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September 23, 2010

**By eFiling**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: John C. McBride v. Dominion Retail, Inc.: Docket No. C-2010-2197014**

**RESPONDENT'S PRELIMINARY OBJECTION**

Dear Secretary McNulty:

On behalf of Dominion Retail, Inc., the Respondent in the above-referenced matter, enclosed via eFiling please find the PRELIMINARY OBJECTION OF DOMINION RETAIL, INC. d/b/a DOMINION ENERGY SOLUTIONS.

**Pursuant to 52 Pa. Code §5.101(b), an answer to a preliminary objection shall be filed within 10 days of the date of service of the objection.**

Please note that Respondent is also filing this date in the instant docket an ANSWER AND NEW MATTER to the subject complaint and a MOTION TO JOIN INDISPENSABLE PARTY.

A copy of this filing is also being served upon Complainant this date by first-class U.S. Mail.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Gary A. Jeffries  
Assistant General Counsel

Enclosures

cc: John C. McBride, 1111 Independence Ct., West Lawn, PA 19609

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOHN C. MCBRIDE	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. C-2010-2197014
	)	
DOMINION RETAIL, INC.	)	
d/b/a DOMINION ENERGY SOLUTIONS	)	
	)	
Respondent	)	

PRELIMINARY OBJECTION OF  
DOMINION RETAIL, INC d/b/a DOMINION ENERGY SOLUTIONS

By even date hereof, the Respondent, Dominion Retail, Inc. d/b/a DOMINION ENERGY SOLUTIONS (“DES”) filed its ANSWER AND NEW MATTER and MOTION TO JOIN INDISPENSABLE PARTY in the above-captioned proceeding.

Now comes DES and files this Preliminary Objection, pursuant to 52 Pa. Code §5.101, seeking the dismissal of the Complaint on the basis that the Complaint fails to invoke the Commission’s jurisdiction and is insufficient as to substance.

Commission preliminary objection practice is similar to Pennsylvania civil practice regarding the filing of preliminary objections.<sup>1</sup> A preliminary objection in civil practice seeking

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<sup>1</sup> Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt.<sup>2</sup> The Commission has adopted this standard.<sup>3</sup>

Section 701 of the Public Utility Code<sup>4</sup> allows any person, having an interest in the subject matter, to file a formal complaint in writing with the Commission setting forth any act or thing done or omitted to be done *by any public utility* in violation, or claimed violation, of any law which the Commission has jurisdiction to administer or of any regulation or order of the Commission. (Emphasis added).

The instant complaint raises non-jurisdictional issues against a non-jurisdictional entity and therefore should be dismissed for lack of jurisdiction and insufficiency as to substance. The Complainant fails to allege any particular wrongdoing by or justiciable complaint against DES and seemingly merely hints that DES, as an electricity supplier, has in some manner breached its private contract with Complainant by not selling him electricity at the “promised” price. Moreover, Complainant seeks a Commission directive to excuse him from paying his lawful debt to DES.

Respectfully, DES submits that the Commission is without jurisdiction to entertain Complainant’s non-particularized claim that DES breached its contract as well as his plea that his private debt to DES be forgiven. The Commission lacks authority to interpret or adjudicate private contracts between electricity generation suppliers and customers. Only courts of competent jurisdiction have such authority. Indeed, the Commission has not extended its jurisdiction over electricity generation suppliers such as DR beyond those activities set forth in §2809(e) of the

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<sup>2</sup> Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991)

<sup>3</sup> Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

<sup>4</sup> 66 Pa. C.S. §701

Public Utility Code.<sup>5</sup> Complainant's apparent request for action by the Commission vis-à-vis DES is not within the scope of the listed §2809(e) activities. Therefore, dismissal of the subject Complaint for failure of jurisdiction and insufficiency as to substance is clearly warranted and free from doubt.

Finally, the Complaint should be dismissed without a hearing. The Commission's rules recognize that a hearing is not necessary in every formal complaint brought before it. Those rules provide that "[t]he filing of a formal complaint entitles the complainant to a formal hearing before the Commission, *except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.*" 52 Pa. Code §5.21(d) (emphasis added). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy, or discretion.<sup>6</sup> DR submits that the issues raised against it in this proceeding are issues of law, not fact. Accordingly, no hearing on this issue is needed.

**NOTICE TO PLEAD: Pursuant to 52 Pa. Code §5.101(b) an answer to a preliminary objection shall be filed within 10 days of the date of service of the objection.**

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<sup>5</sup> 66 Pa.C.S. §2809(e). In regulating the service of electric generation suppliers, the Commission shall impose requirements necessary to ensure that the present quality of service provided by electric utilities does not deteriorate, including assuring that adequate reserve margins of electric supply are maintained and assuring that 56 Pa. Code Ch. 56 (relating to standards and billing practices for residential service) are maintained.

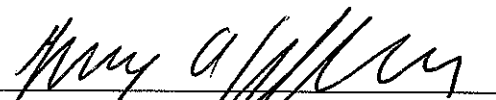
<sup>6</sup> *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d 557 (Pa. Cmwlth. 1989).

IN WITNESS WHEREOF, Respondent, DR, respectfully submits its

PRELIMINARY OBJECTION and requests the Commission grant the relief requested.

DOMINION RETAIL, INC.

DATED: September 23, 2010

By:   
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Gary A. Jeffries  
Assistant General Counsel

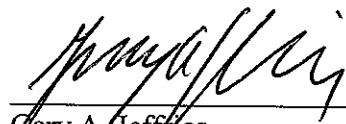


CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the entities, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

John C. McBride  
1111 Independence Ct  
West Lawn, PA 19609

Dated this 23<sup>rd</sup> day of September, 2010.



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Gary A. Jeffries  
501 Martindale Street, Ste. 400  
Pittsburgh, PA 15212