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June 3, 2011

VIA E-file and HAND DELIVERY
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

RE: Investigation of Pennsylvania's Retail Electricity Market, Docket No. I-2011-2237952;
COMMENTS OF DOMINION RETAIL, INC.

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the original copy of the Comments of Dominion Retail, Inc. to the Investigation of Pennsylvanian's Retail Electricity Market.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Todd S. Stewart
Counsel for Dominion Retail, Inc.

TSS/alw
Enclosure
cc: Robert F. Powelson, Chairman (via hand delivery)
John F. Coleman Jr., Vice Chairman (via hand delivery)
James H. Cawley, Commissioner (via hand delivery)
Wayne E. Gardner, Commissioner (via hand delivery)
Tyrone J. Christy, Commissioner (via hand delivery)
Office of Competitive Market Oversight (**Via email to** ra-OCMO@state.pa.us)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation of Pennsylvania's Retail Electricity Market	:	Docket No. I-2011-2237952

COMMENTS OF DOMINION RETAIL, INC. d/b/a DOMINION ENERGY SOLUTIONS

Now comes Dominion Retail, Inc., d/b/a Dominion Energy Services ("DES") and hereby offers its Comments and Recommendations to the Pennsylvania Public Utility Commission ("Commission") in the above-captioned Docket. DES appreciates the opportunity to comment in the Commission's Investigation on the Development of the Competitive Retail Electricity Market. DES supports the eventual elimination of default service and favors a transition model by which customers choose a supplier on their own. Before such action is taken, however, we suggest the Commission raise the bar for suppliers to ensure consumers are protected and receive service from suppliers that are committed to delivering on their promises. Municipal aggregation is not needed at this time and should be deferred while stronger affiliate disclosures should be required, and must include verbal/broadcast communications. Our general comments follow. Also attached hereto, as Appendix A, is a proposed model for exiting the merchant function, and Appendix B, which contains DES's answers to the Commission's specific questions and recommended solutions.

I. Summary of Recommendations:

Moving the Small Customers to Choice

- o Educate More - Make Sure Customers know that it is Okay to Choose
- o Create Events or Urgency to Drive Choice Participation

- o Eliminate Default Service Reconciliation to level the field and allow EDCs to earn a profit on Default Service
- o Require New/Transferring Customers to Select an EGS in lieu of Immediately Placing those Customers on Default Service
- o Make Signing Up for Default Service Less Desirable
- o Eliminate Default Service by a Date Certain
- o Assign Customers to Competitive EGSs

Ensuring the Retail Market is a Safe Option

- Increase Financial and Technical Fitness Standards for EGSs
- Ensure Proper Disclosure on Product Offerings, Especially Teaser Variable Rates

Municipal Aggregation

- Don't Let Municipal Aggregation Dominate the Market Right Away, Let the Customers Choose First

Affiliate Disclosure

- Enhance Affiliate Disclosure Rules

II. General Comments

A. <u>Introduction - The Future of Default Service</u>

Act 129 expanded the requirements for default service providers by adding language that enshrines a quasi-regulated, quasi-market-based default service supply function in Pennsylvania.[1] Such a scheme is problematic for electric distribution companies ("EDCs"), because it requires that the utilities' default service plans be designed to ensure the "least cost to customers over time."[2], while at the same time prescribing the types of transactions (mix of spot, short-term and long-term contracts). Producing the result of "least cost" over time exposes EDCs that operate in a competitive wholesale energy market to regulatory and market risk while requiring the EDCs to expend or at least encumber substantial financial resources for the purposes of procuring default service supply. This "bargain" of risk without reward is a bit

[1] 66 Pa.C.S. § 2807(3.1) to (3.9) (2008, October 15, P.L. 1592)
[2] 66 Pa.C.S. § 2807(3.4)(ii)

unfair to the EDCs and has so far failed to produce the necessary robust shopping that will eventually remove the burden. In short, default service as it is presently codified has the character of a competitive option rather than the provider of last resort ("POLR") notion of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801, *et seq.* ("Choice Act"). For a variety of reasons, not the least of which is the fact that customers start out on default service, this structure has so far served to maintain the EDC as *the* fully-bundled service provider and has, for better or worse, perpetuated the general mindset that utilities provide a safer, more reliable, or better-priced option when compared to taking service from electric generation suppliers ("EGSs"). EDCs have thus remained the *de facto* major competitor in every market in which they participate. Under this regimen, competition is not likely to reach the levels necessary for it to be self-sustaining.

Setting aside for the moment the deliberate strategies of EDCs to retain customers within their corporate umbrella at all costs, by the action of customer inertia alone, even those utilities that actively have sought to dislodge customers from default service have had only limited success. The reason is that customers tend to be "sticky." That is, either by inertia or because they tend to believe that the utility, as a default service merchant, provides them with better/cheaper/more reliable service (despite the lack of evidence to support that point of view), customers do not like change. This "stickiness" problem is compounded by the fact that approximately 10% of customers move (change their physical addresses) every year. This statistic speaks volumes about unexpected consequences, because when those non-sticky customers – those who choose service from an EGS – move, they are still required restart service at their new address as default service customers. This is true even if the customer moves across the street. They lose the benefits of their choice and increase the possibility that they will not again participate in the competitive market.

