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June 3, 2011

**VIA E-file and HAND DELIVERY**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

RE: Investigation of Pennsylvania's Retail Electricity Market, Docket No. I-2011-2237952;  
**COMMENTS OF DOMINION RETAIL, INC.**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the original copy of the Comments of Dominion Retail, Inc. to the Investigation of Pennsylvania's Retail Electricity Market.

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

Very truly yours,

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

TSS/alw  
Enclosure

cc: Robert F. Powelson, Chairman (via hand delivery)  
John F. Coleman Jr., Vice Chairman (via hand delivery)  
James H. Cawley, Commissioner (via hand delivery)  
Wayne E. Gardner, Commissioner (via hand delivery)  
Tyrone J. Christy, Commissioner (via hand delivery)  
Office of Competitive Market Oversight (**Via email to [ra-OCMO@state.pa.us](mailto:ra-OCMO@state.pa.us)**)

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation of Pennsylvania's Retail Electricity Market : Docket No. I-2011-2237952

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**COMMENTS OF DOMINION RETAIL, INC.  
d/b/a DOMINION ENERGY SOLUTIONS**

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Now comes Dominion Retail, Inc., d/b/a Dominion Energy Services (“DES”) and hereby offers its Comments and Recommendations to the Pennsylvania Public Utility Commission (“Commission”) in the above-captioned Docket. DES appreciates the opportunity to comment in the Commission’s Investigation on the Development of the Competitive Retail Electricity Market. DES supports the eventual elimination of default service and favors a transition model by which customers choose a supplier on their own. Before such action is taken, however, we suggest the Commission raise the bar for suppliers to ensure consumers are protected and receive service from suppliers that are committed to delivering on their promises. Municipal aggregation is not needed at this time and should be deferred while stronger affiliate disclosures should be required, and must include verbal/broadcast communications. Our general comments follow. Also attached hereto, as Appendix A, is a proposed model for exiting the merchant function, and Appendix B, which contains DES’s answers to the Commission’s specific questions and recommended solutions.

**I. Summary of Recommendations:**

Moving the Small Customers to Choice

- o Educate More - Make Sure Customers know that it is Okay to Choose
- o Create Events or Urgency to Drive Choice Participation

- Eliminate Default Service Reconciliation to level the field and allow EDCs to earn a profit on Default Service
- Require New/Transferring Customers to Select an EGS in lieu of Immediately Placing those Customers on Default Service
- Make Signing Up for Default Service Less Desirable
- Eliminate Default Service by a Date Certain
- Assign Customers to Competitive EGSs

#### Ensuring the Retail Market is a Safe Option

- Increase Financial and Technical Fitness Standards for EGSs
- Ensure Proper Disclosure on Product Offerings, Especially Teaser Variable Rates

#### Municipal Aggregation

- Don't Let Municipal Aggregation Dominate the Market Right Away, Let the Customers Choose First

#### Affiliate Disclosure

- Enhance Affiliate Disclosure Rules

## II. General Comments

### A. Introduction - The Future of Default Service

Act 129 expanded the requirements for default service providers by adding language that enshrines a quasi-regulated, quasi-market-based default service supply function in Pennsylvania.<sup>1</sup> Such a scheme is problematic for electric distribution companies (“EDCs”), because it requires that the utilities’ default service plans be designed to ensure the “least cost to customers over time.”<sup>2</sup>, while at the same time prescribing the types of transactions (mix of spot, short-term and long-term contracts). Producing the result of “least cost” over time exposes EDCs that operate in a competitive wholesale energy market to regulatory and market risk while requiring the EDCs to expend or at least encumber substantial financial resources for the purposes of procuring default service supply. This “bargain” of risk without reward is a bit

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<sup>1</sup> 66 Pa.C.S. § 2807(3.1) to (3.9) (2008, October 15, P.L. 1592)

<sup>2</sup> 66 Pa.C.S. § 2807(3.4)(ii)

unfair to the EDCs and has so far failed to produce the necessary robust shopping that will eventually remove the burden. In short, default service as it is presently codified has the character of a competitive option rather than the provider of last resort (“POLR”) notion of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801, *et seq.* (“Choice Act”). For a variety of reasons, not the least of which is the fact that customers start out on default service, this structure has so far served to maintain the EDC as *the* fully-bundled service provider and has, for better or worse, perpetuated the general mindset that utilities provide a safer, more reliable, or better-priced option when compared to taking service from electric generation suppliers (“EGSs”). EDCs have thus remained the *de facto* major competitor in every market in which they participate. Under this regimen, competition is not likely to reach the levels necessary for it to be self-sustaining.

