



William T. Hawke  
Kevin J. McKeon  
Thomas J. Sniscak  
Scott T. Wyland  
Todd S. Stewart  
Craig R. Burgraff  
Janet L. Miller

Steven K. Haas  
William E. Lehman  
Tori L. Giesler  
Judith D. Cassel  
Of Counsel  
Julia A. Conover

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

April 25, 2011

**VIA HAND DELIVERY**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

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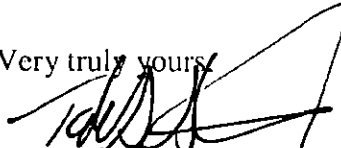
RE: Petition of PECO Energy Company for Expedited Approval of its Default Service Program and Rate Mitigation Plan; Docket No. P-2008-2062739  
**ANSWER OF DOMINION RETAIL, INC.**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are the original and three (3) copies of the Answer of Dominion Retail, Inc. to the Petition of PECO Energy Company in the above-captioned docket. Copies of this Answer have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions related to this filing, please contact the undersigned.

Very truly yours,

  
Todd S. Stewart  
Counsel for Dominion Retail, Inc.

TSS/bes  
Enclosures

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

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for :  
Expedited Approval of its Default Service : Docket No. P-2008-2062739  
Program and Rate Mitigation Plan :

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**ANSWER OF DOMINION RETAIL, INC.  
TO PETITION**

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AND NOW COMES, Dominion Retail, Inc. (“Dominion Retail”), by and through its counsel in this matter, Hawke McKeon & Sniscak LLP, and hereby Answers the Petition of PECO Energy Company (“PECO”) filed with the Pennsylvania Public Utility Commission (“Commission”), on or about April 6, 2011. PECO’s Petition (“Petition”) seeks to rescind and/or amend the Commission’s Order approving a full settlement (“Settlement”) of its most recent default service plan (“DSP Plan”).<sup>1</sup> Dominion Retail opposes the unverified and unsupported Petition as being contrary to law and sound policy. As a matter of law, the Petition fails to discuss the appropriate legal standard for a request to rescind and/or amend a prior order of the Commission under 66 Pa.C.S. § 703(g), or 52 Pa. Code § 5.572, and clearly fails to offer any evidentiary support for such a request. Moreover, as a factual matter, it is likely that the relief requested will harm the nascent competition that is taking hold in PECO’s electric service territory, and it cannot be reasonably disputed that the relief will alter, in a material way and without any consideration, the bargain that was achieved in the Settlement of PECO’s DSP Plan. Finally, the factual averments in the Petition are not substantiated by any evidence whatsoever;

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<sup>1</sup> *Petition of PECO Energy Company for Approval of its Default Service Program and Rate Mitigation Plan*, Docket P-20082062739 (Opinion and Order entered June 2, 2009).

making it impossible for the Commission and the other parties to the Settlement, to assess the Petition or to reach any definitive conclusions regarding the Petition and the need for the relief requested therein. Such a task is not possible without the development of a factual record. For these reasons and those set forth below, Dominion Retail requests that PECO's Petition be DENIED. In support thereof, Dominion Retail states and avers as follows:

1. ADMITTED on information and belief.
2. ADMITTED. By way of further answer, the Settlement that was approved by the Commission in the default service proceeding and the Order that PECO now seeks to modify, *Petition of PECO Energy Company for Approval of its Default Service Program and Rate Mitigation Plan*, Docket P-20082062739, (Opinion and Order entered June 2, 2009), reflected compromise on the part of all parties. It is not possible simply to change one part of that bargain, which encompassed many viewpoints and issues, without affecting the bargained-for exchange. Neither is it safe to assume that any party, when faced with such a new condition, would agree to accept the new term, or conversely, seek to walk away from the entire agreement. Consequently, PECO's unilateral attempt to modify the bargain necessarily places every other provision of that Settlement "back on the table." Modifying a bargained for exchange to the perceived benefit of one party, while not offering the other parties the ability to alter their respective benefits, is a violation of due process and will serve to discourage parties from settling cases in the future.
3. ADMITTED. By way of further answer, it is averred that the GSA process that was approved in the Settlement as Exhibit E was the same as was proposed by PECO in its filing in that case. (See Exhibit ABC-4).
4. ADMITTED. By way of further answer, it is clear that it was PECO that proposed the GSA methodology which it now seeks to modify. It also is clear that the other

parties accepted this proposal as part of the Settlement of all issues in the default service case. It also is obvious that PECO has provided no averments sufficient to support modification of that original proposal.

