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March 31, 2010

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**VIA HAND DELIVERY**

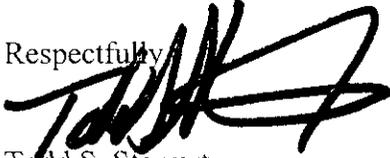
James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – Filing Room (2<sup>nd</sup> Floor)  
Harrisburg, PA 171205

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

Dear Secretary McNulty:

Please find enclosed for filing with the Commission an original and nine (9) copies of the Reply Brief of Dominion Retail, Inc. on the Reserved Issue in the above-captioned matters. As evidenced on the Certificate of Service, all parties of record have been served with two copies of the Brief and all parties have been provided with an electronic copy as well.

If you have any questions pertaining to this filing, please do not hesitate to 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 :

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

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Dated: March 31, 2010

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## **I. SUMMARY OF THE REPLY ARGUMENT**

In its Main Brief (M.B.), the Office of Trial Staff (“OTS”) raises a number of arguments, including its contention that PECO Electric Company (“PECO” or the “Company”) has failed to carry its burden of proving that its proposal to modify its existing purchase of receivables (“POR”) program is in the public interest. Rather, the OTS adamantly contends that a PPL-style POR program has been mandated for all electricity POR programs in the Commonwealth of Pennsylvania. These arguments, as well as the other contentions raised by the OTS in its Main Brief, are without merit and must be rejected, and PECO’s proposed modifications of its current POR program, as adjusted by the Joint Petition for Settlement, should be approved.

The record in this case is clear that PECO’s proposal to modify its existing POR program is reasonable and will produce results similar to those that would be expected from the type of program implemented in PPL’s service territory--which includes the unbundling of generation related uncollectibles expense and the imposition of a discount rate on purchase receivables. Rather than seek to go the PPL route, PECO reasonably chose to continue its existing POR program which recovers uncollectable costs from all customers through distribution rates since all customers will be served by PECO’s billing and collection process under its proposed POR program.

Likewise, the OTS’s argument that cross-subsidies will result from PECO’s program is without merit. The OTS has argued in its Main Brief that PECO’s proposal will cause non-shopping customers to subsidize shopping customers but fails to explain how that will occur, since all customers will be paying the same uncollectibles rate under either proposal. The OTS fails even to demonstrate how such a subsidy could have occurred in PECO’s existing program, which failure seriously undercuts the OTS position, because PECO’s proposed program is a less

risky continuation of its existing program. Moreover, the OTS's view is contrary to Mr. Butler's testimony which states that if there were a subsidy, it would be shopping customers subsidizing non-shopping customers, because traditionally EGS customers have produced lower rates of uncollectable expense than non-shopping customers. Dominion St. No. 1-SR, 1:21-2:7. In any event, what is clear is that shopping customers are no worse of a credit risk than non-shopping, or default service customers, and therefore will not negatively impact the uncollectibles rate of PECO's general customer population. What this means is that there will be no cross-subsidy.

In short, there is no support for the OTS's argument, its position should be rejected, and PECO's proposal to recover the costs of POR from all customers of distribution rates, except for the temporary adder designed to collect incremental uncollectibles administrative costs associated with uncollectibles, should be approved as modified by the Joint Petition for Settlement.

## II. REPLY ARGUMENT

### A. **The OTS' Contention That PECO's Proposal Will Result In Cross-Subsidies Is Contrary To The Facts. (OTS M.B., pp. 8-11).**

In a number of places in its Main Brief, the OTS suggests that PECO's proposed cost recovery methodology (to continue to recover all of the costs associated with billing and collection for both EGS customers and default service customers through distribution rates) would result in default service customers subsidizing shopping customers. This notion is factually and legally incorrect.

There are two methodologies that are appropriate for recovery of purchase of receivable costs. The first is to unbundle all generation related uncollectibles costs out of base distribution rates and to charge an appropriate discount to EGSs on purchased receivables, and to recover a

similar percentage from default service customers through a proportional increase to the generation rate. Dominion Retail St. No. 1, 2:12; St. No. 1-SR, 1:10. This methodology assumes that billing, collection, and associated bad debt expense, or at least that portion of those costs associated with electric generation supply service, are default service expenses and seeks to recover them from each customer group accordingly. The second appropriate methodology, what PECO has proposed here, is that it continue to collect the costs of billing and collection for all customers, from all customers, through base distribution rates. This methodology assumes that since the EDC is billing and collecting from all customers that such costs are distribution related, and therefore seeks to recover those costs as a distribution service expense. Mr. Butler has testified that both methodologies are appropriate ways of implementing a competitively fair POR program. *Id.* Both recover the same level of expenses from the same customers. Dominion Retail St. No. 1-SR, 2:5-3:15.

