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September 12, 2003

VIA HAND DELIVERY

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PA PUBLIC UTILITY COMMISSION
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James J. McNulty, Secretary
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400 North Street, Second Floor
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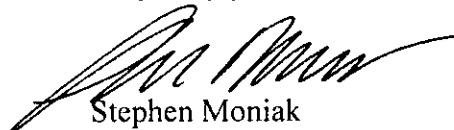
**Re: Pennsylvania Public Utility Commission v. Duquesne Light Company;
Docket Nos. R-00038092, R-00038092C0001 and 0002**

Dear Secretary McNulty:

Please be advised that Reliant Resources, Inc. will not be submitting Reply Exceptions to the Recommended Decision of Administrative Law Judge John H. Corbett, Jr. in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served. Please time stamp the extra copy of this letter and kindly return it to our messenger. Thank you.

Very truly yours,



Stephen Moniak

SM/ec

Enclosures

cc: Administrative Law Judge John H. Corbett, Jr. (via Electronic Mail
and First Class Mail)

Certificate of Service (via Electronic Mail and First Class Mail)

**DOCUMENT
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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 participants, listed below, in accordance with the requirements of § 1154 (relating to service by a participant).

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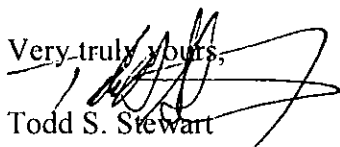
Re: Pennsylvania Public Utility Commission, Strategic Energy LLC, and
Dominion Retail Inc. v. Duquesne Light Company; Docket Nos. R-0
0038092; ~~R00038092C0001~~; ~~R00038092C0002~~; **EXCEPTIONS OF**
→ **DOMINION RETAIL INC., COMPLAINANT, TO THE**
RECOMMEND DECISION UPON REMAND

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and nine (9) copies of
Dominion Retail Inc.'s Exceptions in the above-captioned matter. As indicated by the
attached Certificate of Service, copies of the Exceptions have been served upon all the
parties to this proceeding by both electronic mail and Federal Express. The Office of
Special Assistants has been served with a copy of the Exceptions on disk as well.

If you have any questions concerning the submittal, please direct them to
undersigned counsel.

Very truly yours,


Todd S. Stewart
Counsel for Dominion Retail Inc.

TSS:tap

Enclosures

cc. The Honorable John H. Corbett, Jr. (via electronic and overnight mail)
Office of Special Assistants (w/ diskette by hand delivery)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission,
Strategic Energy LLC, and
Dominion Retail Inc.,

Docket Nos. R-00038092
R-00038092C0001
R-00038092C0002

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v.

Duquesne Light Company

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EXCEPTIONS OF
DOMINION RETAIL INC., COMPLAINANT,
TO THE RECOMMEND
DECISION UPON REMAND

Dominion Retail, Inc. ("Dominion Retail") by and through its counsel in the above-captioned matter hereby provides its Comments to the Recommended Decision upon Remand ("R.D.") of Administrative Law Judge John H. Corbett, Jr. ("ALJ") entered on December 1, 2003 in the above-captioned matter. By Order dated October 30, 2003,¹ the Commission remanded this matter to the Administrative Law Judge for further proceedings to develop market based solutions. The Commission's Opinion and Order required that any Comments² to the R.D. on Remand be filed on or before December 5, 2003. The purpose of these Exceptions is to comply with that Order.

¹ *Pennsylvania Public Utility Commission, et al. v. Duquesne Light Company*, Docket Nos. R-00038092, et al. (Opinion and Order entered October 30, 2003).

² The cover letter affixed to the R.D. as served, changed the terminology to require that "Exceptions" be filed instead.

Introduction

In spite of the strong language used by the Commission in its October 30, 2003 Order in this matter -- wherein the Commission found that on the present record the Commission was unable to approve Duquesne's command and control proposal for addressing reliability on the Duquesne system, and where the Commission also required further hearings to develop a market based solution -- Duquesne allotted considerable space in its Brief to renewing its contention that a command and control solution is the only solution to its purported reliability concerns and that a market based solution, even though it works for Reliant, will not work for EGSs. As correctly observed by the ALJ in the R.D., "Duquesne offers nothing new for review on this record on remand to suggest its original proposal is superior to the market based proposal based on its POLR II Agreement with Reliant" (R.D. at 16).