Setting aside for the moment the deliberate strategies of EDCs to retain customers within their corporate umbrella at all costs, by the action of customer inertia alone, even those utilities that actively have sought to dislodge customers from default service have had only limited success. The reason is that customers tend to be “sticky.” That is, either by inertia or because they tend to believe that the utility, as a default service merchant, provides them with better/cheaper/more reliable service (despite the lack of evidence to support that point of view), customers do not like change. This “stickiness” problem is compounded by the fact that approximately 10% of customers move (change their physical addresses) every year. This statistic speaks volumes about unexpected consequences, because when those non-sticky customers – those who choose service from an EGS – move, they are still required restart service at their new address as default service customers. This is true even if the customer moves across

the street. They lose the benefits of their choice and increase the possibility that they will not again participate in the competitive market.

In those instances where the EDC actively seeks to retain customer load as default or affiliate load, the statistics are worse. The results so far have not been terribly encouraging, despite some EDC efforts, PPL being the best example to catalyze changes in customer attitudes. The utilities continue to enjoy a huge and almost insurmountable advantage in customer counts, and they remain, some by their mere presence in the market, the main obstacle to transitioning customers out of default service and into the competitive marketplace.

The PPL experience serves as an excellent illustration of this problem. As we all know, PPL undertook significant and commendable efforts to motivate customers to shop in 2010 and after, when its default service rates were substantially above market. However, while 40% of the small customers did switch, a laudable percentage in such a short time, that figure should have been closer to 90% given the fact that all EGSs were providing a better value proposition than default service. This is the clearest evidence to date of the phenomenon that customers do not always voluntarily act in their own economic best interests. How better to demonstrate it – 60% of PPL customers voluntarily paid more to stay with utility default service. While in some circumstances default service may be a better option for customers under the current paradigm, default service should be viewed more as POLR service rather than as a competitive alternative. This raises the central question: If we agree that the goal of the Choice Act was to transition customers to a competitive market and to have POLR-type service only as a transitional backstop – how do we get from point A, where we are today, to point B, where we want to be? In other words, how do we move customers from default service into the competitive market?

**B. Key to a Fully Functioning Competitive Market**

The keys to a fully functioning competitive retail electricity market are: 1) Knowledgeable (i.e., educated) customers 2) Active customers who select options in their best interest and that meet their needs, 3) No Confusing or Overriding Price Signals and 3) Reputable EGSs. Suppliers will come if customers are selecting.

It should be obvious at this point that if competition is to flourish, something must be done to move customers from default service to the competitive market in a more meaningful and perhaps more direct way. Best practices should be followed, however, so that before moving customers into the market, you must first give them the option to choose voluntarily. Utilities and regulators may want to include incentives to choose (as was adopted in New York), either a carrot or a stick, or both, but the first option should be a choice. There are two reasons for this approach: First, it allows the customer to make a choice rather than having the choice made for them; and, second, it engages the customer in the market by way of the decision making process, which is quite possibly the point where inertia has its strongest effect. Customers should be moved only after they have failed to exercise the reasonable option in spite of the incentives to do so.

Since the vast majority of customers in Pennsylvania have only recently been able to participate in an even slightly competitive electric generation supply market, it would be appropriate to allow competitive market forces to work for a least some reasonable time – at least a year – before taking action. As an aside, and as you will read below, pinpoint programs, such as Municipal Aggregation, are inappropriate in the early stages of choice because they do not promote a competitive end state. Rather, they switch all customers in a certain locality to a single EGS, in what possibly would not be a competitive process. These types of programs lock

up groups of customers with a single EGS for considerable periods of time, which will likely have the ultimate result of preventing competition rather than encouraging it.

DES's experience in many markets confirms its very strong belief that many customers simply don't understand choice--it is concerning to some and confusing to many. The concerns often harken back to the initial deregulation of long distance telephone service, where customers had to deal with what seemed to be higher costs, additional taxes and other charges, confusing bills, and possibly multiple bills. It is our opinion that a fully functioning retail market should not be that complicated, since the EDCs do most of the billing, and developing the retail market should not further hinder wholesale competition. With retail competition, customers can best select a product that suits their situation, risk tolerances, and needs. By contrast, default service is one size fits all.

The essential messages of why retail competition is good for the customer and, why this change is happening, are rarely answered in a way that brings confidence at the customer level. Rather, the message seems unfocused, watered down and many times raises more concerns than it addresses. For example, it has been standard practice to send customers a list of questions that they should be certain to ask prospective EGSs. However, if one reads the lists from a customer perspective, often times they imply that suppliers are not trustworthy, or worse, thus doing damage to the market in the guise of "helping" customers. DES realizes that customers need some level of protection – but that should be handled more adeptly by managing EGSs rather than placing all of the responsibility on consumers.

