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July 3, 2012

**VIA E-FILING AND HAND DELIVERY**

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

RE: Petition of PECO Energy Company For Approval of Its Default Service Program;  
Docket No. P-2012-2283641; **REPLY BRIEF OF DOMINION RETAIL, INC.  
AND INTERSTATE GAS SUPPLY, INC.**

Dear Secretary Chiavetta:

Enclosed are the original and nine (9) copies of the Reply Brief of Dominion Retail, Inc. and Interstate Gas Supply, Inc. in the above-captioned docket. Copies of this Reply Brief 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.  
and Interstate Gas Supply, Inc.*

TSS/alh  
Enclosure  
cc: ALJ Dennis J. Buckley

## 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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A large, stylized handwritten signature in black ink, appearing to read 'T. Stewart', is written over a horizontal line.

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Dated this 3<sup>rd</sup> day of July, 2012

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company For :  
Approval of its Default Service Program : Docket No. P-2012-2283641

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**REPLY BRIEF OF  
DOMINION RETAIL, INC. AND  
INTERSTATE GAS SUPPLY, INC.**

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## Table of Contents

I.	INTRODUCTION AND SUMMARY OF THE REPLY .....	1
II.	DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS .....	2
	A. Summary of the EGSs’ Position .....	2
	B. Residential Class Procurement .....	3
	1. Term Length of Supply Contracts .....	3
	2. RESA’s Proposal to Include 10% Spot Purchases for Residential Customers.....	3
	3. OCA’s Proposal to Continue Block and Spot Supply Procurement for Residential Customers	3
	C. Small Commercial Class Procurement .....	3
	D. Medium Commercial Class Procurement .....	3
	E. Large Commercial and Industrial Class Procurement .....	3
	F. Extension of Supply Contracts Beyond May 31, 2015.....	3
	G. Procurement Schedule .....	3
	1. OCA’s Proposal to Reallocate Tranches Between Solicitations .....	3
	2. OCA’s Proposed “Hold Back” for Opt-In Program .....	3
	H. Load Cap .....	3
	I. Other Procurement and Implementation Plan Requirements .....	3
III.	RATE DESIGN AND COST RECOVERY.....	4
	A. Summary of EGSs’ Position.....	4
	B. Reconciliation of Default Service Costs and Revenues.....	4
	C. EDC Recovery of Additional PJM Charges.....	6
	D. Costs Included in the Generation Supply Adjustment Charge .....	6
	E. Ratemaking Treatment of Auction Revenue Rights.....	6
	F. Elimination of Alternative Energy Portfolio Standard Surcharge .....	6
IV.	RETAIL MARKET ENHANCEMENTS .....	6

A.	Summary of the EGSs’ Position .....	6
B.	EGS Opt-In Competitive Offer Program .....	7
1.	Composition of Product Offer .....	7
2.	Customer Participation Cap.....	7
3.	Supplier Participation Load Cap.....	8
4.	Customer Options on Product Expiration and Notice Requirements .....	9
5.	Structure of Opt-In Auction – Sealed-Bid Format Versus Descending Price Clock Auction ....	9
C.	EGS Standard Offer Program .....	9
1.	Customer Eligibility .....	10
2.	Composition of Product Offer .....	10
3.	Customer Options Upon Product Expiration.....	10
4.	Types of Customer Calls Eligible for Presentation of Referral Program .....	10
5.	Commencement Date of the EGS Standard Offer Program .....	10
D.	Participation By Low-Income Customers In Proposed Retail Market Enhancements.....	10
E.	Additional Proposed Retail Market Enhancements.....	10
1.	Time-of-Use Offering.....	10
2.	New/Moving Customer Referral Program.....	10
3.	Referral of PECO Wind Customers.....	10
4.	Seamless Moves .....	10
F.	Recovery of Program Costs for Proposed Retail Market Enhancements .....	11
1.	EGS Opt-In Competitive Offer Program.....	11
2.	EGS Standard Offer Program .....	11
3.	Other Enhancements.....	11
V.	OTHER ISSUES .....	11
VI.	CONCLUSION.....	12

