Hawke McKeon & Sniscak LLP
ATTORNEYS AT LAW

Todd S. Stewart
(717) 236-1300 x242
tsstewart@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

June 25, 2012

VIA HAND DELIVERY
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

RE: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania for Power Company and West Penn Power Company For Approval of their Default Service Programs, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670; **EXCEPTIONS OF DOMINION RETAIL, INC.**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are the original and nine (9) copies of the Exceptions of Dominion Retail, Inc. d/b/a Dominion Energy Solutions in the above-captioned docket. Copies of the Exceptions have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions related to this filing, please contact the undersigned.

Very truly yours,

Todd S. Stewart
Counsel for Dominion Retail, Inc.

RECEIVED
2012 JUN 25 PM 4: 16
PA PUC
SECRETARY'S BUREAU

TSS/alh
Enclosures

cc: Honorable Elizabeth H. Barnes

92846
92847
92848

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT PETITION OF METROPOLITAN	:		
EDISON COMPANY, PENNSYLVANIA	:	**Docket Nos.**	**P-2011-2273650**
ELECTRIC COMPANY, PENNSYLVANIA	:		**P-2011-2273668**
POWER COMPANY AND WEST PENN	:		**P-2011-2273669**
POWER COMPANY FOR APPROVAL OF	:		**P-2011-2273670**
THEIR DEFAULT SERVICE PROGRAMS	:		

RECEIVED
2012 JUN 25 PM 4: 17
PA PUC
SECRETARY'S BUREAU

EXCEPTIONS OF
DOMINION RETAIL, INC. TO
RECOMMENDED DECISION

NOW COMES, Dominion Retail, Inc. d/b/a Dominion Energy Solutions ("DES") and hereby submits its Exceptions to the Recommended Decision ("RD") of Administrative Law Judge Elizabeth H. Barnes ("ALJ") issued by the Pennsylvania Public Utility Commission ("Commission") on June 15, 2012, in the above captioned matter. The RD approves, with substantial modification, the default service plans ("DSP") proposed by the Pennsylvania utility affiliates of the First Energy Company: Metropolitan Edison Company ("MetEd"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn")(collectively the "First Energy Companies" or "Companies").

INTRODUCTION AND SUMMARY OF EXCEPTION

The RD contains a number of recommendations which must be adjusted in order to ensure that the DSP proposals accomplish the goal of moving towards a fully competitive retail market in the affected service territories, which is the express intention of the Commission in its Order proposing the competitive enhancements. *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("*IWP Order*").

Specifically, the following provisions of the RD must be modified:

1) The proposed recovery of the costs of the Retail Opt-In Auction ("ROI") from suppliers - both in requiring that EGS' bear the entire costs of the program and in recommending approval of the First Energy Companies alternative recovery mechanism (RD, p. 117) must be changed to provide for recovery of at least some of the costs from customers and to assign the supplier's portion of costs only to winning suppliers on a *pro rata* basis;

2) The recommended approval of the First Energy Companies' proposal to use a descending clock auction as the means of selecting suppliers to participate in the ROI should be rejected in favor of the more cost effective sealed bid approach (RD, p. 115);

3) Rejection of the proposed timeline for the ROI that would allow for the enrollment of customers to occur prior to the suppliers participating in the auction process should be reversed (RD, pp. 97-98); and,

4) The ALJ's rejection of the proposed Market Adjustment Charge ("MAC"), and in particular, the modifications proposed by DES, was not based upon a thorough analysis and should be reconsidered. (RD, pp. 56-58).

If these provisions can be adjusted to provide a more balanced approach to implementation of the *IWP Order*, it is far more likely that the competitive enhancements will achieve their intended goal of expanding competition. However, in their present state, the proposals in question are more likely to cause the opposite impact. DES respectfully requests that the Commission make the appropriate adjustments as discussed herein.

EXCEPTIONS

Exception No. 1: The RD errs in assigning all of the costs of the ROI Auction to Suppliers and in proposing to use the First Energy Companies' Alternative Plan. (RD p. 117).

In the RD, the ALJ rejects the First Energy Companies' proposal to recover the costs of the ROI from all customers and instead imposes the Companies' alternative plan to have all EGSs that "participate" in the auction to pay the cost evenly, without regard to how many customers they may or may not obtain in that process. (RD. p. 117). This recommendation fails on two counts: initially by rejecting without serious consideration the rational for recovering the costs of such a program from customers because they indeed have the most to gain in the form of savings; and then by proposing a recovery mechanism that will ensure that the ROI is a failure by adding a significant upfront cost to suppliers, before they have a chance to bid on or serve a single customer.

DES continues to believe that recovery of the costs of this type of a program from all customers is appropriate; because participating customers benefit immediately in the form of savings, and all customers benefit in the long run from a robust competitive market. (DES Main Brief, p. 23)

However, if the Commission is going to require that suppliers pay the costs, then it should be suppliers that actually obtain customers - those that actually see economic benefit -

that are required to pay the costs in proportion to the benefit they receive. Otherwise, the Companies' alternative recovery plan would add too much risk for suppliers to participate in the program, the risk of paying what could be a sizeable share of costs for a program that will not result in a single customer acquisition.

