

Hawke
 Mckeon &
 Sniscak LLP

ATTORNEYS AT LAW

William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart
Craig R. Burgraff
Janet L. Miller
Steven K. Haas
William E. Lehman
Katherine E. Lovette
Tori L. Giesler

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

March 22, 2010

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room (2nd Floor)
Harrisburg, PA 171205

RECEIVED
2010 MAR 22 PM 3:37
PA PUC
SECRETARY'S BUREAU

RE: Petition of PECO Energy Company for Approval of its Electric Purchase of Receivables Program, Docket No. P-2009-2143607; **MAIN BRIEF OF DOMINION RETAIL, INC. ON RESERVED ISSUES**

Dear Secretary McNulty:

Attached, for filing with the Commission on behalf of Dominion Retail, Inc. is the original of the Statement in Support of Joint Petition for Approval of Settlement. Copies of the enclosed Statement have been served as indicated on the attached Certificate of Service.

If you have any questions, please contact me.

Respectfully,



Todd S. Stewart
Counsel to Dominion Retail, Inc.

TSS/bks

cc: Honorable Cynthia Williams Fordham, Administrative Law Judge (w/encl)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company :
for Approval of Its Revised Electric : Docket No. P-2009-2143607
Purchase of Receivables Program :

**MAIN BRIEF OF
DOMINION RETAIL, INC.
ON RESERVED ISSUE**

RECEIVED
2010 MAR 22 PM 3:37
PA PUC
SECRETARY'S BUREAU

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

Counsel for Dominion Retail, Inc.

Dated: March 22, 2010

TABLE OF CONTENTS

I.	STATEMENT OF THE CASE	3
	A. Procedural History	3
	B. Factual Background	5
II.	STATEMENT OF QUESTIONS INVOLVED	7
III.	SUMMARY OF ARGUMENT	7
IV.	ARGUMENT	8
	A. The Commission Should Reject the OTS Demand	8
	B. PECO’s Proposal is Reasonable and Should be Adopted	11
V.	CONCLUSION	12

TABLE OF AUTHORITIES

Cases

Petition of PECO Energy Company for Approval of its Default Service Program and Rate Mitigation Plan, Docket No. P-2008-2062739 (Order entered June 2, 2009)..... 3

Statutes

52 Pa. Code § 56 3

I. STATEMENT OF THE CASE

A. Procedural History

As part of a settlement in PECO Energy Company's ("PECO") default service case,¹ it agreed to hold at least three stakeholder meetings and to then file a revised purchase of receivables ("POR") program. The Default Service Settlement contained a number of specific requirements for the POR program but left a number of important issues for possible resolution as part of the three stakeholder meetings.² After holding the three meetings, PECO filed a Petition seeking approval of its revised POR program on November 20, 2009.

In its Petition, PECO requests that the Pennsylvania Public Utility Commission (the "Commission" or "PUC") approve revisions to PECO's current electric purchase of receivables program, which, among other things, would permit PECO to: (i) purchase the customer receivables of EGSs participating in PECO's consolidated billing option for basic retail electricity supply services in PECO's service territory, without recourse by PECO to those suppliers for receivables that PECO cannot collect; (ii) discount temporarily the purchase of those receivables to recover PECO's initial implementation costs for the Revised Electric POR Program; and (iii) conduct collection activities with respect to all purchased EGS receivables and, if necessary, terminate electric service to any customer whose account (including the EGS receivable purchased by PECO) remains unpaid, in whole or in part, with all such collection and termination activity to be conducted in accordance with Chapter 14 of the Pennsylvania Public Utility Code and Chapter 56 of the Commission's regulations (52 Pa. Code § 56)

¹ *Petition of PECO Energy Company for Approval of its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (Order entered June 2, 2009) ("Default Service Settlement").

² The OTS, as a party to the Default Service Settlement was invited to the collaborative meetings but never raised, in that forum, the issues that it presents in this case.