5. DENIED. While it may be true that factors other than customer shopping or weather could cause variations in sales and thus affect the GSA, there is no evidence to suggest what, if any, amount of variability may potentially occur in the GSA, and what the impacts of such variability might be. It is DENIED that there is any stated policy goal of avoiding variability in the price to compare. It is further DENIED that an over or under recovery with regard to increased shopping is “not reflective of the market price of generation supply.” Moreover, it is DENIED that there is any basis whatsoever to contend that because a swing in the GSA, large or small, is not related to market supply that it should not be collected in the succeeding quarter as originally proposed by PECO. That is, the unspoken premise of PECO’s argument appears to be that any factor **not** related to market price of generation supply should **not** be included in the GSA, or at a minimum, should not be able to cause wide swings in the GSA. This is a fallacious assertion. That is, the GSA was not designed merely to reflect changes in the market price of the energy, which itself can be volatile at times as well. Rather, it was contemplated at the time by all parties, or should have been contemplated based upon the formula in the Settlement (Exhibit E, Tariff page 31), that the GSA would be affected by shopping levels. That formula includes the reconciliation of anticipated versus actual sales and includes the costs associated with the purchase of block power and spot market power for an expected load.<sup>2</sup> While full requirements suppliers generally absorb shopping risk, purchases of blocks and spot market power provide no such protection. The fact that there may have been

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<sup>2</sup> Based upon this formula, it also is inaccurate to state, as PECO has in its Petition, that the GSA variability is not due to the market price of the power, since the over or under collection amount is the result of the level of sales times the market price.

more shopping than otherwise anticipated on PECO's system, however, is not a sufficient reason to modify the GSA. It simply is not reasonable to now claim surprise that there was shopping in its territory and that the level of shopping is affecting the GSA. Such assertions simply cannot be relied upon as a basis for altering the GSA methodology.

6. DENIED. It is DENIED that the goal of the GSA is to smooth the recovery of costs, thus eliminating variability. It also is DENIED that minimizing variability in the GSA will make the GSA more reflective of market prices.

7. ADMITTED in part, DENIED in part. It is ADMITTED that if PECO's Petition were granted, the results described in paragraph 7 are likely to occur. It is DENIED that these results are beneficial, necessary, warranted or otherwise justified by the Petition or sound public policy.

8. DENIED. PECO's proposal speaks for itself. To the extent that the characterization in paragraph 8 is inconsistent therewith, it is DENIED, and it is further DENIED that the relief requested by PECO is warranted, necessary or otherwise constitutes sound public policy.

9. Neither ADMITTED nor DENIED. The referenced document speaks for itself.

10. The statements in paragraph 10 constitute a request for relief. To the extent that a response is required, the allegations are DENIED. It is also DENIED that the relief requested is necessary or warranted under the circumstances.

11. Paragraph 11 is a request for relief to which no response ordinarily is required. However, to the extent that a response is necessary, any factual allegations are DENIED and it is DENIED that the request for relief is necessary and/or warranted. It is ADMITTED that PECO did share the proposed amendments with Dominion Retail one business day prior to filing. It is

DENIED that allowing one business day to review a complicated request without any supporting data whatsoever is sufficient notice as contemplated under Section 703(g) of the Public Utility Code. Moreover, to the extent that PECO's reference to 66 Pa.C.S. § 703(g) could be interpreted as a request that the Commission grant the Petition without allowing for full evidentiary hearings as provided in that section; Dominion Retail would oppose such an outcome and therefore it is DENIED that such a request comports with the requirements of the statute.<sup>3</sup> Moreover, Dominion Retail DENIES that modifying the Order that approved the Settlement can be achieved without abrogating the entirety of the Settlement of PECO's default service case. Dominion Retail has no knowledge of a webinar on March 31, 2011, that allegedly addressed the issues raised in the Petition, and therefore such allegation is DENIED.