In those instances where the EDC actively seeks to retain customer load as default or affiliate load, the statistics are worse. The results so far have not been terribly encouraging, despite some EDC efforts, PPL being the best example to catalyze changes in customer attitudes. The utilities continue to enjoy a huge and almost insurmountable advantage in customer counts, and they remain, some by their mere presence in the market, the main obstacle to transitioning customers out of default service and into the competitive marketplace.

The PPL experience serves as an excellent illustration of this problem. As we all know, PPL undertook significant and commendable efforts to motivate customers to shop in 2010 and after, when its default service rates were substantially above market. However, while 40% of the small customers did switch, a laudable percentage in such a short time, that figure should have been closer to 90% given the fact that all EGSs were providing a better value proposition than default service. This is the clearest evidence to date of the phenomenon that customers do not always voluntarily act in their own economic best interests. How better to demonstrate it – 60% of PPL customers voluntarily paid more to stay with utility default service. While in some circumstances default service may be a better option for customers under the current paradigm, default service should be viewed more as POLR service rather than as a competitive alternative. This raises the central question: If we agree that the goal of the Choice Act was to transition customers to a competitive market and to have POLR-type service only as a transitional backstop – how do we get from point A, where we are today, to point B, where we want to be? In other words, how do we move customers from default service into the competitive market?

B. Key to a Fully Functioning Competitive Market

The keys to a fully functioning competitive retail electricity market are: 1) Knowledgeable (i.e., educated) customers 2) Active customers who select options in their best interest and that meet their needs, 3) No Confusing or Overriding Price Signals and 3) Reputable EGSs. Suppliers will come if customers are selecting.

It should be obvious at this point that if competition is to flourish, something must be done to move customers from default service to the competitive market in a more meaningful and perhaps more direct way. Best practices should be followed, however, so that before moving customers into the market, you must first give them the option to choose voluntarily. Utilities and regulators may want to include incentives to choose (as was adopted in New York), either a carrot or a stick, or both, but the first option should be a choice. There are two reasons for this approach: First, it allows the customer to make a choice rather than having the choice made for them; and, second, it engages the customer in the market by way of the decision making process, which is quite possibly the point where inertia has its strongest effect. Customers should be moved only after they have failed to exercise the reasonable option in spite of the incentives to do so.

Since the vast majority of customers in Pennsylvania have only recently been able to participate in an even slightly competitive electric generation supply market, it would be appropriate to allow competitive market forces to work for a least some reasonable time – at least a year – before taking action. As an aside, and as you will read below, pinpoint programs, such as Municipal Aggregation, are inappropriate in the early stages of choice because they do not promote a competitive end state. Rather, they switch all customers in a certain locality to a single EGS, in what possibly would not be a competitive process. These types of programs lock up groups of customers with a single EGS for considerable periods of time, which will likely have the ultimate result of preventing competition rather than encouraging it.

DES's experience in many markets confirms its very strong belief that many customers simply don't understand choice--it is concerning to some and confusing to many. The concerns often harken back to the initial deregulation of long distance telephone service, where customers had to deal with what seemed to be higher costs, additional taxes and other charges, confusing bills, and possibly multiple bills. It is our opinion that a fully functioning retail market should not be that complicated, since the EDCs do most of the billing, and developing the retail market should not further hinder wholesale competition. With retail competition, customers can best select a product that suits their situation, risk tolerances, and needs. By contrast, default service is one size fits all.

The essential messages of why retail competition is good for the customer and, why this change is happening, are rarely answered in a way that brings confidence at the customer level. Rather, the message seems unfocused, watered down and many times raises more concerns than it addresses. For example, it has been standard practice to send customers a list of questions that they should be certain to ask prospective EGSs. However, if one reads the lists from a customer perspective, often times they imply that suppliers are not trustworthy, or worse, thus doing damage to the market in the guise of "helping" customers. DES realizes that customers need some level of protection – but that should handled more adeptly by managing EGSs rather than placing all of the responsibility on consumers.

Very few customers understand how choice works. In our call centers, we routinely hear statements such as: "My utility takes care of all of this – how can you do this?" "What is going on here? How do you buy my electricity? How is this going to affect my utility?" In short, it is clear from our call center traffic that there are many confused customers and they are concerned how this affects the utility. On the surface, electricity choice is not that difficult of a concept and has no affect on the utility – why are so many customers asking these questions. Are the EDCs not adequately explaining choice? Are choice messages buried in too many communication messages hitting electricity customers? The message that the consumer gets from some EDCs does not provide the customers a sense of comfort with energy choice and clear understanding of the utility's new role. Furthermore, other programs like budget billing and LIHEAP become issues for many customers who are thinking of choice and those programs become negatives for choice. The bottom line is that consumer education is very important and needs to provide positive reinforcement for energy choice for the market to develop.

In 1997, the Commission did a fantastic job of creating excitement with the Choice pilots in each service territory. And again there seemed to be great activity around the PPL transition and the Commission did an excellent job supporting those efforts. While those events are history, the excitement that they generated remains the best way to pull customers into participating in choice. How can the Commission create the appropriate level of excitement or urgency?

