

**H**awke  
  **M**cKeon &  
   **S**niscak 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  
Tori L. Giesler

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

June 1, 2010

**VIA HAND DELIVERY**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – Filing Room (2 North)  
P.O. Box 3265  
Harrisburg, PA 17105-3265

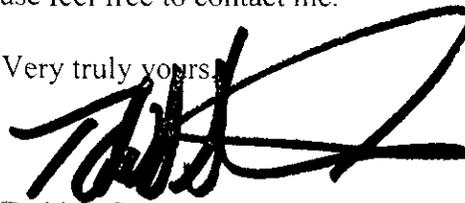
RE: Petition of PECO Energy Company for Approval of Its Revised Electric Purchase of Receivables Program; Docket No. P-2009-2143607; **REPLIES OF DOMINION RETAIL, INC. TO EXCEPTION OF THE OFFICE OF TRIAL STAFF**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission, please find the original and nine (9) copies of the Replies of Dominion Retail, Inc. to Exception of the Office of Trial Staff in the above-captioned proceeding. This document has been served in the manner specified in the attached Certificate of Service.

If you have any further questions, please feel free to contact me.

Very truly yours,



Todd S. Stewart  
Counsel for Dominion Retail, Inc.

TSS/bks  
Enclosure

cc: Honorable Cynthia Williams Fordham, Administrative Law Judge  
Per Certificate of Service

SECRETARY'S BUREAU  
PA FUD

2010 JUN -1 PM 2:55

RECEIVED

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

RECEIVED

JUN 01 2010

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

---

**REPLIES OF DOMINION RETAIL, INC.  
TO EXCEPTION OF THE OFFICE OF  
TRIAL STAFF**

---

NOW COMES, Dominion Retail, Inc., by and through its counsel, and hereby Replies to the Exception of the Pennsylvania Public Utility Commission's ("Commission") Office of Trial Staff ("OTS") to the Initial Decision of Administrative Law Judge ("ALJ") Cynthia Williams Fordham in the above-captioned matter. This Reply is made pursuant to 52 Pa. Code § 5.535.

**I. INTRODUCTION AND BACKGROUND.**

As part of the settlement of PECO Energy Company ("PECO") default's service case,<sup>1</sup> PECO agreed to hold three stakeholder meetings and then to file a revised purchase of receivables ("POR") program. The default service settlement contained several specific requirements for the POR program but left a number of important issues for possible resolution as part of the stakeholder meetings.<sup>2</sup>

After it held the three collaborative meetings, PECO filed the instant Petition seeking approval of a revised POR program on November 20, 2009. PECO's POR Petition requests that

---

<sup>1</sup> *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").

<sup>2</sup> The Office of Trail Staff ("OTS") was a party to the default service settlement and was invited to participate in the collaborative meetings but never raised the concern presented in this case in that forum.

the Commission approve revisions to PECO's existing electric POR program. Under the existing program, PECO currently pays the suppliers 100% of their billed receivables. However, the existing program requires PECO to revert customers to dual billing (PECO bills for it charges and the supplier bills for its charges, and also takes responsibility for any arrearage) if the customer fails to pay after ninety days. This reversion provision typically results in suppliers returning customers to default service before the expiration of ninety days if a customer is carrying an arrearage. So, while suppliers do risk absorbing arrearages, they are nonetheless able to avoid responsibility for them by returning customers to default service. As a result, all customers are ultimately responsible for the vast majority of uncollectible accounts expense through base rates.

PECO's revised POR program eliminates the reversion process but would continue to pay suppliers 100% of billed revenue. What also is new is that PECO would be able to terminate a customer's service for failure to pay purchased receivable amounts--thus giving PECO the single most effective tool to reduce its uncollectible accounts expense, for all customers, not just default service customers. As it does now, PECO would continue to recover its uncollectibles accounts expense as part of its distribution rates from all customers. That is, all customers, both shopping and non-shopping, would continue to reimburse PECO for the same embedded level of uncollectible accounts expense under PECO's proposal as they do today.

On April 29, 2010, Presiding Administrative Law Judge Cynthia Fordham issued an Initial Decision in the above-captioned case that approved a settlement that included all parties except the Office of Trial Staff. That settlement reserved two issues for litigation, one being the very issue, which is the subject of the OTS Exception, and the other, the ability of PECO to

terminate service to customers for pre-2011 arrearages if those arrearages persist after January 1, 2011. Dominion Retail has taken no position on this latter issue.