A number of parties sought to intervene in this proceeding and on January 5, 2010, a Prehearing Conference was held before Administrative Law Judge Cynthia W. Fordham (the "ALJ"). At the prehearing, all interventions were granted and a schedule was established for the submission of testimony and the conduct of hearings. The schedule provided that testimony would be submitted in writing in advance of hearings. Evidentiary hearings were scheduled for March 4 and 5, 2010. On January 22, 2010, Judge Fordham issued Prehearing Order #2 establishing this schedule.

On February 2, 2010, direct testimony and accompanying exhibits were submitted by OTS, OCA, OSBA, RESA and Dominion. On February 5, 2010, supplemental direct testimony and accompanying exhibits were submitted by OTS. On February 22, 2010, rebuttal testimony was submitted by PECO, OTS, OCA, RESA and Dominion. Dominion and OTS submitted surrebuttal testimony and accompanying exhibits on March 1, 2010. PECO, OSBA and OCA submitted surrebuttal testimony and accompanying exhibits on March 3, 2010.

At the same time the parties were preparing to litigate this matter they were engaged in ongoing settlement discussion, which ultimately resulted in a settlement of most of the issues. All of the parties agreed to the submission of a Joint Petition for Settlement that reserved two issues for briefing and resolution before the ALJ and eventually the Commission. The first of those issues is the appropriate treatment of arrearages that may result from PECO's present POR program that exist as of January 1, 2011, and whether PECO may treat customers with such arrearages in the same manner as it would treat customers with arrearages under its revised plan. Dominion Retail takes no position on this issue.

The second issue reserved for resolution is the Office of Trial Staff's ("OTS") insistence that PECO unbundle its uncollectibles expense associated with commodity sales out of

distribution rates and instead collect them from default service customers as an addition to the default service rate, and from shopping customers in the form of a discount to the receivables purchased by PECO from participating Electric Generation Suppliers (“EGS”). The purpose of this brief is to address this latter issue.

B. Factual Background

PECO’s proposed POR program will have PECO buying the receivables of EGS, such as Dominion Retail, at face value, except that PECO proposed to recover the incremental startup costs associated with implementing the POR program in the form of a temporary discount of .2%. This temporary discount will be eliminated once all costs associated with the implementation are recovered. PECO Statement No. 1, 9-10. At the same time, PECO will continue to recover uncollectable expense, that is, the expense associated with the customers that do not pay their bills, through distribution rates paid by all customers in much the same way it does today.

It does not appear from the evidence submitted into the record of this case, namely OTS Exhibit No. 1-S, that PECO has adjusted its uncollectible expense since its restructuring filing in 1997. It also appears that PECO believed that it would be prudent to continue to recover those expenses the way it does now--in its distribution rates. PECO St. No. 1, 9-10. PECO’s current POR program has a zero percent discount. The only major difference between the current POR program and the proposed POR program is that PECO will charge a small administrative adder for the necessary changes, and that PECO will not be permitted to terminate service to customers who fail to pay their EGS charges that were purchased as part of the POR program in the same way that it currently manages collections for default service customers. Consequently, PECO

will no longer revert customers to dual billing if arrearages persist for more than 90 days, as it does under its current POR program. *Id.*

Dominion Retail's witness Butler testified that PECO's approach is appropriate under the circumstances. That is, Mr. Butler testified that there are two accepted approaches to POR programs. Dominion Retail St. No. 1, 2:12. The first is to do what PECO has done and to maintain a zero discount and to continue to recover uncollectibles expense from all customers in distribution rates. Mr. Butler testified that the other accepted method of implementing POR programs is to develop a discount rate that reflects the uncollectable expense associated with commodity charges in base rates to unbundle that amount out of base rates and to recover it from default service customers as part of the default service commodity charge and to recover it from shopping customers in the form of a discount off of the receivables purchased from EGSs. As Mr. Butler testified, both of these methodologies achieve the same results. *Id.*

That is, any impact of including shopping customers in the pool of all customers, for purposes of uncollectibles expenses, is likely to reduce the overall experienced uncollectibles expense, because shopping customers tend to be better credit risk customers. What this means in a practical sense, is that if a discount rate were developed that accurately reflected the uncollectable experience of shopping customers, it would likely be lower than the discount rate for all customers. Dominion Retail St. No. 1-R, 8; Dominion Retail St. No. 1-SR, 1:21-2:7. Mr. Butler's testimony is contrary to Ms. Sears' conclusion that EGSs would increase PECO's overall uncollectible rate. Dominion Retail St. No. 1-SR, 2:10-3:5.

