both of its offices and transition 150+ employees from offices to remote work. Because of governmental restrictions, transitioning remote work, and prioritizing its response to COVID-19, SmartEnergy's ability to prepare its case, including responding to continuing discovery requests in this matter and accessing non-electronic information necessary, has been adversely affected. In addition, SmartEnergy's hearing is set for May 18 – a date on which it appears that public restrictions on gatherings of more than 5-10 people and movement may still be in place.
- b. MDG&E's hearing, set for the week after SmartEnergy, is also during a window of time that the parties expect to be impacted by travel, movement, and gathering restrictions. As with the Responding Parties, MDG&E has begun to reallocate its resources as COVID-19 continues to spread. MDG&E's personnel are sheltering-in-place and working remotely from home for an indefinite time. MDG&E's first priority during this pandemic is to support customer supply needs and to protect customer and employee safety. The company's resources are not available to

dedicate the significant commitment of time and attention to this important docket – including discovery and hearing preparation – while this pandemic is pending.

- c. Direct Energy's hearing, set immediately thereafter, is also impacted similarly. Direct Energy's operations are working diligently on a remote basis to support customer supply needs, and the company's resources are not available to dedicate needed time to this proceeding due to the pandemic. Given that Direct Energy's operations teams are all focused on employee safety while maintaining essential functions of Direct Energy's business operations, their ability to assist in responding to discovery and preparing for the hearing has also been adversely impacted.

9. The Responding Parties and OPC believe that the evidentiary hearings in these matters will involve extensive cross-examination of numerous witnesses over the course of a number of days. The cross-examination will involve references to numerous documents, possibly including documents that had not previously been filed. These documents would need to be marked and moved into evidence during the course of the hearing. In addition, there is extensive material in these proceedings that is marked confidential. The Responding Parties and OPC believe that these issues would create significant technological barriers to conducting the evidentiary hearings in these matters remotely and in an open and transparent manner. Therefore, in-person hearings would be far superior for these complex matters than remote hearings given the technical capabilities that are currently available.

10. As these cases move toward an evidentiary hearing, proper preparation for the hearings will be further challenged by various, and evolving, orders by the Governor of Maryland and the governors of other state where employees of the Responding Parties, attorneys and

witnesses reside. These orders will restrict access to complete files and technical capabilities in parties' offices.

11. Counsel for the Responding Parties, OPC, and Staff discussed the above issues and challenges via conference calls on March 27, 2020, and March 30, 2020. Responding Parties and OPC support this Motion for the reasons stated above.

12. Staff has authorized the parties to affirm that it does not oppose this motion, or the relief sought.

13. Given the PULJ's wide discretion, the Responding Parties and OPC respectfully jointly request the following:

- a. All deadlines set forth in the procedural orders are stayed for at least 60 days, and all parties are prohibited from issuing discovery during the period of the stay and relieved of the obligation to object to, answer, and supplement any discovery issued before the stay became effective.
- b. The parties will reconvene via teleconference within sixty (60) days of the date of the entry of the PULJ's order on this motion to discuss the current status of COVID-19 and whether it is appropriate to lift the stay and resume the cases by establishing procedural dates that comply, to the extent reasonably possible, with the timelines remaining in the current Orders.
- c. The remaining procedural dates, including the evidentiary hearings, in the above-captioned cases will be continued and rescheduled for as soon as is reasonably practicable in light of the current status of COVID-19 in the United States, which the parties will confer in good faith as to the appropriate next steps after the 60-day

temporary stay elapses, and provide a joint status report to the Public Utility Law Judge.

14. By this joint motion, the parties agree to exercise good faith efforts to accommodate the rescheduling of the hearings and compliance with the Orders once the stay is lifted.

CONCLUSION

Wherefore, the parties request that the Public Utility Law Judge issue an order staying the above-captioned proceedings for a period of at least 60 days, at which time the parties shall revisit the possibility of resuming the timeline set forth in the Orders and resetting these hearings to the extent appropriate in consideration of current public health guidance and the safety of all involved in these proceedings.

Respectfully submitted,

**SMARTENERGY HOLDINGS, LLC
D/B/A/ SMARTENERGY**

/s/ Brian R. Greene

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**U.S. GAS & ELECTRIC, INC.
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AND
ENERGY SERVICES PROVIDERS, INC.
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/s/ Brian R. Greene

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