The Office of Trial Staff filed an Exception to the Administrative Law Judge's decision stating "the Administrative Law Judge's recommendation to not unbundle rates to allow for the proper assignment of costs is not in the public interest and must be rejected." (OTS Exception at 4). For the reasons discussed below, the OTS's Exception is without merit and must be denied in its entirety.

## **II. REPLY TO OTS EXCEPTION**

### **The ALJ's Approval of the Settlement is in the Public Interest and should be Sustained.**

Contrary to the arguments raised by the Office of Trial Staff in its Exception, the POR program approved by the initial decision appropriately recovers the costs of the program in a manner that is consistent with the present collection of uncollectibles costs and which is fair to all customers. The OTS bases its argument on its contention that even though customers currently are paying the uncollectibles expense as part of distribution rates, PECO's POR program will "shift" this burden to jurisdictional ratepayers and insulate non-jurisdictional entities. This argument is factually incorrect. PECO's proposal continues to have all customers bear the risk of uncollectibles expense the way they are borne today. Since there will be no discount rate to suppliers (apart from the temporary administrative "adder" to recover start-up costs), PECO will continue to recover uncollectible expense associated with both delivery and commodity charges from all customers. Since shopping customers are distribution customers in the same fashion as default service customers, all customers will pay for uncollectibles on an equivalent basis. To the extent that PECO has been given a new tool by the settlement, namely,

the ability to terminate customer service for non-payment of supplier receivables, PECO should be able to reduce the uncollectible expense in general and, thus, reduce the cost to all customers for uncollectibles. Moreover, PECO's proposal, which was approved by the ALJ, has the other salutary effect of treating all customers the same, and does not require PECO to create two separate billing and collection mechanisms. This result is fair to all customers.

As discussed by Dominion Retail's witness Tom Butler, there are two acceptable means of providing POR program. (Dominion Retail Statement No.1, *passim*.) One method is to unbundle the uncollectibles expense associated with commodity charges out of base rates and instead collect those charges through the default service commodity charge, while at the same time, to charge a discount to EGSs on purchased receivables that is calculated at the same percentage. This application is competitively neutral because the commodity rate will increase by the same amount of the EGS discount which presumably will allow EGSs to recover the discount amount from customers without putting their price to customers in a competitively better or worse position than it would be without the discount. The result—having all customers essentially pay the same uncollectible expense—is competitive neutrality.

The other acceptable method is to continue to recover for uncollectible accounts expense in the distribution rates that are charged equally to all customers, and to not charge suppliers a discount for POR. Each group of customers—shopping and non-shopping—pay exactly the same embedded amount to recover uncollectible accounts expense—thus achieving competitive neutrality once again. Even the OTS's witness acknowledges that both proposals achieve the same result.<sup>3</sup>

In light of these facts, the OTS's contentions that suppliers are being isolated from risk of uncollectibles, and that EGSs will be given an opportunity to earn greater profits under one

---

<sup>3</sup> OTS St. No. 1-SR, p. 4.

proposal versus another, is a *non sequitur*. That is, even with the unbundling/discount methodology advanced by the OTS, the supplier's risk for uncollectibles is limited by the discount rate. The discount charged to EGSs is static and is identical to the increase in default supply rates, which also is static. If the utility experiences a greater uncollectible account's expense level, it is the utility that bears the risk of the lack of collection, not the EGS, and not the customers. Similarly, with a zero discount program, the risk is likewise borne by the utility because the level of uncollectible expense is embedded in base rates is not easily changeable out of the context of a base rate case. Because the unbundling/discount methodology proposed by the OTS produces the same result as PECO's proposal--there is no shifting of risk at issue in this case.

The OTS also contends that shopping customers "will be paying for uncollectible accounts twice." This also is not true. All customers will pay for uncollectible expense in their distribution rates. There is no evidence to suggest that customers served by EGSs under the POR would be charged by their EGS for uncollectibles expense associated with the purchase of electric generation supply if the EGS is not paying a discount—that would be bad business. The unproven contention that PECO does not collect all of its billed revenue is a red herring argument, and is irrelevant because that cost that will continue to be borne by all customers the same as it is today. What appears most clearly from the OTS arguments raised in its Exception is that the OTS does not fully understand the nature of PECO's proposal in particular, or POR programs in general (OTS Exception, page 6), or it simply is misstating the facts in an effort to confuse. Either way, the OTS' arguments lack merit.