### **Conclusion**

Dominion Retail respectfully requests that the Petition of PECO Energy Company be DENIED. There is no factual basis whatsoever for granting the Petition, and it would be unsound public policy to shift course at this point without allowing competition an opportunity to take hold. It may be true that there has been more shopping than may have been anticipated by PECO for 2011. That is to be commended.

The result of PECO's request, whether intended or not, will be to be to put a damper on the increased shopping, if not to thwart it entirely. This result would be contrary to the Commission's policy of encouraging shopping. To the extent that shopping customers have increased the dollars left unrecovered thus increasing the GSA, however, it cannot be said that

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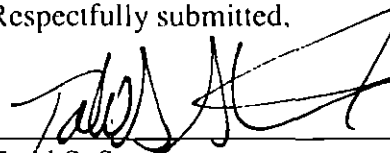
<sup>3</sup> Rescission or amendment are permitted only after notice to affected parties and an opportunity to be heard. 66 Pa. C.S. § 703(g); *Popowsky v. Pennsylvania Public Utility Commission*, 805 A.2d 637, 643 (Pa. Cmwlth. 2002) (An opportunity for notice and comment is not sufficient to satisfy requirement of "opportunity to be heard." and opposing parties should have been afforded an opportunity to offer evidence.); *Scott Paper v. Pennsylvania Public Utility Commission*, 558 A.2d 914 (Pa. Cmwlth. 1989) (allowing PECO to file a modified tariff containing a new provision that was not litigated in case was inappropriate without allowing evidentiary hearing). *West Penn Power Co. v. Pennsylvania Public Utility Com'n*, 659 A.2d 1059 (Pa.Cmwlth. 1995) (Such relief [rescission of prior order] is to be granted judiciously and only under appropriate circumstances).

such a result was not anticipated -- that under recoveries due to shopping would be recovered from customers and would affect the GSA. It is disingenuous to now request a modification to the GSA simply because there is more shopping than had been anticipated. Moreover, it is not accurate to portray the purpose of the GSA as being to smooth the recovery of costs or to assert that a smoother GSA will better reflect market prices. In short, the relief requested by PECO is not warranted under the circumstances.

If shopping is occurring it should be allowed to continue and it is inappropriate for PECO to seek such a significant modification to the Settlement without first consulting with the signatories of the Settlement and giving them adequate time to respond and have input into the issue. This is not PECO's typical collaborative approach and Dominion hopes that this is not symbolic of a new PECO approach.

WHEREFORE, Dominion Retail respectfully requests PECO's Petition be DENIED.

Respectfully submitted,



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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: April 25, 2011

## 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 First Class U.S. Mail and Electronic Mail

Charles D. Shields, Esquire  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[chshields@state.pa.us](mailto:chshields@state.pa.us)

Tanya J. McCloskey, Esquire  
Christy M. Appleby, Esquire  
Candis Tunilo, Esquire  
Office of Consumer Advocate  
555 Walnut St., Forum Place, 5th Fl.  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[cappleby@paoca.org](mailto:cappleby@paoca.org)  
[ctunilo@paoca.org](mailto:ctunilo@paoca.org)

Daniel Asmus, Esquire  
Lauren M. Lepkoski, Esquire  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North 2nd Street  
Harrisburg, PA 17101  
[dasmus@state.pa.us](mailto:dasmus@state.pa.us)  
[llepkoski@state.pa.us](mailto:llepkoski@state.pa.us)