Despite the best efforts of the EDCs, the EGSs and the Commission, however, experience has shown that many customers will never take the time to choose a EGS on their own volition—will not act in their own economic best interest. For these customers, pushing the customer into retail competition is a route that could be very effective. A simple intermediary step is to make new customers (new services and transfers) choose an EGS (and default service could be one of the choices if this cannot be done without legislation) when they sign up for electricity service. It begins the process of switching customers to retail markets in a somewhat orderly and consistent manner. While it may initially appear to be more cumbersome for the customer, it should provide an ever larger group of customers with the "push" they need to get them into the competitive market. Once a critical mass of customers has been transitioned, moving the remaining customers should require less effort.

Requiring the EDCs to exit the merchant function or eliminating default service as an option has previously been perceived as a radical approach but conceptually it should be the favored approach since it gets the transition process to the finish line. Indeed, the very idea of "choice" for gas and electric consumers was considered radical just a few years ago and was opposed (and still is) by certain groups. Exiting the merchant function means that the electric utilities are no longer responsible for acquiring electric generation supply and providing it to customers. EDCs would continue to perform functions associated with the distribution of electricity, including billing and collecting for electric generation supply and distribution service. The utilities would also continue to manage the distribution grid in an even-handed manner which would not favor any EGS over another. Under the methodology discussed below, multiple EGSs would provide electric generation supply service to customers who did not choose, rather than the utility being responsible for that service. Or said another way, customers would be assigned to EGSs if they did not choose.

The significant advantage of eliminating default service is that it is a direct path to the preferred end state—fully competitive retail markets. Neither staying with the current state nor implementing several intermediary steps can guarantee that the end state--a fully functioning retail market that can thrive and sustain itself. The pros and cons for the customer are somewhat subjective and depend largely on the position of the person making the claim. A customer advocate would argue that having default service insures lower prices, and a market advocate would argue that having a fully functioning retail market provides the lowest prices. At the end of the day, the real question is how will the retail market develop with current default service still being provided? Will markets like West Penn Power, Penelec, and MetEd ever develop?

In our view, the best approach for eliminating default service would be a hybrid Texas/Georgia model. A more detailed description of the mechanics of this model is provided in the attached Appendix A. Under this approach, customers are given a window of opportunity (six to nine months) to choose a competitive EGS. The consequence of not choosing before the deadline is that all non-choosing customers are allocated to participating EGSs as of a date certain (the end of the current default service plans).[3] The best allocation approach for the remaining customer (after the deadline) is *pro rata* among participating EGSs based upon the number of customers that the EGS serves at the end of the "challenge" period within that service territory.[4] That is, if 100,000 out of 500,000 customers were switched during the challenge period, 10,000 went to EGS A, 30,000 to EGS B, and 60,000 to EGS C, the remaining 400,000 customers would be allocated based upon the share that each participating marketer received out of the original 100,000 (EGS A: 40,000; EGS B: 120,000; and EGS C: 240,000).

It would be necessary to set a minimum participation level to avoid the complications of switching customers in small groups, and it would be absolutely critical that EGSs participating in this program be required to provide significant additional financial security, and demonstrate heightened technical and financial fitness before being permitted to participate in the allocation, because providing default service is a far more complex activity than providing competitive service to a small group of customers. Accordingly, participating EGSs also would have to

[3] All Customer Assistance Program ("CAP"), and similar discounts would flow through distribution rates, thus allowing all customers to participate.

[4] To the extent that any EDCs have long-term contracts that extend beyond this date, the power purchased under those contracts would be allocated *pro rata* among participating EGSs.

demonstrate their capability to manage large numbers of customers. Under such a program, the utilities would continue to bill and collect and EGSs would serve customers at a publicly available posted price, the same price that they offered in the non-allocation marketplace. Under this proposal, however, customers would always have the ability to switch at any time without penalty.

In short, under this approach, following the expiration of their current default service plans, utilities would be required to exit the merchant function after a six to nine month challenge period during which customers would be encouraged to voluntarily shop. Customers who do not shop would be allocated on a *pro-rata* basis based upon the percentage of customers each participating EGS obtained during the challenge period. The utility would continue to bill for services, and utility affiliates could participate with appropriate code of conduct separations between the affiliate and the host utility. The EGSs participating in the program would be subject to significantly increased scrutiny, more so than ordinary licensing, including significantly higher bonding requirements and financial fitness examinations.

As a alternative, if default service cannot be eliminated, it should be modified to be of equal status to competitive retail market offerings. While DES is supportive of the current procurement process, it strongly suggests that reconciliation of default service cease and utilities providing default service should be placed on the same situation as EGSs with the ability to earn a profit on default service. Whether those profits go to deferring distribution rate increases or handled separate of the ratemaking process, EGSs should be indifferent. Such a change will at least place default service on equal footing with retail offerings and eliminate retailer concerns that reconciliation presents opportunities for significant mismatches like what happened with PPL's TOU price compared to market prices in the first quarter of 2011.

C. Raising the Bar For EGSs

Many of us have probably heard of a situation where an EGS provided what we would consider to be inadequate or inappropriate service; it is concerning what negative impacts these few EGSs may have on the market as a whole. There can be isolated incidents involving any EGS, no matter how diligent they may be, however there appear to be two groups of EGSs for whom such conduct is more regular and problematic. The first group includes those EGSs who simply lack the technical expertise to manage an operation as complex as being an EGS.[5] Ordinarily this is a problem of scale – "mom and pop" operations that may be inadequately staffed, under-capitalized or simply lack the necessary experience.