The OTS ignores these fundamental facts, and instead suggests that continuing to include the cost of billing and collection in distribution rates for all customers would cause a cross subsidy. OTS M.B. at 7-8. The OTS never explains how this subsidy would happen, it just hypothesizes that it will occur. It is telling, and ironic then, that OTS's witness, Ms. Sears, admits that the discount rate she proposes would be the same for both shopping and non-shopping customers. How can that be if one group's costs are different, because PECO already has proposed to collect the incremental costs of the program in a temporary discount charged ONLY to EGS? The fact is that both approaches collect the same level of dollars from the very same customers, the same as PECO does today, with one major improvement, PECO will now be able to treat all customers the same for purposes of billing and collection, including terminations and reconnections, which should lower its costs and uncollectibles risk.

In short, there is no evidence, apart from Ms. Sears' unsupported speculation, that there will be a subsidy. This view is contrary to Ms. Sears' admission that the discount rates would be the same. The only credible evidence on the subject shows that there will be no such subsidy. Accordingly, the OTS's position on this point must be rejected.

**B. The OTS' Contention That The Settlement In PPL's POR Controls Here Is Baseless. (OTS M.B., pp. 7-8, 12).**

At several locations in its Main Brief, the OTS cites to the Commission's Order in the PPL POR<sup>1</sup> case as controlling here. The OTS goes so far as to state "[t]he fact that resolution of pertinent issues in the PPL proceeding was achieved through a settlement does not mitigate its applicability in this proceeding." OTS Main Brief at 7. Finally, the OTS contends that, "[t]here has not been a presentation of legally credible evidence to support a finding that the parameters of the POR program approved by the Commission at PPL's service territory are not applicable to PECO's service territory." OTS Main Brief at 8. However, these contentions are without merit and are contrary to the express provisions of the Commission Order in question and with the terms of the settlement that resolved the pertinent issue in that case, which prohibits parties from citing the settlement as precedent.

The PPL POR case was the subject of a Joint Petition for Settlement that was joined by all parties to the litigation, and which resolved all issues, save two: 1) the termination/reconnection issue; and 2) the definition of basic supply service. These issues, and these alone were litigated and resolved by the Commission in its Final Order.<sup>2</sup> All other issues,

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<sup>1</sup> *Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge*, Docket No. P-2009-2129502 (Final Order entered November 19, 2009) ("PPL Final Order").

<sup>2</sup> *Id.*, slip op., pp. 3-8.

including the issue of POR cost recovery, were resolved in a settlement that clearly prohibits the OTS from making the sort of argument it raises here:

36. This Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceeding with the exception of the reserved issues for litigation set forth herein. If the Commission does not approve the Settlement and the proceeding continues, the Joint Petitioners reserve their respective rights to present full briefing and argument. The Settlement is made without any admission against, or prejudice to, any position which any Joint Petitioner may adopt in the event of any subsequent litigation in this proceeding or any other proceeding.

37. This Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.<sup>3</sup>

Even if the OTS were not prohibited from citing the PPL Joint Petition as precedent on the issue of cost recovery (which it is), nowhere in the PPL Final Order did the Commission say that the cost recovery structure approved in that Order was mandatory for all subsequent POR programs, nor did the Commission say that the only appropriate cost recovery methodology for POR programs would be to impose a discount and unbundling structure. In fact, there is no discussion of the notion at all except to mention that the settlement contains such a provision. The OTS should be familiar with the conditions of the PPL Joint Petition, because it was a signatory to the settlement; which makes the OTS position in this case somewhat troubling. At bottom however, and contrary to the OTS position, there is no legal basis to assert that the PPL Final Order controls here in any manner. The OTS argument must, therefore, be rejected.

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<sup>3</sup> *Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge*, Docket No. P-2009-2129502, Joint Petition for Settlement at paragraphs 36-37. (“PPL Joint Petition”)

**C. PECO's Proposal To Modify Its Existing POR Program Is Adequately Supported In The Record. (OTS M.B., pp. 4-8).**

Contrary to the OTS's position, PECO has adequately supported its proposal to modify its existing electricity POR program. PECO has proposed to continue to recover its uncollectible expenses for all customers, from all customers in the same manner it does today--in its distribution rates. PECO Statement No. 1, 8-10. The settlement also provides PECO with the ability to better control uncollectibles expense by allowing it to terminate service to customers if they fail to pay bills associated with purchased receivables. PECO has taken a prudent approach 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.