The OTS has proposed in this case that PECO be required to put aside its current methodology of recovering bad debt expense through distribution rates from all customers. Instead, OTS would require that PECO unbundle bad debt associated with commodity charges

out of distribution rates and instead collect those dollars through the commodity charges and through a discount charged to suppliers on purchased receivables. OTS Statement No. 1, 8:15-9:10.

While Dominion Retail has agreed to such a methodology in other cases, in this particular case, it believes that employing such a methodology would be unwise for a number of reasons, including most prominently the amount of time that has passed since the last time PECO submitted a bad debt number. Dominion Retail St. No. 1-SR, 1:16-19.

II. STATEMENT OF QUESTIONS INVOLVED

1. Should the Pennsylvania Public Utility Commission (“Commission”) approve PECO’s proposal to provide a purchase of receivable (“POR”) program at a zero discount (with a .2% temporary administrative adder) and to continue to recover uncollectable expense from all customers through distribution rates?

Suggested Answer: Yes

2. Should the Commission reject the Office of Trial Staff’s (“OTS”) position that would require PECO to unbundle its uncollectable expense out of distribution rates and to instead collect commodity related uncollectable expense through the commodity charge and to require PECO to charge EGSs a discount, in addition to the administrative adder, to recover the uncollectable expense from shopping customers?

Suggested Answer: Yes

III. SUMMARY OF ARGUMENT

PECO has proposed to modify its existing POR program to allow it to reduce its current uncollectibles risk by providing it with the ability to terminate a customer’s service for failure to pay EGS charges for which PECO purchases the receivable. PECO also has proposed a temporary discount to collect the incremental costs of implementing the revised POR program. There is no evidence of any other incremental ongoing costs associated with the proposed modified POR program that are not already recovered through distribution rates. To the

contrary, the evidence is clear that PECO currently recovers those costs through distribution rates. PECO St. No. 1, 8-10.

Nonetheless, the OTS has insisted that PECO impose a discount rate on EGSs for purchased receivables and that PECO be required to unbundle its uncollectibles expense out of distribution rates, despite the lack of any evidence to support the notion that doing so is the best result in this case. While it is not generally disputed that either approach is viable, owing largely to the fact that PECO has not determined its uncollectible expense in some time, and has not even presented evidence of the uncollectibles rate associated with EGS receivables, Dominion Retail believes that there is a risk associated with guessing at that number here and so it supports PECO's approach.

IV. ARGUMENT

A. The Commission Should Reject the OTS Demand.

The OTS has asked the Commission to reject PECO's efforts to comply with one of the express requirements of PECO's Default Service Settlement, and to instead impose a different methodology—in opposition to every other party to the case. In particular, the Default Service Settlement, at ¶ 66, requires:

The discount PECO will apply to receivables purchased under the POR program will reflect only incremental uncollectibles expense and other incremental POR-related expense that are not included in distribution rates.

PECO St. No. 1, 8:10-16 (emphasis supplied). Apart from the obvious flaw, that the OTS position in this case--that PECO unbundle its entire uncollectibles expense, not simply the incremental expense, out of distribution rates--is at odds with the settlement to which it was a party and which the Commission approved, the OTS has failed to provide any valid rationale or

factual basis for its demand. The short answer is that PECO proposed a modified POR program in accord with the resolution of its DSP case and the OTS would now have PECO do something different. The OTS effort should be rejected.