## I. INTRODUCTION AND SUMMARY OF THE REPLY

As directed by the procedural schedule established in this case, Dominion Retail, Inc. d/b/a Dominion Energy Solutions (“DES”) and Interstate Gas Supply, Inc. d/b/a IGS Energy (“IGS”)(collectively “Suppliers”) submitted a Main Brief on June 18, 2012. In their Main Brief, the Suppliers generally supported PECO Energy Company’s (“PECO”) Procurement Plan and rate design proposals. Perhaps the most glaring example of a subject on which the Suppliers do not agree with PECO is PECO’s unnecessary proposal to increase the time period over which it reconciles from a quarter to a year. As discussed in their Main Brief and below, the Suppliers believe this proposal is flawed and must be rejected. The most notable aspect of PECO’s procurement plan, from the Suppliers’ perspective, is its proposal to eliminate block and spot purchases and to instead employ one and two-year full requirement contracts procurements for the period June 1, 2013 through May 31, 2015. This component should aid in eliminating the fluctuations in the Price to Compare (“PTC”) that appear to be at the root of PECO’s annual reconciliation proposal which is anathema to the Suppliers.

The Suppliers support PECO’s proposal to implement several Retail Market Enhancements that were suggested in the Pennsylvania Public Utility Commission’s (“Commission”) recent order on the subject of improving competition, *Investigation of Pennsylvania’s Retail Electricity Market; Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012)(“*IWP Order*”). However, in their Main Brief, the Suppliers discuss several structural shortfalls in PECO’s Market Enhancement proposals, perhaps the most glaring being PECO’s proposed cost recovery mechanisms. The Suppliers believe that the structural defects they identify must be corrected if PECO’s proposals are to be at all suited to the task of increasing the level of competition on the PECO system.

A number of parties took positions on either side of most of these issues, some urging to add further restrictions and conditions that would cripple these programs from the outset, such as the Office of Consumer Advocate's ("OCA") insistence on dramatic limitations on the number of customers that would be permitted to participate in the Retail Opt-In Auction ("ROA"). In this Reply Brief, the Suppliers will attempt to navigate through the pertinent contested issues and propose a reasonable recommendation for the Commission's consideration.

## **II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS**

### ***A. Summary of the Suppliers' Position***

As discussed in their Main Brief, (Suppliers' Main Brief "MB" p. 6) the Suppliers support PECO's proposed procurement plan and its proposal to replace the current percentage of block and spot purchases with full requirements products. As discussed by PECO in its Main Brief (PECO MB, pp. 10-16) elimination of the block and spot purchases will resolve one of the most significant factors causing current volatility of PECO's PTC, namely, PECO's inability to reconcile forecasted costs with current revenues. The continued inclusion of block and spot purchases would require PECO to estimate future spot market purchase costs, which then must be reconciled and which create unnecessary volatility in the PTC. Moreover, during the period of transition to a fully competitive market, such reconciliation based volatility may cause customer confusion, as discussed at length by Mr. Barkas in his testimony and as noted in the Suppliers' Main Brief (DR/IGS Statement No. 1-R, p. 6:1-7).

The OCA has taken the approach that PECO should continue to include significant quantities of block and spot power in its procurement plan which is contrary to the views of PECO and the majority of the suppliers in this proceeding. (OCA MB, pp. 18-25). The Suppliers recommend that the OCA's proposal be rejected, and similarly that RESA's proposal to include

ten percent (10%) block and spot purchase as opposed to the twenty-five percent (25%) advocated by the OCA, likewise be rejected.

PECO's procurement proposal is reasonable under the circumstances, will avoid unnecessary volatility due to the reconciliation problem with forecasted energy prices, and will create a more market relevant price for customers. If EDC default service rates continue to be reconciled, reconciling the costs of full requirements contracts creates less unnecessary volatility than the injection of block and spot purchases and is a better route. Accordingly, PECO's proposal should be adopted and the OCA's and RESA's recommendations should be rejected.

***B. Residential Class Procurement***

- 1. Term Length of Supply Contracts – Not Addressed**
- 2. RESA's Proposal to Include 10% Spot Purchases for Residential Customers – See Above.**
- 3. OCA's Proposal to Continue Block and Spot Supply Procurement for Residential Customers – See Above.**

***C. Small Commercial Class Procurement – Not Addressed***

***D. Medium Commercial Class Procurement – Not Addressed***

***E. Large Commercial and Industrial Class Procurement – Not Addressed***

***F. Extension of Supply Contracts Beyond May 31, 2015 – Not Addressed***

***G. Procurement Schedule***

- 1. OCA's Proposal to Reallocate Tranches Between Solicitations – Not Addressed**
- 2. OCA's Proposed "Hold Back" for Opt-In Program – Not Addressed**