It is the second group of EGSs that may prove to be the more difficult to address, however, because their questionable conduct appears to be of a more institutional nature and often appears to be part of the business plan. This includes such practices as pricing service in a way that implies a price or discount level that is contrary to what is being offered, often through such means as stating a price "without gross receipts tax," or stating that the customer will receive an approximate XX% discount, implying that the product is calculated as a discount off the price to compare when in fact it is a variable-priced product that has nothing to do with the price to compare. These are the easy problems to spot because they are often embodied in printed advertising material.

Teaser variable rates have been receiving notice from customers, media and commissions in several states. DES does not think teaser offerings can be banished from the market, but such offerings require greater disclosure, especially when the offerings are positioned as below market

[5] I do not include in this discussion brokers or other agent-type entities that typically do not take title to energy – but that is not to say that such operations to do not have their own problems that may make it worthwhile to revisit the often reduced bonding requirements for those entities.

price and the price can change significantly without notice, or if the teaser variable offering implies savings where savings are for a month or two and then the savings evaporate. DES is concerned about the impact on retail competition by undisclosed teaser offerings. Those offerings need to be "called out" so consumers can protect themselves.

The more insidious problems come from the coercion and deception that often accompany door-to-door marketing and multi-level marketing due to the coercive nature of the contact, and the fact that monitoring these in-person contacts is nearly impossible when compared to telemarketing, where almost all calls are recorded. These later concerns of high pressure door-to-door sales significantly damaged the competitive market in Illinois, even though the offenders were few.

Regardless of the reason for the behaviors, the Commission's priority should be a customer focus. What that means is that the Commission should make it more difficult to get away with entering the market if not prepared, and should make it harder for any EGS to engage in conduct that is not fair to customers.

As a first step, and the Commission has already started doing this to a certain extent, the Commission must take a harder look at new applicants and existing licensees to make sure that their bonding levels are sufficient when compared to the number of customers and the level of risk posed by an EGS. Increasing the requirements may be necessary to satisfy potential judgments or other defaults so that customers can be made whole if EGSs become insolvent or suddenly exit the market in the future. We also believe that there is a heightened likelihood of insolvency or premature market exit when EGSs set out to engage in risky business and marketing plans. As a general matter, the bonding requirements for EGSs are supposed to be "in form and amount to ensure the financial responsibility of electric generation supplier and the supply of electricity at retail in accordance with contracts, agreements, or arrangements." 66 Pa.C.S. § 2809(c)(1)(i). It is notable that in the two most significant EGS defaults in Pennsylvania since the onset of competition, the bonds of both early exit/defaulting companies were not sufficient even to cover the taxes owed to the Commonwealth, let alone to satisfy the customers who did not receive the savings to which they were entitled.

An updated calculation of this bonding requirement should be considered – one that takes into account potential financial impacts on the Commonwealth, the Commission, and the customers. Such a calculation could also consider the number of customers, current market prices, and other market risk factors before setting bonding level on a EGS-specific basis. This approach of increased security requirements would ensure that the market is not populated by entities that are not financially secured and that may cause negative fallout across the Commonwealth.

Companies seeking to become licensed EGSs in Pennsylvania should also be required to more thoroughly demonstrate financial and technical fitness in order to obtain a license. To be deemed technically fit, an applicant should have to demonstrate that it has the actual employee and supervisory experience, the necessary computer systems, service center/call answering capabilities, cash and working capital to purchase and manage supplies, and customer enrollment/ billing interface systems to ensure that customers are served efficiently and to a high standard. Such requirements would not prevent small companies from being EGSs, but the alternative is for the Commission to impose restrictions, adjusted from time to time, on the number of customers a particular small company can serve based on their inherent technical and financial capabilities.

Finally, the Commission needs to move more quickly and perhaps more aggressively on door-to-door marketers. We have all heard the stories of high-pressure sales tactics, aggressive behavior, and the blatant misrepresentation that goes on every day. The only good part of this story is that the incidents do not appear to be widespread or common practice. The most damaging bad act is when you have door-to-door representatives that lie to customers. Of all the deceptions, the one that hurts competition the most is when a representative is not truthful about whom they represent – whether it be the utility or the customer's current EGS. We need regulations with teeth and we need them now with enforcement to follow. The rules should include increased bonds or financial security because of the increased risk.

While the success of every EGS is important, the Commission must protect customers and the success, or lack thereof, in moving to a competitive market will reflect directly back on the Commission and the participants. We do not want to adopt a plan that, in the end, customers view as a failure, or of no benefit to them, and the Commission must realize that they need to set high standards; the customers must come first.

One final issue that recently has made the "list" of concerns is customer data privacy. The general issue was appealed as part of the OCA/Pennsylvania Coalition Against Domestic Violence case in the Commonwealth Court regarding what is commonly referred to as the Eligible Customer List ("ECL") Order. The consolidated appeal and cross appeal concerned the data elements that are part of that list and the conditions under which that list is released to EGSs. Recently the Commonwealth Court remanded that matter to the Commission for further study and resolution. However, there is one aspect of the more generic issue that is worthy of debate; what do we do about real-time data? As smart meters are deployed and interval data becomes available for residential customers, what do we do with that capability and where do we share that data? The concern is that with some expertise, the data might be capable of providing much more information about a customer than how much electricity they use. This would include information such as the hours they typically work, when they are running certain appliances, etc. It has been suggested that thieves could monitor houses to determine when people are on vacation, or when the kids were home alone, depending on the thieves' sophistication. The responsible use of this data should be supported, and only by those who need it. It is imperative that before an EGS can ask to receive the data it must have affirmative consent from the customer, and should be able to demonstrate that the customer is enrolled in a program that requires the use of real-time data. To do otherwise is to invite trouble.