The OTS witness, Ms. Sears, contends, based only upon speculation, that PECO should be required to charge a discount rate to suppliers of 2.07% in addition to .2% discount that is intended to recover the incremental administrative charges, for a total discount rate of 2.27%. The 2.07% figure was extracted without any adjustment whatsoever, from PECO's 1997 restructuring filing. OTS Exhibit No. 1-S. It is obvious that conditions are likely to have changed in the succeeding 13 years, yet Ms. Sears does not address, nor even acknowledge the passage of time and its effect on the discount percentage she proposes. Even more egregiously, she offers no support whatsoever for the "need" to unbundle and charge a discount to EGSs in light of PECO's proposal, nor does she even acknowledge that her proposal, in a general sense, achieves the same result as PECO's approach. Finally, she fails to acknowledge that if the Commission were to agree with her notion that unbundling and a discount are required, it would be more likely to harm EGS customers, who generally have better credit performance, and thus lower uncollectibles, than customers generally. Dominion Retail St. No. 1-R, 8:8; Dominion Retail St. No. 1-SR, 2:10-3:14.

The foundation of Ms. Sears's approach is found in her statement "due to the existence of an uncollectibles account, and a prior policy to revert to dual billing for charges delinquent over ninety days, there is evidence that the EGSs do not collect 100% of its billed revenues." She then goes on to state that the discount rate is appropriate "because it reflects the added risk of the uncollectibles associated with EGS receivables being purchased" OTS Statement No. 1 at 9:3-10. Ms. Sears' apparently believes that there exists some data relative to PECO's uncollectibles

experience with its present POR program, or so her testimony would suggest, yet, her Exhibit, OTS Exhibit No. 1-S, shows only PECO's general uncollectibles number from 1997, before PECO had a POR program. Accordingly, there is no basis to conclude that PECO's uncollectibles experience with EGSs in its existing POR is better or worse than for its other customers. While it may be true that EGSs do not collect 100% of their billed revenues, the only evidence in the record on the subject suggests that EGSs collect larger percentages of their billed revenue than EDCs. Dominion Retail St. 1-R, 8:5; Dominion Retail St. No. 1-SR, 2:20-22. Nonetheless, Ms. Sears never explains how her disjointed thoughts form the basis of her proposal. The short answer is that they do not. Accordingly, OTS fails to present a coherent rationale for rejecting what PECO has proposed; which is not a new methodology, but rather a continuation of what it does today.

Certainly speculation cannot form the basis for a Commission decision to require PECO to use a discount rate, when PECO's existing POR program pays suppliers 100% of their purchased of receivables. Under PECO's proposed program, it would continue to do the same thing, except that PECO would be able to terminate service to customers who fail to pay their EGS charges, rendering the reversion to dual billing process unnecessary. Ms. Sears assumes that elimination of this reversion to dual billing will shift uncollectibles risk to PECO, OTS Statement No. 1-R, 3:3., but she provides no data to support this naïve assumption, and fails to consider that EGSs might presently be shifting that risk to PECO by simply returning customers with arrearages approaching 90 days in duration, back to default service. Dominion Retail St. No 1-SR, 2:10-3:5. Accordingly, with PECO gaining the ability to terminate service to customers on account of EGS arrearages, which it cannot do today, its collection risk should diminish, not increase. Moreover, Mr. Butler has made it clear that the collection risk associated

with serving EGSs is less than for default supply customers generally. Dominion Retail St. No. 1-R, 8:1-18.

At bottom, there is no support for the OTS position in this case, and it is contrary to the requirements of the settlement of PECO's default service case. Importantly, there is unrefuted testimony that the OTS proposal and PECO's proposal, as a general matter, would produce a similar sharing of costs, but that due to the passage of time and the non-base rate case nature of this proceeding, that it is risky to establish a discount and appropriate unbundling mechanism. Dominion Retail St. No. 1-R, 8-9; Dominion Retail St. No. 1-SR, 1:16-19. Accordingly, the OTS proposal must be rejected.

