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September 20, 2010

VIA HAND-DELIVERY

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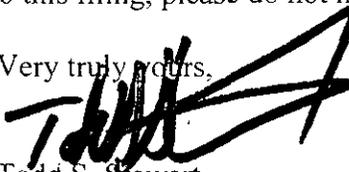
RE: Pennsylvania Public Utility Commission, *et al.* v. PECO Utility Company --
Electric Division, Docket No. R-2010-2161575; **REPLY OF DOMINION
RETAIL, INC. TO MAIN BRIEF OF OFFICE OF TRIAL STAFF**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Commission an original and nine (9) copies of the Reply of Dominion Retail, Inc. to Main Brief of Office of Trial Staff in the above-captioned matter. 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.

Very truly yours,



Todd S. Stewart
Counsel for Dominion Retail, Inc.

TSS/bks
Enclosure

cc: Honorable Marlane R. Chestnut, Administrative Law Judge (Via Federal Express)
Honorable Christopher P. Pell, Administrative Law Judge (Via Federal Express)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, *et al.* :
 :
 v. : Docket No. R-2010-2161575
 :
 PECO Utility Company – Electric Division :

**REPLY OF DOMINION RETAIL, INC.
TO MAIN BRIEF OF OFFICE OF TRIAL STAFF**

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Dated: September 20, 2010

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I. SUMMARY OF REPLY ARGUMENT

The Office of Trial Staff (“OTS”) opposed PECO Energy Company’s (“PECO”) purchase of receivables (“POR”) program when the Pennsylvania Public Utility Commission (“Commission”) approved it in June of this year.¹ In this case, the OTS again demands that the Commission overturn that decision and require the imposition of a merchant function charge which will completely unwind the POR program that the Commission approved and which PECO is implementing. The OTS’s ongoing attack on this issue, in this case, creates uncertainty and risk, and will increase the costs of POR dramatically if decided in the OTS’s favor. Accordingly, Dominion Retail, Inc. (“Dominion Retail”), supports PECO’s proposal, as previously approved, and urges rejection of the OTS position here, for all the reasons stated herein, as well as in Dominion Retail’s Main Brief in this case.

II. REPLY ARGUMENT

A. Burden (OTS MB, pp. 6-9).

The OTS’s Main Brief (“MB”) contends that the burden of proof in this case rests squarely with PECO. (OTS MB, pp. 6-9). Under ordinary circumstances, such a position would be a correct statement of the law. However, the OTS’s contention plainly is not correct in this case. To the contrary, not only does the OTS bear the burden of proving why its proposal is in the public interest and thus more favorable than PECO’s current method, it bears the burden of overcoming the fact that its request here violates the doctrine of *res judicata* and the burden of

¹ *Petition of PECO Energy Company for Approval of its Revised Electric Purchase of Receivables Program*; Docket No. P-2009-2143607 (Opinion and Order entered June 18, 2010, Slip Op. at 48) (“POR Case”).

clearing the rather high bar of explaining how it satisfies the criteria for reconsideration set out by this Commission.² The OTS fails on all counts.

The OTS is the moving party with respect to the appropriate methodology for recovering uncollectible expense associated with commodity sales from customers. PECO made no proposal concerning that methodology in this case – that is, it made no claim. In fact, the Commission recently approved the methodology proposed by PECO, resolving that issue against the OTS, for the recovery of those expenses – to continue its current methodology of recovering those expenses from all customers through the base rates – and approved PECO’s purchase of receivables (“POR”) program.³ In fact, the OTS’s position in this case takes no issue with the level of the expenses claimed. (OTS St. No 2, pp. 2-4). Rather, this is a matter of the OTS proposing a new methodology for the recovery of those expenses, a methodology which the Commission has rejected as recently as three months ago.⁴ The Public Utility Code does impose the burden of proof on PECO to prove that the proposed rate is just and reasonable⁵ – a burden which the Company satisfied and to which the OTS did not object. But here, it is the OTS that is seeking to alter the *status quo ante* and therefore it is the moving party with regard to this issue and it must prove the reasonableness of its proposal.⁶ The OTS fails on all counts and this argument should be rejected accordingly.

B. Res Judicata and *Duick*. (OTS MB, pp. 9-13).

The OTS’s position in this case is barred by the doctrine of *res judicata*. As discussed in Dominion Retail’s Main Brief at length (Dominion Retail, MB, pp. 6-7), the OTS’s attempt to re-litigate in this case the issue of the appropriate collection mechanism for uncollectibles

² *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 558, 51 PUR4th 284, 288 (1982)(“*Duick*”).

³ POR Case, slip op. at 48.

⁴ POR Case.

⁵ 66 Pa. C.S. § 315(a).

expense associated with commodity sales in PECO's service territory is foreclosed, because the Commission already has decided the issue in the POR Case.

Contrary to the OTS's assertion (OTS MB, p. 9), the issue of the unbundling of uncollectibles expense was not "explicitly reserved for argument in the instant base rate case by the Commission." To the contrary, the Commission's Order said "any non-signatory to this settlement is free to argue in favor of further unbundling of PECO's generation-related service costs (e.g., uncollectible account expense, call center charges, etc.) in PECO's next distribution base rate case."⁷ For the OTS to suggest that the Commission explicitly reserved the issue for argument in this case is more than a simple overstatement, it borders on misrepresentation. Nonetheless, whatever the Commission said, it could not abrogate the rights of the parties to act upon the results of the case once litigation concluded. Accordingly, there is no merit to the OTS's attempt to preempt here arguments seeking to foreclose its attempt to reopen an already resolved issue.