In short, while we need to encourage EGSs to enter the market and remain in the market, we also need to hold them accountable to providing quality service to customers.

D. Municipal Aggregation Should Be Deferred

There has been quite a bit of discussion on the subject of municipal aggregation lately. Municipal aggregation can take two forms, "opt-in" and "op-out." Opt-in aggregation is when an EGS goes to a municipality and strikes a deal to sign up customers in the municipality. The arrangement often involves the EGS providing some value to the municipality in exchange for the municipality's cooperation and/or assistance in making offers to the citizenry. The value can take the form of discounted rates for the municipality's own use, or a check to the general fund. The offer typically is a discounted offer that is better than, or at least as good as, the offers that EGS is making in the general market. What usually happens is that the EGS will present its offer to customers in a mailing that appears to have originated from the municipality. Often such mailings will include a letter from a municipal official urging the citizens to participate.

There does not appear to be anything in the Public Utility Code, 66 Pa.C.S. § 101, *et seq.*, that would prevent such arrangements. However, depending on the form of municipality involved and the form of the arrangement with the EGS, there could be implications with regard to the manner of the municipality's acquisition of energy, particularly the public bidding requirements. As a general matter, these types of programs that require the customer to respond to an ad, albeit an "enhanced" ad, pose little threat to the competitive marketplace because customers still make the choice to switch.

The other form of municipal aggregation, opt-out, is not nearly so benign. In opt-out aggregation, there is still a "deal" between the EGS and the municipality, and there is often some value provided, but the difference is that in opt-out aggregation, as the name suggests, customers who take no action are switched, with no guarantee that the deal will be good for them. In fairness, one would expect that the municipal leadership would be savvy enough to write an ordinance that would guarantee savings, but this may not always happen. The big legal hurdle for this type of program, however, is the fact that customers are switched without their consent, which the Commission recently found to violate the law requiring affirmative customer consent before switching them.

Without looking to whether municipalities are granted the authority to make such agreements or pass the ordinances necessary to implement them, the Commission ruled that EGSs and the EDCs that actually implement the switch transaction remain subject to Commission oversight and cannot enter into such agreements absent Commission approval. While the Commission has approved programs similar to opt-out aggregation in the past, it was only in the most extreme circumstances and emergency situations, and in none of those cases did the Commission adopt a policy or general rule endorsing such arrangements. To the contrary, the Commission has stated that it has a general dislike of such programs and found that its regulations point to an opposite result: "Commission regulations express a strong preference for individual choice in regard to electric generation supply." Chairman Powelson expressed concern that an EDC would attempt municipal aggregation prior to receiving Commission approval, and had this to say about the future of municipal aggregation in Pennsylvania:

> I note that the Commission has historically been generally supportive of the concept . . . however, my views are maturing. At a minimum, I am becoming less convinced that municipal aggregation is a benefit to a well-functioning and fully competitive retail electricity market and increasingly concerned that such programs may actually hinder competition. . . . [W]idespread enactment of municipal aggregation will prevent EGSs from making offers, thereby stifling innovation and competition and deterring the development of a robust retail market.

Petition of the Retail Energy Supply Association for Investigation and Issuance of Declaratory Order Regarding the Propriety of the Implementation of Municipal Electric Aggregation Programs Absent Statutory Authority, et al., Docket No. P-2010-2207062, *et al.* (Declaratory Order entered March 17, 2011, Statement of Chairman Powelson). Chairman Powelson's Statement also recommended that the legislature table all efforts to implement municipal aggregation while the Commission investigates statewide retail electricity markets. So far, it appears that the legislature has not acted, despite the fact that at least one bill has been introduced on the subject.

It would be unfortunate if we came to expect that opt-out aggregation would be a reasonable substitute for "real" competition -- where the customer makes the choice. The problems with this approach are multiple, beginning with the potential to do violence to existing default service arrangements and ending with the prospect of customers being harmed by the action of their municipality. The programs that were the subject of the action described above were not bid publicly and had the very real potential to switch customers who already had chosen an EGS. We suggest not going down the municipal aggregation road until we have given real choice a chance, and not unless we can do so in a way that is transparent and fair to all participants.

E. Improving Disclosure for EDCs Affiliates.

DES is less concerned with the fact that affiliates of EDCs participate in the marketplace under their corporate brand name than with the fact that customers may think the EDC affiliate is the same as the EDC. In a perfect world we would be able to prevent people from instinctively assuming that any entity with a name that sounds like their trusted EDC is their EDC, but such is not the case. At the outset of competition, the Commission wisely recognized the potential for mischief if customers were not aware of the lack of any connection, and mandated disclosures to make sure that customers understood. The shortcoming of those disclosure requirements are, unfortunately, their downfall—the disclosures are not required to be visible at the same place the utility sounding name is placed, or audible, at the same time. The solution is simple, everywhere the name and/or logo is used in a prominent/introductory place (e.g top of letters, on envelopes), even as part of another name, the affiliated retailer must provide a disclosure, in the same place and in legible type. The disclosure cannot be in small type buried on the back in or in a footnote where it most likely is never to be seen. The language must be plain and emphasize that the affiliated EGS is not the same company as the EDC. Furthermore, this disclosure must also appear every place the utility name is used by the affiliate. While this transparency may seem to be cumbersome, it is the only way that customers will be made to understand that they get no advantage by doing business with a utility affiliate that chooses to use its utility's brand recognition, name and/or logo in its marketing efforts. This disclosure should also be carried through to oral or broadcast communications with customers.