***H. Load Cap – Not Addressed***

***I. Other Procurement and Implementation Plan Requirements – Not Addressed***

### **III. RATE DESIGN AND COST RECOVERY**

#### ***A. Summary of EGSs' Position – Not Addressed***

#### ***B. Reconciliation of Default Service Costs and Revenues***

On page 8 of their Main Brief, the Suppliers explain why PECO's proposal, (PECO MB, pp. 35-38), to modify its current quarterly reconciliation methodology to an annual methodology is inappropriate and unwise and why it should therefore be rejected. The Suppliers continue to believe that PECO's proposal is unwarranted and unnecessary and will cause undue competitive hardship to Suppliers participating in the PECO service territory and will exacerbate the confusion of customers who may well be lured into believing that the PTC is a fixed price offer when it is not.

PECO has proposed to modify its current quarterly reconciliation methodology by which it reconciles the revenue received from customers and its expenses on a quarterly basis and then recovers any over or under recovery in the succeeding quarter with a one-quarter lag. Because PECO continues to have difficulty in matching its revenues with its expenses, it has proposed to elongate the process, based upon the hope that a yearly process would allow certain costs and revenue elements to offset each other so that the current alleged quarterly problem would be alleviated. In support of this position, PECO submitted the testimony of Mr. Alan Cohn and his Exhibit, ABC-R1, which purport to show that annual reconciliation avoids this problem. The fact is that annual reconciliation does not solve the problem, it simply masks the ongoing problem of PECO's inability to match its revenues and its expenses. Moreover, it continues to create volatility in the PTC which ultimately creates the possibility that suppliers could be unable to make competitively priced offers for up to a year at a time depending upon PECO's reconciliation process.

It is particularly troubling because the process itself will be managed solely by PECO, and creates severe risks for suppliers being unable to participate in the market for long periods of

time because of a large over or under-collection balance distorting the future PTC, which should be based upon current energy charges. Interestingly, PECO never explains why it cannot fix the alleged “billing lag” problem that it alleges cause the quarterly fluctuations in the PTC in the first instance. PECO is merely proposing to put a “band-aid” on the problem through the annual reconciliation process.

The OCA and the Office of Small Business Advocate (“OSBA”) both support PECO’s annual reconciliation proposal in some form. (OCA MB, pp. 37-40)(OSBA MB, pp. 7-8). In seeking to support its ill-conceived annual reconciliation proposal, PECO assails the evidence presented by Suppliers’ witness Mr. Barkas, from the natural gas industry, showing that annual reconciliation of costs creates perpetual boom and bust cycles in that market which are likely to transfer into the electricity market if annual reconciliation is adopted here. In those boom and bust cycles, the fluctuations in the e-factor due to large under or over recoveries that accumulate over the course of the year, have put suppliers at a competitive disadvantage, *vis a vis* the PTC, which has created difficulties for marketers in maintaining offers and market share in service territories where they can participate at all (DR/IGS Statement No. 1, pp. 5-7; DR/IGS Statement No. 1-SR, pp. 6/7).

The fact is, the premise at the heart of PECO’s proposal is that any variation in the PTC is to be avoided at all costs, which is not necessarily a policy choice the Commission has expressed. In seeking to impose this unsupported and ill-advised route, PECO has proposed a reconciliation mechanism which has proven in the gas industry to be devastating to competition. PECO has not refuted the impact of the annual reconciliation in the gas industry, it only has argued that the evidence is not applicable to the electricity market, but without support. This contention is unavailing and should be rejected, as should PECO’s annual reconciliation process.

- C. EDC Recovery of Additional PJM Charges – Not Addressed*
- D. Costs Included in the Generation Supply Adjustment Charge – Not Addressed*
- E. Ratemaking Treatment of Auction Revenue Rights – Not Addressed*
- F. Elimination of Alternative Energy Portfolio Standard Surcharge – Not Addressed*

#### **IV. RETAIL MARKET ENHANCEMENTS**

##### *A. Summary of the Suppliers' Position*

The Suppliers generally support the notion of including a retail opt-in auction (“ROA”) proposal such as described by PECO (PECO MB pp. 48-60), with a few notable adjustments. The primary adjustments would be: 1) to urge adoption of the OCA’s proposed twelve (12) month contract in contrast to PECO’s six (6) month contract (OCA Main Brief, p. 53); 2) reject the proposed removal of the 50% supplier participation cap, which PECO had originally championed and then retracted in response to spurious arguments raised by FES with regard to the goal of the competitive enhancements in the first instance (FES Main Brief, pp. 18-22); and, 3) most importantly, to reject PECO’s proposed method of cost recovery.