In short, there simply is no evidence in the record to support the notion that there will be double recovery of uncollectibles expense from shopping customers. An EGS participating in

PECO's program would be loath to include uncollectible expense in its price—if it is not responsible for that expense, for the simple reason that there is price competition. Customers would be paying the costs associated with uncollectibles only once in their distribution rates.

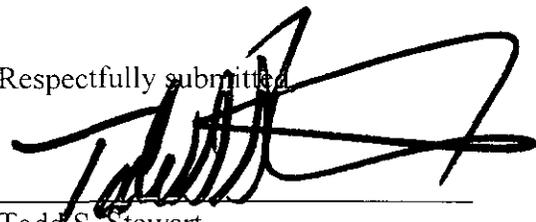
The OTS also contends that the PPL POR case set a precedent and requires the unbundling of uncollectible expense associated with the commodity of out of base rates and collecting those charges from shopping customers through a discount and through non-shopping customers through an addition to the default service rates. The Commission's approval of the PPL POR plan does not in any way endorse the PPL methodology which is cited by the OTS as the only acceptable methodology. In fact, it does not even endorse the PPL methodology. Moreover, that condition was part of a settlement agreement to which the OTS was a signatory and which the OTS agreed not to cite as precedence in any other proceeding. (Dominion Retail Reply Brief, pp. 4-5).

The fact that Dominion Retail supported the PPL plan does not preclude it from supporting the PECO plan, and its position is not at all disingenuous, contrary to the OTS's assertion. Mr. Butler has made it clear that both methodologies are acceptable. Quite frankly, it is puzzling why the OTS would sink to such petty *ad hominem* attacks in its Exception when its own witness has admitted that the two proposals produce the same result. The fact that PECO chose to propose the administratively simpler methodology in the present case is an advantage because it will allow the POR program to be developed at a much lower cost. In this case, it appears that the OTS is advocating this position merely for the sake of consistency between EDC service territories. The simple fact is that there is no advantage gained by any party by such consistency. Both methodologies are competitively neutral.

### III. CONCLUSION

In conclusion, it is clear from the evidence in this case that the PECO proposal and the proposal proposed by the OTS are equivalent and produce the same result from a competitive perspective and from a customer perspective. The OTS' insistence upon having its way in this case for purposes of consistency between EDC service territories is nonsensical since it can cite no rational reason that suggests that consistency is necessary or desirable. It is telling, in this regard, that the EGSs, who are the only parties to be materially affected by differences in requirements as between EDC service territories, are clearly willing to endorse programs of differing styles. That is, at the end of the day, EGSs are indifferent. However, to the extent that PECO's proposal is administratively easier for it to implement, suppliers may not be completely indifferent because PECO's plan will reduce the cost of implementation, a cost which the EGSs will bear. Accordingly, EGSs support the PECO proposal in this case for that reason and because it would be difficult in the context of this proceeding to establish an accurate discount. Accordingly, EGSs urge rejection of the OTS proposal and denial of its Exception.

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](mailto:tsstewart@hmslegal.com)  
Telephone: (717) 236-1300  
Facsimile: (717) 236-4841

*Counsel for Dominion Retail, Inc.*

Dated: June 1, 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, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923

Richard A. Kanaskie  
Senior Prosecutor  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
Commerce Keystone Building  
400 North Street, 2<sup>nc</sup> 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, 8<sup>th</sup> 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

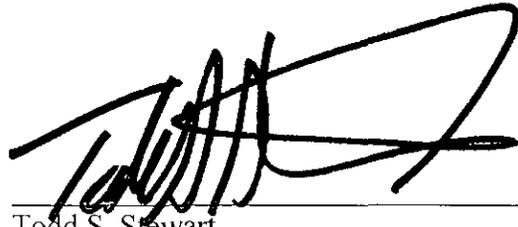
Christopher A. Lewis, Esquire  
Christopher R. Sharp, Esquire  
Blank Rome, LLP  
One Logan Square  
130 N. 18<sup>th</sup> Street  
Philadelphia, PA 19103-6998

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



Todd S. Stewart

Dated this 1<sup>st</sup> day of June 2010

SECRETARY'S BUREAU  
PA PUC

2010 JUN -1 PM 2:55

RECEIVED