B. PECO's Proposal is Reasonable and Should be Adopted.

PECO has proposed to continue to recover uncollectable expense from all customers in the same manner it does today, in its distribution rates. PECO Statement No. 1, 8-10. This is fair because PECO has not had a distribution rate case in some time, and to derive a discount outside of that context is difficult and risky. That is not to say that once PECO has its revised POR program in place for a number of years that it would not be appropriate to revisit the issue of relative uncollectable rates as between PECO and EGSs and to create a proper discount rate based upon actual experience. But in the context of the current proceeding, such an approach is inappropriate and risky. Moreover, the only evidence in this case on the subject suggests that customers who choose alternative suppliers tend to have better credit history and credit performance. Dominion Retail St. No. 1-R, 8:8. This fact alone supports the notion that any EGS discount, if it varies at all, is likely to be less than the experienced uncollectable rates of the general population of EDC customers. However, without any actual current information,

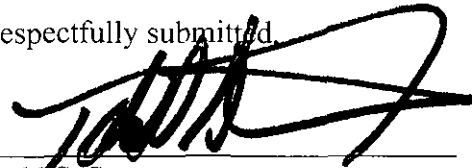
creating a fair and appropriate discount is not advisable. Dominion Retail St. No. 1-R, 8:2-18; Dominion Retail St. No. 1-SR, 1:16-19.

PECO has taken the more prudent approach, for now, and continued the same manner of recovering uncollectibles expenses and has proposed to collect the incremental implementation costs through the temporary .2% discount. As Mr. Butler points out, there are two valid approaches, but the only reasons for picking one over the other suggest that PECO's approach is the better path. Dominion Retail St. No. 1, 2:12-3:2. Accordingly, PECO's proposal as modified by the Joint Petition for Partial Settlement should be adopted.

V. CONCLUSION

The OTS proposal is contrary to the requirements of PECO's default service settlement, is not supported by any other party, and is factually and fundamentally unsupported. Accordingly, it must be rejected. PECO's proposal is reasonable under the circumstances and should be approved, as modified by the Joint Petition for Partial Settlement.

Respectfully submitted,



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

Counsel for Dominion Retail, Inc.

Dated: March 22, 2010

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 accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL & FIRST CLASS MAIL

Tanya J. McCloskey
Senior Assistant Consumer Advocate
Barrett C. Sheridan
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Richard A. Kanaskie
Senior Prosecutor
Office of Trial Staff
Pennsylvania Public Utility Commission
Commerce Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Divesh Gupta, Esquire
Constellation Energy Resources, LLC
111 Market Place, Suite 500
Baltimore, MD 21202

Charis Mincavage
Barry A. Naum
Saad A. Syed
McNees, Wallace & Nurick LLC
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108-1166

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

David I. Fein
Vice President, Energy Policy
Director of Retail Energy Policy
Constellation Energy
550 W. Washington Blvd., Suite #300
Chicago, IL 60661

Christopher A. Lewis, Esquire
Christopher R. Sharp, Esquire
Blank Rome, LLP
One Logan Square
130 N. 18th Street
Philadelphia, PA 19103-6998

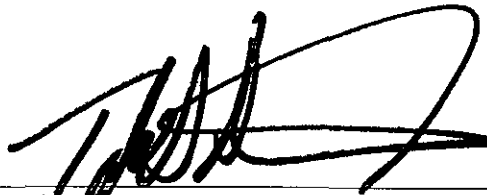
RECEIVED
2010 MAR 22 PM 3:37
SECRETARY'S BUREAU

Brian Kalcic
Excel Consulting
225 S. Meramec Avenue
Suite 720-T
St. Louis, MO 63105

Barbara Alexander
83 Wedgewood Drive
Winthrop, ME 04364

Thomas P. Gadsden
Kenneth M. Kulak
Catherine G. Vasudevan
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Anthony E. Gay
Jack R. Garfinkle
Exelon Business Services Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699

A handwritten signature in black ink, appearing to read 'Todd S. Stewart', written over a horizontal line.

Todd S. Stewart

Dated this 22nd day of March 2010