III. Conclusion

DES respectfully offers these Comments to the Pennsylvania Public Utility Commission for its consideration in the above captioned investigation. DES is will to address any questions the Commission may have regarding its comments, in writing or otherwise and expects to participate in any ongoing proceedings at this docket.

Respectfully submitted,

Todd S. Stewart
Counsel for
Dominion Retail, Inc.
d/b/a Dominion Energy Solutions

Appendix A – Exiting the Merchant Function - Operational Issues and Suggested Solutions

- **Initial Allocation -** Customers have six to nine months to choose a competitive EGS, known as the "challenge period." After the close of the challenge period all non-choosing customers are allocated to "allocation EGSs." These are the EGSs that have been approved by the Commission to participate in allocations; have posted additional security and demonstrated the technical capability to manage large numbers of default service customers. The customers are allocated *pro rata* among allocation EGSs based upon the number of customers that the allocation EGS serves at the end of the challenge period within that service territory. That is, if 100,000 out of 500,000 customers were switched during the window period, 10,000 went to EGS A, 30,000 to EGS B, and 60,000 to EGS C, the remaining 400,000 customers would be allocated based upon the share that each market is participating in the market received of that 100,000. (EGS A: 40,000; EGS B: 120,000; and EGS C: 240,000). EGSs serving fewer than 1000 customers at the end of the challenge period would not be eligible to participate in the allocation. Once a EGS achieved the 1000 customer mark, if otherwise qualified as an allocation EGS, it would be permitted to participate in the ongoing allocation as described below.

- **Ongoing Allocation** - The allocation of new, non-choosing residential and small commercial customers, who would be considered "default service" customers, will be managed by the EDC. It will maintain a list of the qualified allocation EGSs. Because the EDC will be managing customers and will be required to maintain information and perform the allocations, it will be permitted to charge a fee to the EGS receiving the customer in the allocation of ____ per customer. The fee will be charged to the EGS who first bills the customer.

- **Managing New Customers** – Without a default service provider (DSP), new customers will need either to choose a new EGS or be assigned to one. The entity best situated for this role is the EDC. When customers call the EDC requesting a new service, they should be told that they must choose an EGS or one will be assigned to them. They should be directed to the PA Power Switch website and/or provided with a welcome package that provides a listing of all EGSs with offers. If a customer does not choose immediately they will be assigned to a "cancel anytime" contract with an approved allocation EGS. Once/if they choose, the switch becomes effective pursuant to normal switching protocols.

- **Customer Moves** – When customers contact the EDC to disconnect service, the EGS will be provided an EDI (Electronic Data Interchange) transaction to that effect. If the customer is to move within the same EDC territory, the EGS also will be given the customer's new address. The address should be provided for moves outside the service territory if collected. The EGS must then notify the customer and either negotiate a new contract or inform the customer that they have the option to choose another EGS. The

EGS contract is specific to a customer/premises; when the customer or the premises change, the contract is voided, but the EGS has the first option to retain the customer.

- **Pricing** – Service to customers by allocation EGSs will be via a one–year, fixed price, cancel anytime contract with standard automatic renewable provisions that perpetuate the cancel anytime provision. The rate will be the lowest current applicable rate that the allocation EGS offers to comparable non-allocation customers. If the allocation EGS has more than one active applicable rate, the rate most advantageous to the customer will be used. The current allocation rate for each allocation EGS will be posted on the Commission's website. If any EGS's posted price were to exceed the average of all posted allocation EGS prices by at least 10%, that EGS should be suspended from receiving new allocations until its posted price returned to that level or lower.

- **Billing and Collection** – The EDCs would continue to bill and collect from all customers via a purchase of receivables program. Because there would be no non-choosing customers, all costs associated with the billing and collection of the commodity portion of the bill would be recovered either:

    - Through a discount rate that recovers the bad debt component and the administrative costs of the billing and collection; or

    - Through distribution rates charged to all customers.

- **Utility Affiliate Participation** – A single EGS owned or controlled by, or affiliated with the incumbent EDC would be permitted to participate in the allocation under certain conditions:

    - They must "de-brand," that is, they may not have a name that contains the name or substantial portion of the name of the incumbent;

    - They cannot in any communication reference the fact that they are owned/controlled/affiliated with the incumbent;

- **Financial Security -** EGSs participating in the allocation will be responsible for taking over providing service for other allocation EGSs that fail. Allocation EGSs shall post security calculated to make whole the EGSs who may be required to pick up such customer for the remainder of their contracts. The following formula should be used: *average annual usage* (e.g. 800 kWh) x *potential differential between market price and contract price* (e.g. $10) = *security per customer* ($80).