Duquesne offers no new evidence to support its command and control proposal and fails wholly to explain why the market based components of the POLR II Agreement work well for Reliant, but will not work EGSs. On the contrary, that there is ample evidence in the record to support the proposition that market based solution will, in fact, discipline EGSs in the Duquesne service territory. This evidence is comprised of two parts: 1) the undisputed evidence of Reliant's performance over the past several years under the POLR II Agreement, which is clearly a market based solution (Transcript "Tr." at 124:13-21;138:2) ; and, 2) the performance of EGSs, such as Dominion Retail, under the Duquesne's current regime which requires EGSs to pay for energy shortfalls at the market price, which regularly exceeds \$100 per MWH and which has risen as high as

\$5,000 in recent years. (Dom. Ret. St. No.1 at 3; Tr. at 127:1-20).³ Taken as a whole, this evidence shows that EGSs respond to the same market signals that Duquesne touts as being responsible for Reliant's stellar performance over the last several years under the POLR II Agreement. Duquesne offered no evidence to establish a basis for its assertion that EGSs and/or their wholesale suppliers would not respond to the same market signals and perform in a similar fashion.

Attached to the Testimony of Mr. Rosser, the witness for Duquesne in the proceeding on remand, was exhibit JFR-4, which is appended to the R.D. as Appendix A. That document contains Duquesne's attempt to translate the "reliability" components of the POLR II Agreement with Reliant, into supplier tariff requirements for EGSs. Dominion Retail, agrees with much of what is contained in that proposal. However, there are several specific components with which Dominion Retail disagreed, and there are a few provisions that Dominion Retail believes should have been added. In large measure, the R.D. made appropriate recommendations in response to Dominion Retail's position. In several instances, however, the R.D. does not go far enough in mandating changes to JFR-4, or permits certain portions to remain when Dominion Retail believes they should have been removed. In short, Dominion Retail recommends that the Commission adopt the ALJ's recommendation that rejects Duquesne's command and control methodology in favor of the market based solution contained in Exhibit JFR-4 as modified.

Dominion Retail incorporates by reference, all of its briefs, exceptions and replies previously submitted in this proceeding. The order of these Exceptions will track the presentation in the R.D.

³ The record is clear that Dominion Retail (or more correctly, its wholesale supplier) has delivered well over 90% of its energy using firm generation and firm transmission, despite the lack of any requirement that it do so, and in response to the imbalance energy costs for being short.

EXCEPTIONS

1. **Proposed Tariff Rule 4.5 is Unnecessary and Arbitrary and, Alternatively, Would Require Significant Changes In Order to Be Even Facially Reasonable.**

The R.D. recommends the inclusion of Tariff Rule 4.5 as part of the market based solution in Duquesne's service territory. Rule 4.5 would require that EGSs post a letter of credit in an amount equivalent to the EGSs outstanding bond (for providing EGS service statewide) with the Commission. The only modification proposed by the R.D. would be potentially to permit other forms of security, recognizing that letters of credit are the most expensive form of security short of cash deposits.

Dominion Retail continues to believe that no additional security should be required. The record shows that Duquesne's current supplier tariff allows Duquesne to require EGSs to post additional security, when warranted – that is, when the EGS demonstrates that its credit may be faulty. (Tr. at 367:23). Duquesne put evidence in the record of its "losses" associated with the default of two suppliers, but could not recall whether it had even exercised that right under its tariff with respect to either supplier. (Tr. at 397) It must be assumed therefore, that it did not, since otherwise Duquesne would have put that evidence in the record in support of its proposal. Duquesne admits that none of the suppliers currently on its system have bad credit, or are ever late in making payments. (Tr. at 383). In short, apart from pure speculation that if a supplier were to default and firm load was shed (something that did not happen on July 29, 2002), that the penalties could be quite large, Duquesne offered no evidence to support its contention that any EGS is presently a risk to default (its witness had performed no calculation as to what a penalty might look like other than to speculate that it would be large)(Tr. 366:11),

that the EGS's current bonds with the Commission are inadequate (Duquesne's witness who developed the proposal did not even know how large those bonds are)(Tr. 365:12), or that its current supplier tariff provisions are inadequate. There simply is no evidence to support the need for additional security. Dominion Retail submits, therefore, that the additional security requirement be removed from Exhibit JFR-4.