Why would a supplier take the risk of participating in a program with the Companies' proposed cost recovery mechanism? The answer is that most would not, and would instead opt to simply invest their limited resources trying to increase their customer base the way they always have, since then they at least will likely have some new customers to show for the effort at the end. In other words, the Companies' misguided methodology proposed by the RD requires suppliers to gamble with what could be a substantial sum of money (particularly since the RD also proposes using a descending clock auction which is very expensive) and roll the dice to see if they even win a single tranche of load, over which to spread those costs. Even if they don't win, however, the costs remain. This is simply too great a risk for most suppliers and will almost certainly result in only a few very large EGSs participating in the ROI. This type of cost recovery also increases the risk that the program will simply allocate market share among the very large affiliated suppliers who can pay the costs. That is not competition.

Accordingly, the ALJ's endorsement of the Companies' alternative cost recovery scheme for the ROI must be rejected in its entirety and replaced with a more rational approach where customers and suppliers at least share the costs, and where only suppliers that win tranches must pay.

Exception No. 2: The RD erroneously approved the First Energy Companies' proposal to employ a descending clock auction for the ROI. (RD, p. 115).

On page 115 of the RD, the ALJ recommends rejecting the proposals of two marketers and the Office of Consumer Advocate ("OCA"), on a subject where they actually agree, in favor

of the Companies' unsupported and contrary proposal to employ a descending clock auction rather than a sealed bid proposal. The reasoning appears to be limited to the fact that neither the suppliers nor the OCA supplied any financial analysis showing that a sealed bid was more cost effective than a descending clock auction. The rather obvious fatal flaw in this "logic" is the fact that it is the Companies that bear the burden of proving that their proposal is superior and the Companies have failed to do so by similarly failing to provide any serious financial analysis that a descending clock auction is cost effective.

The ALJ rejects Mr. Butler's experience, which is substantial, as a supporting basis for his conclusions, and instead welcomes the same sort of evidence presently by Mr. Miller on behalf of the Companies without reservation. Not only does such an approach defy reason, it simply allows the RD to skirt the rather obvious issue - that the companies cannot prove that a DCA is better.

As the proponent of a rule or order, the First Energy Companies bear the burden of proving that its proposed plan is in the public's best interest, 66 Pa. CS § 332(a), and that all of its proposals satisfy the Commission's Default Service Regulations. 52 Pa. Code § 54.181, *et seq.*, as well as the Commission's recent guidance in its Retail Markets Investigation proceedings. *Investigation of Pennsylvania's Retail Electricity Market; Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012)("Final Order").

The term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1954) and *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. P.U.C. 300 (1976). The term "preponderance of the evidence" means that one party must present evidence that is more convincing, even by the smallest amount, than the evidence presented by the other parties.

What this means is that the Companies must overcome the substantial and convincing evidence provided by several witnesses, that a sealed bid process is superior to a DCA in order to prevail and it has failed to do so. Accordingly, the RD should be reversed on this point and the DCA proposal rejected in favor of the sealed bid process.

Exception No. 3: The RD's proposed rejection of the proposed timeline for the ROI that would allow for the enrollment of customers to occur prior to the suppliers participating in the auction process is erroneous. (RD, pp. 97-98).

DES proposed that customers be aggregated prior to the ROI auction process, so that participating suppliers would know the sizes of the tranches before being asked to bid. (DES M.B., p. 18). The rationale for this position is that if EGSs know the size of the tranches, they will be able to provide better pricing to customers and produce the lowest price possible for the auction. (DR St. No. 1, p. 7). DES' witness expressed his view that the $50 bonus and the savings of at least 5% would be a sufficiently defined product such that customers could confidently opt to participate based on that information alone. (*Id.*) The RD's cursory rejection of DES' proposal ignores the efficacy that can be gained, and the fact that it is customers who ultimately will benefit, if suppliers know the characteristics of the tranches for which they are bidding. Accordingly, the RD should be reversed on this point, and DES proposal (DR. St. No. 1, p. 7) adopted instead.

Exception No. 4: The ALJ's rejection of the MAC in the form proposed by DES should be reconsidered. (RD, pp. 56-58).

The Companies' witness Mr. Fullem, First Energy Statement No. 7, proposed a MAC that would allow the Companies to recover the costs of default service that are otherwise unrecoverable through presently configured default service rates. (DES Main Brief, pp. 8-9).

The charge as proposed would be a .5 cent/kwh adder that would be included in the price to compare ("PTC").