Appendix B – Answers to Commission Questions

Present Status of Retail Competition

- Residential Customer Perspective - It has been our experience that residential customer markets develop very slowly for several reasons; some customer don't understand that they can really choose or some find the offers too overwhelming with details, others understand but don't care to take the time or the savings are too small, and other customers are very cynical of new electricity options and whether they will really save . In several PA electric territories, specifically PPL and Duquesne Light, the adoption rate has been higher due to savings or a significant price event. Residential switching can be driven or enhanced by an "event". RECOMMENDATION: CREATE A SWITCHING EVENT

- Commercial/Industrial Customer Perspective – Most large commercial customers have a significant economic reason to participate in choice and the adoption rate is very fast and efficient. The mass of small commercial consumers acts somewhat like the residential – but their inaction is due to lack of significant savings or their lack of time to understand the details. Large commercial switching is driven by "necessity". Again small commercial must be driven by an "event". There seems to be a significant amount of diversity in product pricing and the cost that included in EGS quotes. It may helpful to create a standard price disclosure table so that customers know what is included in each EGS quote. RECOMMENDATION: CREATE A STANDARD PRICE DISCLOSURE THAT MAKES IT CLEAR WHAT COST COMPONENTS ARE INCLUDED IN PRICES BEING QUOTED.

- Alternative EGSs – PA has significant amount of active EGSs. There are enough EGSs to make the market develop and remain robust. Most of the players are making reasonable and legitimate offers, however, a few players are making offers that do not include all of the costs that compare directly to the PTC or a few are baiting customers with a low variable price combined with a savings message and then raising with no savings after the first month. RECOMMENDATION: IMPLEMENT A GUIDELINE THAT VARIABLE RATES CANNOT BE COMBINED WITH A SAVINGS MESSAGE UNLESS THE SAVINGS IS GUARANTEED VERSUS THE PTC FOR MORE THAN 6 MONTHS. IF A PTC DOES NOT EXIST IN THE FUTURE THEN VARIABLE PRODUCTS CANNOT IMPLY SAVINGS UNLESS SAVINGS CAN BE PROVED.

- Difference in Switching Rates by service territories – The perspective of the Utility and the way it educates and communicates with its customer (customer are impressed by the utility's opinion) can affect switching to a degree. Our customer service department has found that appropriate support from the EDCs customer service department helps immensely in making customers feel comfortable with participating in choice. However, the default service rates have a significant impact on switching. Since each EDC developed its own default service plan and the implementation dates vary widely. This caused certain EDCs to have higher rates than other EDCs. Some EDCs were able to purchase their supply at the bottom of the market while others did not. Choice needs to be a positive event. The way choice is communicated with customers could be improved and the Commission should involve itself in educating customers. DES still wonders why residential customers in Penn Power never accepted our 30% guaranteed discount offer in 2008. RECOMMENDATION: DEVELOP A PAPUC CHOICE EDUCATION PROGRAM AND INSTITUTE AT ALL EDCS WITH AN OBJECTIVE TO IMPROVE CUSTOMER PARTICIPATION

- Market Design
    - Barriers to Adoption by Small Customers
        - Default Service - If the EDC default service was eliminated as the standard choice or was structured as an equivalent choice, the market design would be more robust and every EGS would be able to participate knowing that they are on equal footing. RECOMMENDATION: ELIMINATE DEFAULT SERVICE IF POSSIBLE
        - New Customers - Secondly, new customers need to choose an EGS and not be placed on default service. Every time a customer finals their electricity service, a competitive EGS will most likely lose a customer to default service. New customers/Customer Move-ins must be required to select an EGS. RECOMMENDATION: NEW CUSTOMERS MUST SELECT AN EGS
- Proper Cost Allocation of EDC costs
    - Default Service Administration Costs - DES has not identified any cost disadvantage with regard to EDCs recovering default service costs through distribution rates or separate riders. NO RECOMMENDATION
    - Migration/Switching Riders - DES is adamantly opposed to default service costs being recovered through separate riders such as migration riders. It is our view that diverting default service costs to separately collected riders is anti-competitive and an unfair practice. RECOMMENDATION: NO MIGRATION OR SEPARATE DEFAULT RIDERS

- Forecasting/Reconciliation – Generally speaking, the default service forecasted pricing by EDCs has been reasonably accurate. Since default rates are reconcilable, it is possible that a default service provider could manage market switching or cause vast numbers of customer to switch back to default service by improperly forecasting its default service price. We would recommend that any "future" default service, if it is deemed necessary, not be reconcilable. RECOMMENDATION: ELIMINATE RECONCILIATION

◆ Unintended Consequences

- Time of Use – DES did experience unintended consequences from the PPL TOU rate. Approximately 5000 customers of DES switched to PPL's TOU when it was announced in December 2010. It is our opinion that the PPL TOU rate was improperly forecasted (a separately reconcilable rate) by as much as 2 cents per kWh. PPL's average TOU rate was 6.2 cents/kWh while the market price was close to 8.3 cents/kWh. Our concerns were shared with PPL, however, but we were informed that they were ordered by the Commission to develop a separately reconciled TOU rate. PPL was unwilling to adjust its TOU rate formulation for the five month period. We felt the TOU rate should be a variable rate that follows the market – but PPL designed it as a short-term fixed price which felt was not providing the right price signals. To rectify the situation, PPL suggested that we have discussions prior to the end of their next POLR period. RECOMMENDATION: BID TOU SERVICE AS A SEPARATE NON-RECONCILABLE RATE AND THE RATE SHOULD BE COMPLETELY VARIABLE.