Very few customers understand how choice works. In our call centers, we routinely hear statements such as: "My utility takes care of all of this – how can you do this?" "What is going on here? How do you buy my electricity? How is this going to affect my utility?" In short, it is

clear from our call center traffic that there are many confused customers and they are concerned how this affects the utility. On the surface, electricity choice is not that difficult of a concept and has no affect on the utility – why are so many customers asking these questions. Are the EDCs not adequately explaining choice? Are choice messages buried in too many communication messages hitting electricity customers? The message that the consumer gets from some EDCs does not provide the customers a sense of comfort with energy choice and clear understanding of the utility’s new role. Furthermore, other programs like budget billing and LIHEAP become issues for many customers who are thinking of choice and those programs become negatives for choice. The bottom line is that consumer education is very important and needs to provide positive reinforcement for energy choice for the market to develop.

In 1997, the Commission did a fantastic job of creating excitement with the Choice pilots in each service territory. And again there seemed to be great activity around the PPL transition and the Commission did an excellent job supporting those efforts. While those events are history, the excitement that they generated remains the best way to pull customers into participating in choice. How can the Commission create the appropriate level of excitement or urgency?

Despite the best efforts of the EDCs, the EGSs and the Commission, however, experience has shown that many customers will never take the time to choose a EGS on their own volition—will not act in their own economic best interest. For these customers, pushing the customer into retail competition is a route that could be very effective. A simple intermediary step is to make new customers (new services and transfers) choose an EGS (and default service could be one of the choices if this cannot be done without legislation) when they sign up for electricity service. It begins the process of switching customers to retail markets in a somewhat orderly and



consistent manner. While it may initially appear to be more cumbersome for the customer, it should provide an ever larger group of customers with the “push” they need to get them into the competitive market. Once a critical mass of customers has been transitioned, moving the remaining customers should require less effort.

Requiring the EDCs to exit the merchant function or eliminating default service as an option has previously been perceived as a radical approach but conceptually it should be the favored approach since it gets the transition process to the finish line. Indeed, the very idea of “choice” for gas and electric consumers was considered radical just a few years ago and was opposed (and still is) by certain groups. Exiting the merchant function means that the electric utilities are no longer responsible for acquiring electric generation supply and providing it to customers. EDCs would continue to perform functions associated with the distribution of electricity, including billing and collecting for electric generation supply and distribution service. The utilities would also continue to manage the distribution grid in an even-handed manner which would not favor any EGS over another. Under the methodology discussed below, multiple EGSs would provide electric generation supply service to customers who did not choose, rather than the utility being responsible for that service. Or said another way, customers would be assigned to EGSs if they did not choose.

The significant advantage of eliminating default service is that it is a direct path to the preferred end state—fully competitive retail markets. Neither staying with the current state nor implementing several intermediary steps can guarantee that the end state--a fully functioning retail market that can thrive and sustain itself. The pros and cons for the customer are somewhat subjective and depend largely on the position of the person making the claim. A customer advocate would argue that having default service insures lower prices, and a market advocate

would argue that having a fully functioning retail market provides the lowest prices. At the end of the day, the real question is how will the retail market develop with current default service still being provided? Will markets like West Penn Power, Penelec, and MetEd ever develop?

In our view, the best approach for eliminating default service would be a hybrid Texas/Georgia model. A more detailed description of the mechanics of this model is provided in the attached Appendix A. Under this approach, customers are given a window of opportunity (six to nine months) to choose a competitive EGS. The consequence of not choosing before the deadline is that all non-choosing customers are allocated to participating EGSs as of a date certain (the end of the current default service plans).<sup>3</sup> The best allocation approach for the remaining customer (after the deadline) is *pro rata* among participating EGSs based upon the number of customers that the EGS serves at the end of the “challenge” period within that service territory.<sup>4</sup> That is, if 100,000 out of 500,000 customers were switched during the challenge period, 10,000 went to EGS A, 30,000 to EGS B, and 60,000 to EGS C, the remaining 400,000 customers would be allocated based upon the share that each participating marketer received out of the original 100,000 (EGS A: 40,000; EGS B: 120,000; and EGS C: 240,000).