Thomas P. Gadsden, Esquire  
Kenneth M. Kulak, Esquire  
Catherine G. Vasudevan, Esquire  
Morgan Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
[tgadsden@morganlewis.com](mailto:tgadsden@morganlewis.com)  
[kkulak@morganlewis.com](mailto:kkulak@morganlewis.com)  
[cvasudevan@morganlewis.com](mailto:cvasudevan@morganlewis.com)  
*Counsel for PECO Energy Company*

Gary A. Jeffries, Esquire  
Senior Counsel  
Dominion Retail, Inc.  
501 Martindale Street, Suite 400  
Pittsburgh, PA 15212-5817  
[Gary\\_A\\_Jeffries@dom.com](mailto:Gary_A_Jeffries@dom.com)

J. Barry Davis, Esquire  
Scott J. Schwarz, Esquire  
City of Philadelphia, Law Dept.  
1515 Arch Street, 16<sup>th</sup> Floor  
Philadelphia, PA 19102  
[jbarry.davis@phila.gov](mailto:jbarry.davis@phila.gov)  
[scott.schwarz@phila.gov](mailto:scott.schwarz@phila.gov)  
*Counsel for City of Philadelphia*

David M. Kleppinger, Esquire  
Charis Mincavage, Esquire  
Vasiliki Karandrikas, Esquire  
McNees Wallace & Nurick, LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
[dkleppinger@mwn.com](mailto:dkleppinger@mwn.com)  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[vkandrikas@mwn.com](mailto:vkandrikas@mwn.com)  
*Counsel for Philadelphia  
Area Industrial Energy Users Group*

Daniel Clearfield, Esquire  
Deanne M. O'Dell, Esquire  
Charles R. Shultz, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[dodell@eckertseamans.com](mailto:dodell@eckertseamans.com)  
[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)  
*Counsel for Retail Energy Supply  
Association: Direct Energy Services, Inc.*

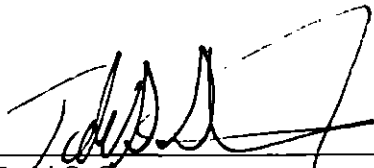
Divesh Gupta  
Constellation Energy Resources, Inc.  
111 Market Place, Suite 500  
Baltimore, MD 21202  
[divesh.gupta@constellation.com](mailto:divesh.gupta@constellation.com)

Paul F. Mapelli, Esquire  
Vice President and General Counsel  
Consolidated Edison Solutions, Inc.  
701 Westchester Ave., Suite 300 East  
White Plains, NY 10604  
[mapellip@conedsolutions.com](mailto:mapellip@conedsolutions.com)

Thomas T. Niesen, Esquire  
Charles E. Thomas, III, Esquire  
Thomas Long Niesen & Kennard  
212 Locust Street  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
[tniesen@thomaslonglaw.com](mailto:tniesen@thomaslonglaw.com)  
[cct3@thomaslonglaw.com](mailto:cct3@thomaslonglaw.com)  
*Counsel for Consolidated  
Edison Solutions, Inc.*

Thu B. Tran, Esquire  
Philip A. Bertocci, Esquire  
Jonathan M. Stein, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
[ttran@clsphila.org](mailto:ttran@clsphila.org)  
[pbertocci@clsphila.org](mailto:pbertocci@clsphila.org)  
[jstein@clsphila.org](mailto:jstein@clsphila.org)  
*Counsel for Tenant Union Representative  
Network: Action Alliance of Senior Citizens  
of Greater Philadelphia; Association of  
Community Organizations for Reform Now*

Mark Baird, Inc.  
RRI Energy, Inc.  
7642 West 450 North  
Sharpesville, IN 48068  
[mbaird@rrienergy.com](mailto:mbaird@rrienergy.com)  
*Counsel for RRI Energy, Inc.*



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Todd S. Stewart  
*Counsel for Dominion Retail, Inc.*

Dated this 25<sup>th</sup> day of April 2011