◆ Default Service

- Continuation of Default Service – The Office of Customer Advocate has strongly stated its opposition to the elimination of default service. Reasons for its opposition are probably that default service keeps the market in check (safe harbor for a customer) and the default service product is an officially bid service and should be an accurate proxy for the market price. DES believes that robust "retail" competition will keep prices in check and will keep continuous market proxies in front of the customers. In the long term, competition will provide greater product diversity, more energy conservation, and engaged customers who should act in their individual best interest. A fully functioning choice model without default service is the best end state, in our opinion better than a combination of default service with reconciliation and competitive products. The crux of the policy maker's decision is that choice requires each customer to engage themselves in an energy decision. With the current default service it is an easy choice for the customer to "do nothing", even when it is in their best interest to participate in choice. The Penn Power example cited earlier where customers could save 30% off the PTC but very few customers took action in their best interest is the paramount problem with in the current situation. Keeping default service in its current form continues the "do nothing" syndrome. If the policymakers believe strongly in the competitive retail market, then default service needs to be eliminated or minimized. Again, complete elimination of default service is the optimal route. However, one way to more naturally eliminate default service is that all new customers/customer move-ins must affirmatively choose an EGS. The portfolio approach to default service product design could be maintained – but the customer eligibility for default service is limited to the current default customers (no re-entry).

- <u>Default Service Impedes Competition</u> – Maintaining default service will ultimately limit the saturation of retail competition, that is obvious. The easy policy modification is to keep default service and make it a variable product. DES is vehemently opposed to making default service a variable product for several reasons; 1) the customer will never be informed by the EDC that the current default price is variable,, 2) Variable prices assign the market risk to the customer – possibly making variable the highest risk but the largest reward, lowest- priced product. If the policy makers want to develop retail choice, the variable product will hamper choice development because most customers on the default variable will not understand or perceive any of the forward price risks because they have not experienced those risks in electricity before. Even when we know most customers are risk averse, the variable price risk will not be accounted for properly by the basic customer.

- <u>Advantage to Incumbent EDC or its Generation Affiliates</u> – DES wonders if it is appropriate that incumbent EDCs/Utility affiliates who in most cases hold the generating assets should be able to play on both sides of the equation, being a default service provider and a competitive retail EGS. While DES realizes there are standards of conduct that prohibit certain information sharing between the EDC and the competitive EGS, the wholesale generating entity is one party working with both entities. Furthermore, it seems the EDC having the right to reconcilable self-forecasted default rates and an affiliated competitive retail EGS who can compete with all of the other EGSs is a bit one-sided, especially if that entity has a grand strategy to dominate the competitive markets. This is especially concerning in the branded, incumbent, or home markets. While we expect the branded entity to see favorable results in its home, the deck seems a bit stacked in its favor. The result of a dominant player may favor the customer in the short term; however, if lack of competition is a result, the customer will suffer long term. RECOMMENDATION: REQUIRE THE UTILITY AFFILIATE TO

PROVIDE AN AFFILIATE DISCLAIMER NEXT TO THE CORPORATE LOGO; ELIMINATE DEFAULT SERVICE

- Fulfilling Default Service
  - Who should fulfill "Default service"? – If default service is maintained, we are fine with the EDC fulfilling the default service role under certain conditions. First, the character of the service needs to change from "reconcilable" to "non-reconcilable". Secondly, the EDC's generation affiliate must have a "share cap" of 33%. Lastly, the customer eligibility for default service must change as noted above.
  - Transition of Default Service to EGSs – DES is not supportive of creating a secondary default service to be served by EGSs in lieu of the EDC. DES is supportive of customers being assigned to EGSs for their electricity service under a short term standard contract. But that customer becomes a "customer of the EGS" (permanently assigned) and can never return to EDC for default service or reassignment to another EGS the next year. We would suggest the short standard product be a 1 year fixed price product with a cancel anytime provision and that product would need to renew each year for another 1 year term. The rolling fixed price products would give the unseasoned shoppers a chance to shop with a known price in their pocket. The best and most efficient transition to choice is the method discussed in our comments. Those comments suggest that customers be provided a deadline to choose or be assigned versus a complete assignment program. This way, customers must activate themselves and move forward with choosing EGS that they are satisfied with.
  - Criteria for EGSs to Fulfill Default Service Role – DES believes that "Raising the Bar" for EGSs is necessary. The Commission has done an excellent job of developing the competitive market and improving its market rules. But if a complete competitive transition is going to be implemented, customer interests and protection must be paramount to successful transition. In such a circumstance, it is suggested that certain safeguards be adopted: higher bonding requirements, new guidelines on savings statements related to variable products, clarity on price inclusions and exclusions for all customer classes, increased rigor on financial and technical fitness and enhanced market oversight.
- Improvements to Current Default Service and Rules
  - Eliminate Reconciliation- DES cited earlier that "reconciliation" should be eliminated. Reconciliation is dependent on the forecasting prowess of the EDC and leaves opportunities for gaming. While it is unlikely the EDC will game the system purposely, it is not necessary to allow for those opportunities. It has been

cited earlier that forecasting prices can cause significant disruptions to a developing market.

- Make New Customers Choose an EGS – It has been suggested that a possible plan is to phase-out default service by not allowing new accounts and transfers to sign up for default service after a certain date. Those new customers must choose from the list of available EGSs.