Despite Dominion Retail's threshold view on the need for additional security requirements, it nonetheless views the recommended decision as a potential starting place for a more reasonable security requirement, if the Commission insists on imposing one. The main failure of the R.D. with regard to proposed Rule 4.5 was in not addressing the level of the security proposed by Duquesne, and in failing to find controlling the lack of any evidentiary support for that proposed level. The record in this case indicates clearly that EGS's current statewide bonding requirement is set at 10% of the EGS's gross intrastate operating revenues, statewide. (Dom. Ret. St. 1-S at 3:7-15). Strategic's bond currently is in excess of \$10 million. (Tr. at 412). There is no evidence in the record to substantiate Duquesne's position that such a significant level of bonding has any relationship to the expected level of costs and/or potential penalties that an EGS may face in the Duquesne's service territory. In fact, Duquesne admits that it has done no study that would estimate the amount of exposure that any particular supplier might impose upon Duquesne for these charges. Moreover, in addition to its failure to adduce any evidence of the potential exposure that a supplier might cause, there likewise is no evidence of the level of risk of default that any supplier might pose. Taken as a whole, this lack of evidence makes clear that Duquesne's proposal is arbitrary in the extreme.

The R.D. does address potential form that security might take -- the R.D. recognizes that a letter of credit is the most onerous form of security that might possibly be required of suppliers by Duquesne. Nonetheless, the R.D. fails wholly to address the issue of the appropriate level of such security.

Dominion Retail submits that without any evidence to support an appropriate level of security, the Commission's only alternatives are either to reject Duquesne's proposal outright, or to craft a reasonable security requirement, which would allow suppliers to post security in any form currently acceptable to the Commission including bonds and corporate guarantees, and which would set the level of security based upon the financial exposure that supplier might impose on Duquesne factored by the supplier's risk of default. In either event, Duquesne's current proposal cannot stand.

2. Rule 4.7(a)(iii) Should Be Modified to Recognize the Value of EGS Energy Supplies.

Proposed Rule 4.7(a)(iii) assumes that there is no value to any EGS supplied energy that exceeds 110% of the EGSs forecast load in any hour. (Dom. Ret. St. No. 1-S at 5:8). Duquesne has not rebutted the Dominion Retail's contention that there are many times on which such energy has value but has instead simply stated that it might cause a haphazard result. The fact is, there are many times when this energy does have tremendous value. One example from the record is the fact that on July 30, 2002, the day after the event that supposedly initiated Duquesne's filing, Dominion Retail did over-deliver 10 megawatts during the peak hours, and Duquesne did not complain. (Dom. Ret. St. No. 1 at 8:12). Dominion Retail was paid at the imbalance energy rate for the energy,

and it must be assumed that Duquesne sold that energy as imbalance energy to other suppliers.

Dominion Retail does recognize that there may be times when such energy may have a negative value that is, that it may cost Duquesne money to dispose of the energy. Dominion Retail has suggested that Rule 4.7(a)(iii) be modified to recognize that value whether it is positive or negative, rather than assuming that such value always is a negative. There are likely to be circumstances in which a supplier will over deliver, inadvertently, or even at Duquesne's request, and the supplier should be paid (or pay) for the value of that energy.

3. Under Rule 4.7(a)(iv), Suppliers Should Not be Penalized for Shedding Firm Load Where the Supplier Took All Reasonable Steps.