DES supports the notion that if there indeed are identifiable costs of default service that presently are unrecovered, those costs should be recovered through the MAC. However, Mr. Butler suggested that if the purpose of the MAC were slightly re-visioned, it also could assist in furthering the goal of jump-starting competition. Citing to a recent customer survey showing that customer savings in the range of 10-20% can increase customer interest in shopping from an average of 26%, to 51%, or nearly double (DR St. No. 1, pp. 8-10), Mr. Butler proposed to double the MAC charge to 1 cent per kwh; to make it temporary - in place only until 50% shopping is achieved; to make it a funding source, by flowing the bulk of the revenue back to customers outside the PTC, and to make it cancelable at any time if it appears not to be working. (DR St. No. SR-1, 5:6-10).

This proposal would have allowed for the Companies to accomplish their goal of cost recovery but more importantly, from DES' perspective, would have allowed suppliers the opportunity to make offers that could provide substantial savings, and thus overcome the substantial status quo bias that keeps customers stuck on default service. Importantly, customers would not be asked to pay anything extra.

While the RD recommends rejecting the MAC charge as proposed by the Companies, it did not address the practical efficacy of DES' proposal. The ALJ acknowledged that other jurisdictions have authorized such charges, but only suggested that the Public Utility Code, 66 PA. C.S. § 101, *et seq.*, does not allow for such a mechanism, without a citation. (RD. p.57) While it certainly is true that the MAC charge concept is new in Pennsylvania, it should at least have been given consideration as a tool for getting customers into the competitive market. As such the RD erred in not giving it due consideration.

CONCLUSION

This matter involves a large number of issues and sub-issues, many of which at first glance may not appear to be that significant or likely to alter the outcome of the programs proposed by the Companies. But such is not the case. Rather, each element of the proposal is important, each comes with its own set of costs and assigns a party or group of parties to pay those costs. Accordingly, one simply cannot view this effort as a whole, but must instead make sure that each piece, on its own, is best suited to achieving the stated goal of increasing significantly the level of competition on the First Energy Companies' systems. As it stands, the RD has failed in several important aspects to ensure that each element is right. In particular, the ROI which is essentially the flagship program, must be created and implemented correctly. As discussed herein and in DES' Main and Reply Brief there are several components of the Companies' proposal that were approved by the RD that are not best suited to achieving the Commission's goal and those must be corrected for the programs to have a chance of success.

Respectfully submitted,

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

Counsel for Dominion Retail, Inc.

Dated: June 25, 2012

RECEIVED
2012 JUN 25 PM 4:17
PA PUC
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in the manner indicated below, and in accordance with the requirements of 52 P.A. Code §1.54 (relating to service by a party).

VIA EMAIL AND FIRST CLASS MAIL

Johnnie E. Simms, Esquire
Charles D. Shields, Esquire
PA PUC Bureau of Investigation And Enforcement
PO Box 3265
Harrisburg, PA 17105

Irwin A. Popowsky, Esquire
Aaron Beatty, Esquire
Darryle Lawarence, Esquire
Office of Consumer Advocate
5th Floor Forum Place
555 Walnut Street
Harrisburg, PA 17101-1923

Terry Sneed, Esquire
Daniel G. Asmus, Esquire
Office of Small Business Advocate
Suite 1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101

Thomas P Gadsden, Esquire
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Daniel Clearfield, Esquire
Deanne M. O'Dell, Esquire
Eckert Seamans Cherin & Mellot LLC
213 Market Street 8th Floor
PO Box 1248
Harrisburg, PA 17108-1248

Charis Mincavage, Esquire
Susan E. Bruce, Esquire
McNees Wallace & Nurick
100 Pine Street
PO Box 1166
Harrisburg, PA 17108

Brian J. Knipe, Esquire
Buchanan Ingersoll & Rooney PC
17 North Second Street, 15th Floor
Harrisburg, PA 17101-1503

Regina L. Matz, Esquire
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
PO Box 9500
Harrisburg, PA 17108

RECEIVED
2012 JUN 25 PM 4:16
PA PUC
SECRETARY'S BUREAU

Bradley A. Bingaman, Esquire
Tori L. Geisler, Esquire
FirstEnergy Service Company
2800 Pottsville Pike
PO Box 16001
Reading, PA 19612-6001

Patrick M. Cicero, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101

Benjamin L. Willey, Esquire
Law Offices of Benjamin L. Willey
7272 Wisconsin Avenue
Suite 300
Bethesda, MD 20814

Michael A. Gruin, Esquire
Stevens & Lee
17 North Second Street, 16th Floor
Harrisburg, PA 17101

Divesh Gupta, Esquire
Managing Counsel- Regulatory
Constellation Energy
100 Constellation Way
Suite 500C
Baltimore, MD 21202

Trevor D. Stiles, Esquire
Foley & Lardner LLP
777 E. Wisconsin Ave
Milwaukee, WI 53202

Todd S. Stewart

Dated this 25th day of June, 2012

RECEIVED
2012 JUN 25 PM 4:17
PA PUC
SECRETARY'S BUREAU