It would be necessary to set a minimum participation level to avoid the complications of switching customers in small groups, and it would be absolutely critical that EGSs participating in this program be required to provide significant additional financial security, and demonstrate heightened technical and financial fitness before being permitted to participate in the allocation, because providing default service is a far more complex activity than providing competitive service to a small group of customers. Accordingly, participating EGSs also would have to

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<sup>3</sup> All Customer Assistance Program (“CAP”), and similar discounts would flow through distribution rates, thus allowing all customers to participate.

<sup>4</sup> To the extent that any EDCs have long-term contracts that extend beyond this date, the power purchased under those contracts would be allocated *pro rata* among participating EGSs.

demonstrate their capability to manage large numbers of customers. Under such a program, the utilities would continue to bill and collect and EGSs would serve customers at a publicly available posted price, the same price that they offered in the non-allocation marketplace. Under this proposal, however, customers would always have the ability to switch at any time without penalty.

In short, under this approach, following the expiration of their current default service plans, utilities would be required to exit the merchant function after a six to nine month challenge period during which customers would be encouraged to voluntarily shop. Customers who do not shop would be allocated on a *pro-rata* basis based upon the percentage of customers each participating EGS obtained during the challenge period. The utility would continue to bill for services, and utility affiliates could participate with appropriate code of conduct separations between the affiliate and the host utility. The EGSs participating in the program would be subject to significantly increased scrutiny, more so than ordinary licensing, including significantly higher bonding requirements and financial fitness examinations.

As a alternative, if default service cannot be eliminated, it should be modified to be of equal status to competitive retail market offerings. While DES is supportive of the current procurement process, it strongly suggests that reconciliation of default service cease and utilities providing default service should be placed on the same situation as EGSs with the ability to earn a profit on default service. Whether those profits go to deferring distribution rate increases or handled separate of the ratemaking process, EGSs should be indifferent. Such a change will at least place default service on equal footing with retail offerings and eliminate retailer concerns that reconciliation presents opportunities for significant mismatches like what happened with PPL's TOU price compared to market prices in the first quarter of 2011.

### C. Raising the Bar For EGSs

Many of us have probably heard of a situation where an EGS provided what we would consider to be inadequate or inappropriate service; it is concerning what negative impacts these few EGSs may have on the market as a whole. There can be isolated incidents involving any EGS, no matter how diligent they may be, however there appear to be two groups of EGSs for whom such conduct is more regular and problematic. The first group includes those EGSs who simply lack the technical expertise to manage an operation as complex as being an EGS.<sup>5</sup> Ordinarily this is a problem of scale – “mom and pop” operations that may be inadequately staffed, under-capitalized or simply lack the necessary experience.

It is the second group of EGSs that may prove to be the more difficult to address, however, because their questionable conduct appears to be of a more institutional nature and often appears to be part of the business plan. This includes such practices as pricing service in a way that implies a price or discount level that is contrary to what is being offered, often through such means as stating a price “without gross receipts tax,” or stating that the customer will receive an approximate XX% discount, implying that the product is calculated as a discount off the price to compare when in fact it is a variable-priced product that has nothing to do with the price to compare. These are the easy problems to spot because they are often embodied in printed advertising material.

Teaser variable rates have been receiving notice from customers, media and commissions in several states. DES does not think teaser offerings can be banished from the market, but such offerings require greater disclosure, especially when the offerings are positioned as below market

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<sup>5</sup> I do not include in this discussion brokers or other agent-type entities that typically do not take title to energy – but that is not to say that such operations do not have their own problems that may make it worthwhile to revisit the often reduced bonding requirements for those entities.

price and the price can change significantly without notice, or if the teaser variable offering implies savings where savings are for a month or two and then the savings evaporate. DES is concerned about the impact on retail competition by undisclosed teaser offerings. Those offerings need to be “called out” so consumers can protect themselves.

The more insidious problems come from the coercion and deception that often accompany door-to-door marketing and multi-level marketing due to the coercive nature of the contact, and the fact that monitoring these in-person contacts is nearly impossible when compared to telemarketing, where almost all calls are recorded. These later concerns of high pressure door-to-door sales significantly damaged the competitive market in Illinois, even though the offenders were few.

Regardless of the reason for the behaviors, the Commission’s priority should be a customer focus. What that means is that the Commission should make it more difficult to get away with entering the market if not prepared, and should make it harder for any EGS to engage in conduct that is not fair to customers.