Beginning on page 34, the R.D. discusses the \$1,000 per megawatt hour penalty for shedding firm load. The ALJ correctly recognizes that Duquesne's proposal contains a disparity with regard to the POLR II Agreement on this subject. Specifically, the POLR II Agreement requires that if Reliant fails to deliver in any particular hour and that such failure causes the shedding of firm load, Reliant might nonetheless be excused from paying the \$1,000 per megawatt penalty if, in fact, Reliant can demonstrate that it did everything possible, (i.e., that it delivered all the output from all available on-system generation) to satisfy its load obligations. The R.D. correctly recognizes that EGSs may find themselves in similar circumstances, and recommends applying a parallel provision to them. That provision would require that if an EGS has contracted for firm energy and firm transmission (something that Duquesne had demanded that EGSs do as part of its command and control regime) and such energy nonetheless is not delivered due to no

fault of the EGS or its wholesale supplier, the EGS would be penalized only \$100 per megawatt hour instead of \$1000 per megawatt hour. Otherwise it would be unfair to EGSs who do everything within their power to insure delivery.

4. The Required EGS Demonstration of Ability to Perform Must Include Appropriate Standards.

Beginning on page 38, the R.D. correctly recommends that a Protective Order be required for competitively sensitive information that might be produced pursuant to an EGS's semi-annual obligation to demonstrate its ability to perform. The R.D. likewise endorses the proposal that the Commission perform these reviews. Nonetheless, the R.D. fails to impose specific standards for said review. Without such standards, EGSs cannot make appropriate plans to maintain system reliability.

Proposed Rule 4.19 would require an EGS twice annually to demonstrate to the Commission's satisfaction that the EGS had adequate supply resources with which to fulfill its supply obligations for its customers in the Duquesne control area. Dominion Retail echoed the recommendation by the Office of Consumer Advocate that specific standards be developed by the Commission as part of its review process, but suggested that such standards not mandate already rejected requirements such as firm transmission or firm energy. Dominion is concerned that the process used by the Commission in evaluating these semi-annual demonstrations be known beforehand and that any competitively sensitive information that is provided, be treated under protective order requirements.

There is a standard form of protective order, currently used in most complex proceedings before the Commission. Such an order simply could be applied on a blanket

basis to such material, recognizing that most of what would be provided would be considered highly proprietary, since it would contain future purchasing plans. If proposed Rule 4.19 incorporates these concepts, it can function in a reasonable fashion.

5. Proposed Rule 16.2 Requires Further Modification To Include Standards.

The R.D. adopts in large part, beginning at page 44, proposed Rule 16.2 which contains two new proposed events of breach: 1) a failure to post security; and, 2) the failure make adequate assurances after a delivery failure that causes the shedding of firm load. The assurances would ostensibly show that the EGS had corrected the causes of the delivery failure within sixty (60) days of the request.

The ALJ recommended retaining subsection (F) which addressed security and proposed a modification to subsection (G) which would require that any adjudication of an EGSs failure to provide assurances be approved by the Commission before an EGSs ability to serve on the Duquesne system was terminated.

For the reasons stated above, Dominion Retail does not believe that subsection (F) is necessary because Dominion Retail does not believe that additional security should be required as suppliers operating on the Duquesne system.

Dominion Retail agrees that any termination by Duquesne under 16.2(G), on the basis that a supplier has failed to provide adequate assurances, be subject to Commission review before any supplier's ability to serve can be terminated. Moreover, Dominion Retail recommends that the Commission establish standards similar to those for the semi-annual Demonstration of Ability to Perform in order to impose some structure for the types of assurances that could be demanded in such circumstances. Otherwise, Duquesne

would be free to impose any requirements that it saw fit in response to a non-delivery which caused the shedding of firm load.

6. Rule 17.2 Must Be Further Modified To Allow Customers a Meaningful Opportunity to Choose.

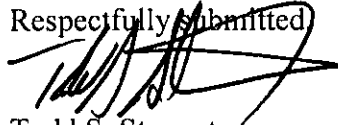
Proposed Rule 17.2 states that the termination of an individual coordination agreement would have the same effect on an EGS's customers as if the EGS simply had discontinued to supply such customers as described in the EDC Tariff. The proposed rule would not allow customers of the terminated EGS to avoid POLR service, unless they switch prior to termination; an event of which they most likely would be unaware. The practical implications of this provision are that if Duquesne accuses an EGS of committing one of the items listed in Rule 16 (Events of Breach), the accused EGS can either cut its own throat by advising its customers that it potentially may be put out of business and that the customer should choose another supplier, thus ensuring that the supplier is out of business, regardless of whether the EGS is proven to be guilty of the offense charged; or, the EGS could risk allowing its customers to be sent back to POLR service (which in many cases leaves the customer no option to leave POLR service for several months). The plain language of Rule 17.2, as proposed, states that if the customer has not switched prior to the termination of the EGS's service, that customer will be returned to POLR service.