The OTS fails to address the criteria of the Commission's rule set out in *Duick* regarding an attempt to seek reconsideration or rehearing of an issue already decided by the Commission. As discussed in Dominion Retail's Main Brief, there is nothing new or novel about the OTS's argument in this case, there are no new facts, and no reason the OTS could not have said the same things in the prior case. In short, the OTS has failed to justify what could turn out to be the perpetual re-litigation of this issue. For all of these reasons, the OTS's position should be rejected out of hand.

⁶ 66 Pa. C.S. § 322(a).

⁷ POR case, p. 48.

C. OTS Has Failed on the Merits. (OTS MB, pp. 13-24).

The OTS has brought no new evidence, no new policy, no new or convincing arguments to bear on the merits – the question of whether its proposal is substantially better than the proposal the Commission approved only a few short months ago – that would justify overturning the well-founded expectations of the parties with regard to the impact of that decision. The OTS’s ongoing insistence that “policy” requires the Commission to unbundle uncollectible expenses associated with generation charges out of base rates and instead recover those expenses through the merchant function charge notwithstanding – the Commission has approved a policy that is contrary to the OTS assertion, for PECO.

Dominion Retail has stated repeatedly that the methodology proposed by the OTS is one of two appropriate methodologies for the recovery of such costs. The other methodology is what PECO has done here, namely, the zero-discount purchase of receivables program which puts the supplier in the same place it would be relative to uncollectible expense if the Company had unbundled and instituted a merchant function charge. However, the major benefit of the PECO proposal is the cost savings associated with not having to make the rather substantial system changes required to implement the OTS’s proposal. Those costs would be borne entirely by the EGSs operating on PECO’s system, and nowhere does the OTS even suggest that those costs not be borne by the EGSs. Accordingly, what the OTS is suggesting is to require an unbundling methodology that would put customers in no different place but would charge potentially millions of unnecessary dollars to EGSs.

The major reason Dominion Retail opposed of the imposition of the OTS plan in this case was the increase of costs in one plan versus the other, in what otherwise are two fairly similar results. It is sadly ironic, then, that the OTS finally has acknowledged that its proposal and the

PECO proposal ultimately arrive at the same place – overall uncollectible expense collectively and evenly recovered from default service customers and shopping customers – but that it still insist on having its way. (OTS MB at 16). The fact remains, however, the costs of the OTS proposal will be borne by EGS. At this point those costs are not limited to the hard implementation costs discussed above, but will include all of the costs associated with the uncertainty of making a major change in direction at this late date. The mere fact that the OTS continues to insist that the timing is right to implement its plan now, before rate caps expire, proves that it has no understanding of how competitive markets operate. The uncertainty associated with changing the rules now would be devastating and would likely cause major disruption to the market opening next year with the expiration of the rate caps.

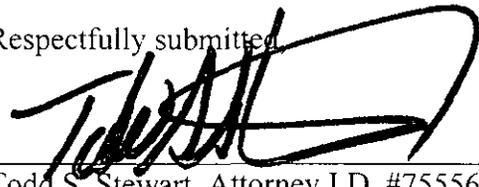
The OTS's contentions about how EGSs would price their products are simply incorrect. (OTS MB, pp. 16-20). There is no basis for Ms. Morrissey's speculation regarding how EGSs include certain expenses within their prices or whether any EGS would attempt to increase its prices to customers to include uncollectibles expense, especially when that same expense was being recovered by PECO through distribution rates as opposed to the commodity rates through an MFC. (OTS St. No. 2, pp. 5-6; OTS MB pp. 16-20). The OTS's position assumes that suppliers can charge customers whatever they want and remain in business! The OTS apparently has forgotten that EGSs do not have captive customer. If the EGS price is higher than its competitors, the customers will leave. The OTS's position is contrary to the laws of economics in the competitive market in which suppliers participate. Why would an EGS increase its price to include uncollectibles expense when it does not face the expense? To attract customers away from its lower priced competitors? Not likely! The OTS's position is simply untenable.

Contrary to the assertions of the OTS, now is exactly the WRONG time to unbundle uncollectibles. PECO's customers are going to be emerging from a twelve-year period of capped rates at the end of this year. PECO is hard at work to try to implement the systems to make that possible. To throw the monkey wrench of unbundling and a new MFC into the mix at this point would almost certainly mean that there would be no workable POR program come January 1, 2011, which would seriously impede the development of the competitive market and seriously hamper customer choices. There simply is no basis to conclude that the Commission should do so, and Dominion Retail suggests that the Commission should reject the OTS attempt to do so.

III. CONCLUSION

Dominion Retail respectfully requests that the Pennsylvania Public Utility Commission approve the partial settlement of PECO's filing in this case and reject the position of the OTS regarding the requirement to unbundle uncollectible expense and to implement a merchant function charge.

Respectfully submitted,



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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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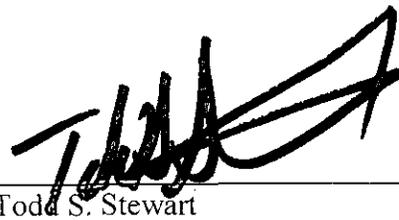
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