PECO has proposed that the costs of the ROA be recovered from the winning suppliers based upon the proportion of load they win. If suppliers are to be charged at all for the program, which is not the Suppliers’ position, PECO’s primary method is acceptable. However, this approach fundamentally ignores the fact that customers will obtain significant benefits from these programs and should be asked to pay for at least some of the costs if not all of them. Accordingly, while the Suppliers could accept recovery from winning suppliers as a fall back recovery mechanism, their preferred choice for recovery of the costs of the ROA would be from all eligible customers through a non-bypassable surcharge. In no event, however, do the Suppliers support or accept any possible application of PECO’s fallback recovery methodology -

recovery of the costs through an adder of 0.3% in the purchase of receivables (“POR”) discount which is paid by suppliers.

The proposed Standard Offer Referral program suffers from this same problem, namely PECO’s insistence on recovery from suppliers through the POR discount, except this time, PECO has proposed POR recovery as the primary method. The Referral Program must be implemented in a way that does not drive existing suppliers from the market, since they are the ones who would foot the bill for the referral program under PECO’s method. The only fair method, again, is to charge the costs to the winning suppliers, via a per switch fee, if suppliers are required to pay at all.

***B. EGS Opt-In Competitive Offer Program***

**1. Composition of Product Offer**

The Suppliers continue to support a one-year product, priced at least 5% less than the existing PTC with a \$50 bonus to be paid after 3 months. (Suppliers’ MB, pp. 10-11). However, based upon PECO’s continued insistence that suppliers foot the entire bill for the program, the \$50 bonus is too generous and may cause suppliers not to participate due to the large expense. The Commission should consider the impact of the bonus on the overall per-customer cost and compare that to typical customer acquisition costs before imposing the costs and the bonus on suppliers.

**2. Customer Participation Cap**

The Suppliers continue to reject the OCA’s proposal to kill the program before it starts by limiting customer participation to 20%. (OCA MB, pp. 66-70). As discussed above, particularly if the Commission intends that suppliers pay the entire bill for this program, limiting customer participating to 20% creates too small of a pool of customers over whom the eventual winners can spread the costs. This causes the per-customer acquisition costs to exceed the suppliers’

normal cost, which causes the suppliers not to participate. The Company's proposed 50% cap is reasonable and should be approved. Moreover, the OCA's proposal is driven by its apparent concern that wholesale suppliers may view the risk of a 50% cap as more significant than the risk of a 20% cap, based purely on the speculation of its witnesses. There can be no doubt that the wholesale suppliers who bid for PECO's default service load will price what they perceive as attrition risk into their offers, but as Mr. Barkas points out, the market is not likely to price a 50% cap program differently than a 20% cap program. The OCA's program killing cap should be rejected.

### **3. Supplier Participation Load Cap**

In general, the Suppliers continue to believe that a fifty-percent (50%) supplier load cap is appropriate, as discussed in their Main Brief at page 13, and reject FES' rather lengthy dissertation on why the only goal of the competitive enhancements should be to allow a single supplier to drive out all competitors through the auction process. The Suppliers have elsewhere advocated for a cap as low as 25% in an effort to ensure supplier diversity over FES' supplier dominance proposal. The Suppliers accepted the 50% cap proposed by PECO as a compromise position, but are now concerned that PECO appears to be backing away from its proposal. It is obvious that FES wants to eliminate actual retail competition between suppliers based upon potential non-price factors, and to use the one-day lowest price auction as a substitute. This type of proposal allows well-funded suppliers to "buy market share" through the retail opt-in auction rather than winning it through individual customers participating in the process, which is the hallmark of a truly competitive market. The FES method would substitute one administratively determined price for another. In short, it is not all about the lowest price, and Banks' testimony to the contrary must be rejected as must his proposal to eliminate the supplier participation cap of fifty-percent (50%).

#### **4. Customer Options on Product Expiration and Notice Requirements**

Likewise, the OCA's (OCA MB, pp. 72-73) suggestion that there should be additional requirements placed upon suppliers at the expiration of contracts provided under ROA, should be rejected. As discussed in the Suppliers' Main Brief at pages 13-14, the additional "protections" proposed by the OCA are merely cost additions to suppliers and ultimately provide no greater protection to customers and will simply increase costs. The Commission has approved a two-notice methodology which currently is used for all other residential retail customers and which does not appear to have resulted in any significant problems. Accordingly, Ms. Alexander's unsupported suggestions of increasing the cost on suppliers for no apparent reason should be rejected.