Dominion Retail agrees with the R.D.'s requirement that requiring that any return of customer to POLR service be allowed only with the approval of the Commission, but adds that it should be further modified to include a requirement that the customer be given at least some nominal opportunity to switch before being returned to POLR service.

CONCLUSION

In general, the Recommended Decision appropriately adopts the necessary terms to provide a market based solution in Duquesne's service territory to address Duquesne's reliability concerns. Dominion Retail believes that with the modifications discussed herein, that proposal will provide reliability similar to the POLR II Agreement until such time as Duquesne joins an RTO. Dominion Retail urges the Commission to adopt the recommendations contained in these comments and to order that Exhibit JFR-4 be modified accordingly, and that Duquesne Light Company file tariff supplements following the entry of an Order in this case incorporating these changes.

Respectfully submitted


Todd S. Stewart
Counsel for Dominion Retail, Inc.

Dated: December 5, 2003

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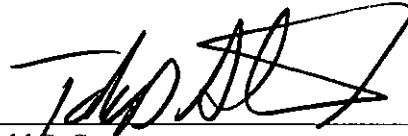
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Dated: December 5, 2003

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Duquesne Light Company Supplement No. 1 :
To-Tariff Electric PA PUC No. 3S - Electric :
Generation Supplier Coordination Tariff

Docket No. R-00038092

Dominion Retail, Inc.
v.
Duquesne Light Company

Strategic Energy, L.L.C.
v.
Duquesne Light Company

ORIGINAL

R-00038092 C0001
Docket No. E-20039487

R-00038092 C0002
Docket No. E-2003

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PETITION TO INTERVENE
AND COMMENTS OF
PEPCO ENERGY SERVICES, INC.

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

NOW COMES, Pepco Energy Services, Inc. (hereinafter "PES"), pursuant to the provisions of 52 Pa. Code §5.71, by and through its undersigned attorney, and hereby files this Petition to Intervene, requesting that this Commission grant the Petition thereby conferring upon PES "Intervenor" status in the above captioned proceeding. In support of this Petition, PES states as follows:

1. Pepco Energy Services, Inc. is, a subsidiary of Pepco Holding Company, Inc. with its headquarters in Arlington, Virginia.
2. PES is a licensed electric generation supplier ("EGS"), having received its license from this Commission by Order dated August 13, 1998, at Commission Docket No. A-110082.

3. PES will be represented in this proceeding by the following attorney who should be placed on the Commission's service list and receive copies of all correspondence and other documents:

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It is also requested that all documents be forwarded to:

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4. On January 7, 2003, Duquesne Light Company ("Duquesne") filed its proposed Supplement No. 1 ("Supplement No. 1") to Tariff Electric PA PUC No. 3S, which is the Company's EGS Coordination Tariff (the "Supplier Tariff"). On February 12, 2003, Dominion Retail Inc. filed its Complaint regarding Supplement No. 1 (the "Dominion Complaint"). On February 18, 2003, Strategic Energy L.L.C. filed its Complaint regarding Supplement No. 1 (the "Strategic Complaint").

5. PES supports the Dominion Complaint and the Strategic Complaint. PES has a number of particular concerns. Supplement No. 1 would limit the supply alternatives available to EGS, and therefore to consumers in the Duquesne service territory, unfairly hindering competition and resulting in higher costs to consumers with no demonstrable benefit in reliability. One of the two options that an EGS will be limited to is to purchase supply within the Duquesne control area. However, this alternative is highly problematic for an EGS and for consumers. There are currently only two firms with significant generating capacity within the Duquesne service territory. These companies themselves are subject to a number of conflicting interests and economic pressures, as a result of ongoing financial and regulatory concerns and because of their interest in competing for customers in the Duquesne territory. Consequently, purchasing supply within the Duquesne service territory is not a secure option.