There is no binding norm in Pennsylvania with regard to a required structure for Electric service POR programs. While the OTS may believe that its methodology is better, it has presented no legal authority to support its notion that a PPL style program is mandatory. Moreover, from a factual perspective, OTS has not addressed Mr. Butler's consistent testimony that PECO's approach is favorable under the circumstances. Under both approaches customers should remain indifferent. Based on the record of this case, there is ample evidence to conclude that PECO's proposal to modify its existing program, as modified by the Settlement, is just and reasonable.

**D. There Is No Evidence To Support The Propriety Of Implementing The OTS's Proposal In This Case. (OTS M. B., *passim*).**

While the Commission has issued a notice of proposed rulemaking that would establish rules for natural gas purchase of receivables programs<sup>4</sup>, it is not done the same for electric purchase of receivables programs. Even if one were to argue that the rules proposed for the natural gas industry applied here, those rules are absolutely clear that charging a discount is wholly at the discretion of the NGDC.<sup>5</sup> Accordingly, there are no rules in effect in Pennsylvania at this point with regard to any POR program that would require a discount—and the rules that have been proposed, require the opposite. Nonetheless, OTS insists that the only acceptable manner of implementing a POR program here is to impose an uncollectibles discount rate of 2.27% for residential customers. The OTS discount rate is based upon the uncollectibles expense reported by PECO in its **1997 restructuring filing**. OTS Exhibit 1-SR. However, the OTS's Main Brief and Testimony are devoid of any explanation of how the passage of time, or any other factors in today's market, including PECO's present POR program, might have affected this uncollectibles rate; an omission which is most startling.

Rather than supporting its proposal with analysis and evidence, the OTS makes the conclusory statement, "without the inclusion of an uncollectable account expense factor in the proposed discount, there will be an improper shifting of non-jurisdictional generation expenses from the EGSs to the jurisdictional distribution ratepayers." OTS Brief at 9. Such statements are not a substitute for evidence, and are contrary to announced Commission policy that charging a discount be a decision for the utility. More importantly, this statement is factually incorrect and is nowhere supported in the record.

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<sup>4</sup> *Natural Gas Distribution Companies and the Promotion of Retail Markets*; Docket No. L-2008-2069114, (Proposed Rulemaking Order entered March 27, 2009); 39 Pa. Bull. 3461.

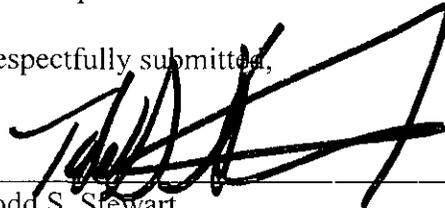
<sup>5</sup> *Id.*, at 39 Pa. Bull. 3466.

In short, the evidence shows that customers will be either indifferent, or slightly better off under PECO's plan as compared to the OTS proposal. The OTS admits that both groups of customers (shopping v. non-shopping) have approximately the same uncollectibles rate. OTS St. No. 1-SR, p. 4. Therefore, recovering uncollectibles expense as part of the distribution rate, which is paid by all customers, as opposed to unbundling it and applying it the same percentage rate to EGS receivables in the form of a discount and to increase default service rates to non-shopping customers by the like amount, results in PECO collecting the same amount of money from the same people. What this means is that PECO's continuation of its ongoing plan is an acceptable alternative and produces the same result. Accordingly, the OTS position must be rejected.

### III. CONCLUSION

Accordingly, Dominion Retail, Inc., respectfully requests that the OTS's position on the reserved issue regarding the appropriate cost recovery mechanism for PECO's purchase of receivable program be rejected and that PECO's proposed purchase of receivable program as modified by the Joint Petition for Settlement be approved as presented.

Respectfully submitted,



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*Counsel for Dominion Retail, Inc.*

Dated: March 31, 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).

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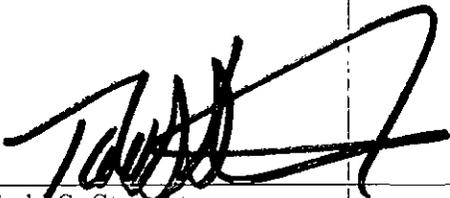
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Dated this 31<sup>st</sup> day of March 2010