#### **5. Structure of Opt-In Auction – Sealed-Bid Format Versus Descending Price Clock Auction**

PECO has proposed to conduct the retail opt-in auction through a sealed bid format, which is opposed by FirstEnergy Solutions witness Mr. Banks, based on his continuing misguided perception that the only thing that matters in the competitive enhancements is driving the price to its lowest point on a single day. (FES MB, pp. 23-27). The Suppliers continue to support PECO's proposal based upon its lower costs and higher efficacy in producing a more diverse supplier participation. (Suppliers' MB, p. 14).

##### ***C. EGS Standard Offer Program***

Perhaps the most significant failure of PECO's proposed Standard Offer Program is its cost recovery mechanism through the POR discount. As discussed below, under the heading of Cost Recovery, recovery of any costs of such programs through the POR discount is ill-advised and highly prejudicial to suppliers that already participate in PECO's market. PECO has elevated its goal of simplified administration over fairness. The fact is, recovery of any costs

through a POR discount penalizes suppliers that have existing market share and which may not even participate in the ROA programs. As such, it is an unwarranted and unnecessary expense that they should not be forced to bear if they do not participate in the programs. If PECO insists on a recovery through the POR discount, the Suppliers would rather the program be scrapped in its entirety, rather than be forced to potentially pay for the program if they do not participate.

1. **Customer Eligibility – Not Addressed**
2. **Composition of Product Offer – Not Addressed**
3. **Customer Options Upon Product Expiration**

The Suppliers continue to reject the OCA's insistence on multiple unnecessary notices and options for customers at the end of their opt-in contracts. (OCA MB, pp. 80-82). Customers who participate in the referral should have the same options and obligations as any customer who takes a retail offer, two notices and they remain with the supplier until they affirmatively decide to go to another supplier.

4. **Types of Customer Calls Eligible for Presentation of Referral Program – Not Addressed**
5. **Commencement Date of the EGS Standard Offer Program – Not Addressed**

*D. Participation By Low-Income Customers In Proposed Retail Market Enhancements – Not Addressed*

*E. Additional Proposed Retail Market Enhancements*

1. **Time-of-Use Offering – Not Addressed**
2. **New/Moving Customer Referral Program – Not Addressed**
3. **Referral of PECO Wind Customers – Not Addressed**
4. **Seamless Moves – Not Addressed**

***F. Recovery of Program Costs for Proposed Retail Market Enhancements***

As discussed at length in Suppliers' Main Brief (*passim*) and above, the Suppliers oppose any attempt to recover the costs of the retail market enhancements from suppliers through a POR discount. For purposes of the referral program, the Suppliers could accept recovery through a per customer switch fee but for purposes of the ROA, continue to believe that recovery from all eligible customers is appropriate. If suppliers are to be responsible for any share of costs of the ROA, it should be on a *pro rata* basis only for those suppliers who actually win tranches of load in the auction, since those are the only suppliers that actually receive any direct benefits and customers over which to spread the cost of participation in the auction. If suppliers are to be forced to risk being subjected to paying an increased POR discount for programs in which they may not participate, those suppliers may choose to leave PECO's market or not participate in PECO's market in order to avoid those costs. It simply is not fair and not beneficial for the long term state of competition to impose such costs on nonparticipating suppliers.

Accordingly, PECO's proposed POR discount recovery methodology must be rejected across all potential programs.

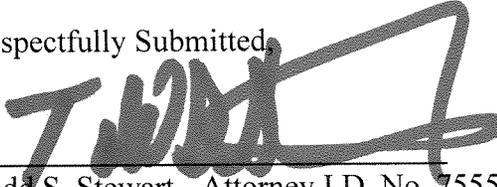
1. **EGS Opt-In Competitive Offer Program – See above**
2. **EGS Standard Offer Program – See above**
3. **Other Enhancements – See above**

**V. OTHER ISSUES - none**

**VI. CONCLUSION**

Accordingly, with the modifications proposed by Dominion Retail, Inc. and Interstate Gas Supply, Inc., PECO's proposed DSP II should be approved.

Respectfully Submitted,



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DATED: July 3, 2012