The only other alternative that would satisfy Duquesne's proposed rules would be to purchase firm point-to-point transmission, which is far more costly and, as noted below does not provide any meaningful reliability benefits. As noted in Count IV and Count V of the Strategic Complaint, these restrictions are unduly discriminatory and anti-competitive because Duquesne's provider of last resort suppliers ("POLR Suppliers") are not similarly limited and generation and transmission owners operating in adjacent control areas (including their competitive retail affiliates) will have gaming opportunities.

6. It is the occurrence of events of Transmission Loading Relief ("TLR") which Duquesne points to as support for imposition of Supplement No. 1. Yet, even firm point-to-point transmission can be interrupted during a TLR, thus negating any purported benefit of imposing the firm delivery obligation on EGS. As noted in paragraph 8 of the Strategic Complaint,

Duquesne's own Open Access Transmission Tariff, Part II, Section 13.6, confirms the ability to interrupt firm transmission. Moreover, Duquesne fails to demonstrate in any way that Supplement No. 1 would mitigate the supply interruptions that Duquesne identifies in only the most general terms. The TLR events occurred during a summer season that was far hotter than normal in the eastern United States. Duquesne only interrupted its interruptible customers one time during the summer of 2002. In contrast, PJM Interconnection exercised its load management programs on three days, including July 29, 2002, the date on which Duquesne interrupted its interruptible customers. Duquesne's characterization of its supply interruption as the direct result of failure by EGSs to meet their *delivery responsibilities* ignores the fact that loads were abnormally high on July 29, 2002, and that load management actions were taken in PJM (and possibly other control areas) to balance supply and demand and ensure reliability for firm service customers. Therefore, Duquesne's response is wholly out of proportion (and in any event, not responsive) to the stated problem.

7. Supplement No. 1 is also unnecessary because Duquesne is already adequately protected against EGS under delivery. Duquesne has in place today in its Supplier Tariff and in its Open Access Transmission Tariff protection against the risk of an EGS undersupplying its customers' load, thereby shifting the risk of non-performance to the EGS. Furthermore, the practice of the market to purchase wholesale firm supply via firm liquidated supply contracts properly meshes with Duquesne's current tariff provisions to mitigate the risk to Duquesne. The market has developed "firm liquidated damages" contracts under which the wholesale seller of electricity is bound to pay to the EGS (which is the wholesale buyer in this transaction) liquidated damages for its failure to deliver other than as a result of certain limited exceptions,

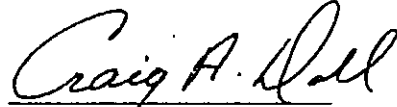
and so the competitive parties have cost effectively allocated risk amongst themselves, including in the event of a TLR. Thus Supplement No. 1 would further harm the market (and thus consumers) by eliminating the efficacy of the prevailing wholesale supply contract form. It goes without saying that Duquesne's proposed changes would undermine the value of interruptible supply contracts and transmission contracts, both economically and as a means to allocate resources and risks.

8. PES supports the Dominion Complaint and the Strategic Complaint and urges the Commission to reject Supplement No. 1 as not being in the public interest, or in the alternative to suspend the Supplement No. 1 and not permit it to become effective pending investigation through evidentiary hearing to determine whether Duquesne's proposed new rules are lawful, non-discriminatory, pro-competitive and in the public interest.

9. PES, as an EGS licensed to provide electric generation services within the Commonwealth has a direct interests in this proceeding and will be directly affected by the resolution of issues in this proceeding. Despite PES's general support of the positions taken by Strategic and Dominion, no other party, other than PES, can adequately represent its unique position or protect its interests in this proceeding.

WHEREFORE, Pepco Energy Services, Inc. respectfully requests that this Commission grant this Petition for Intervention.

Respectfully submitted,



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(717) 566-9000

Attorney I. D. #22814

Attorney for Pepco Energy Services,
Inc.

Dated: April 2, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the persons and in the manner listed below which service satisfies the requirements of 52 Pa.

~~Code 1.54:~~

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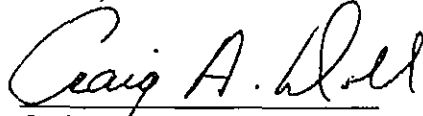
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Dated: April 2, 2003