As a first step, and the Commission has already started doing this to a certain extent, the Commission must take a harder look at new applicants and existing licensees to make sure that their bonding levels are sufficient when compared to the number of customers and the level of risk posed by an EGS. Increasing the requirements may be necessary to satisfy potential judgments or other defaults so that customers can be made whole if EGSs become insolvent or suddenly exit the market in the future. We also believe that there is a heightened likelihood of insolvency or premature market exit when EGSs set out to engage in risky business and marketing plans. As a general matter, the bonding requirements for EGSs are supposed to be “in form and amount to ensure the financial responsibility of electric generation supplier and the

supply of electricity at retail in accordance with contracts, agreements, or arrangements.” 66 Pa.C.S. § 2809(c)(1)(i). It is notable that in the two most significant EGS defaults in Pennsylvania since the onset of competition, the bonds of both early exit/defaulting companies were not sufficient even to cover the taxes owed to the Commonwealth, let alone to satisfy the customers who did not receive the savings to which they were entitled.

An updated calculation of this bonding requirement should be considered – one that takes into account potential financial impacts on the Commonwealth, the Commission, and the customers. Such a calculation could also consider the number of customers, current market prices, and other market risk factors before setting bonding level on a EGS-specific basis. This approach of increased security requirements would ensure that the market is not populated by entities that are not financially secured and that may cause negative fallout across the Commonwealth.

Companies seeking to become licensed EGSs in Pennsylvania should also be required to more thoroughly demonstrate financial and technical fitness in order to obtain a license. To be deemed technically fit, an applicant should have to demonstrate that it has the actual employee and supervisory experience, the necessary computer systems, service center/call answering capabilities, cash and working capital to purchase and manage supplies, and customer enrollment/ billing interface systems to ensure that customers are served efficiently and to a high standard. Such requirements would not prevent small companies from being EGSs, but the alternative is for the Commission to impose restrictions, adjusted from time to time, on the number of customers a particular small company can serve based on their inherent technical and financial capabilities.

Finally, the Commission needs to move more quickly and perhaps more aggressively on door-to-door marketers. We have all heard the stories of high-pressure sales tactics, aggressive behavior, and the blatant misrepresentation that goes on every day. The only good part of this story is that the incidents do not appear to be widespread or common practice. The most damaging bad act is when you have door-to-door representatives that lie to customers. Of all the deceptions, the one that hurts competition the most is when a representative is not truthful about whom they represent – whether it be the utility or the customer’s current EGS. We need regulations with teeth and we need them now with enforcement to follow. The rules should include increased bonds or financial security because of the increased risk.

While the success of every EGS is important, the Commission must protect customers and the success, or lack thereof, in moving to a competitive market will reflect directly back on the Commission and the participants. We do not want to adopt a plan that, in the end, customers view as a failure, or of no benefit to them, and the Commission must realize that they need to set high standards; the customers must come first.

One final issue that recently has made the “list” of concerns is customer data privacy. The general issue was appealed as part of the OCA/Pennsylvania Coalition Against Domestic Violence case in the Commonwealth Court regarding what is commonly referred to as the Eligible Customer List (“ECL”) Order. The consolidated appeal and cross appeal concerned the data elements that are part of that list and the conditions under which that list is released to EGSs. Recently the Commonwealth Court remanded that matter to the Commission for further study and resolution. However, there is one aspect of the more generic issue that is worthy of debate; what do we do about real-time data? As smart meters are deployed and interval data becomes available for residential customers, what do we do with that capability and where do we

share that data? The concern is that with some expertise, the data might be capable of providing much more information about a customer than how much electricity they use. This would include information such as the hours they typically work, when they are running certain appliances, etc. It has been suggested that thieves could monitor houses to determine when people are on vacation, or when the kids were home alone, depending on the thieves' sophistication. The responsible use of this data should be supported, and only by those who need it. It is imperative that before an EGS can ask to receive the data it must have affirmative consent from the customer, and should be able to demonstrate that the customer is enrolled in a program that requires the use of real-time data. To do otherwise is to invite trouble.

In short, while we need to encourage EGSs to enter the market and remain in the market, we also need to hold them accountable to providing quality service to customers.

**D. Municipal Aggregation Should Be Deferred**

There has been quite a bit of discussion on the subject of municipal aggregation lately. Municipal aggregation can take two forms, "opt-in" and "op-out." Opt-in aggregation is when an EGS goes to a municipality and strikes a deal to sign up customers in the municipality. The arrangement often involves the EGS providing some value to the municipality in exchange for the municipality's cooperation and/or assistance in making offers to the citizenry. The value can take the form of discounted rates for the municipality's own use, or a check to the general fund. The offer typically is a discounted offer that is better than, or at least as good as, the offers that EGS is making in the general market. What usually happens is that the EGS will present its offer to customers in a mailing that appears to have originated from the municipality. Often such mailings will include a letter from a municipal official urging the citizens to participate.



