

January 14, 2005

**VIA HAND DELIVERY**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

Re: Implementation of the Alternative Energy Portfolio Standards Act Of  
2004; Docket No. M-00051865; **COMMENTS OF DOMINION  
RETAIL INC.**

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of Dominion Retail Inc.'s Comments in the above-captioned matter. As indicated by the attached Certificate of Service, copies of the Comments have been served upon staff by electronic mail, as requested.

Dominion Retail Inc. also requests that it be given an opportunity to appear and make a brief presentation at the January 19, 2005 technical conference. 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: Gary Jeffries  
Tom Butler

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of the Alternative :  
Energy Portfolio Standards Act :  
Of 2004 : Docket No. M-00051865

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**COMMENTS OF DOMINION RETAIL, INC.**

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Dominion Retail Inc. (“Dominion”) hereby submits its Comments in the above-captioned matter as requested by Secretarial Letter dated January 7, 2005. The Commission’s Secretarial Letter identified a number of topics on which the parties were asked to concentrate their Comments. Dominion will not address all areas but will limit its Comments to those most relevant to its interests, in particular: deferrals and cost recovery; *force Majeure*; and the creation of an appropriate trading platform.

**Deferrals and Cost Recovery**

Perhaps the most important issue as far as Dominion is concerned, is the methodology by which the costs for the purchase of these credits are recovered. The reason is simple, if the cost recovery mechanism for EDCs is not created and implemented with great care, a very likely result of the Act will be to harm competition in Pa. in a very real way. The Alternative Energy Standards Act of 2004 (Act 213) (“The Act”) provides the EDCs with a dollar-for-dollar pass through of all costs associated with the requirements it establishes, including administrative costs and the cost of credits themselves using a reconciliation mechanism under Section 1307 of the Public Utility

Code, 66 Pa. C.S. § 1307. However, EGSs are afforded no such ability. Rather, EGSs must include these costs in the price of their competitive offers to customers. As we have seen in the natural gas markets, the dollar for dollar recovery of these types of costs, which will vary from month to month and year to year, is difficult, if not impossible to accurately represent in a price to compare. In the gas market, the collection of commodity costs through a reconciliation mechanism that is never representative of the actual and timely market costs causes a distortion between the prices marketers can offer and prices that the utility customer will use as a benchmark in evaluating the offer. This lack of transparency almost certainly will inhibit a customer's willingness to choose an EGS.

Dominion believes that the best means of avoiding the potential for severe competitive harm described above, is for the Commission to require that the EDCs purchase credits for all energy delivered into their service territory--for shopping and non-shopping customers--and to recover those costs through a separate line item of the bills to all customers. These costs would be non-bypassable for customers who choose service from an EGS. Since EDCs are allowed to pass through all costs associated with this program, on a dollar for dollar basis, they would suffer no economic detriment. Moreover, the goals of competition would not be destroyed because EGSs would participate in the market on the same basis that they do now. Finally, the goals of The Act would be unaffected.

In the alternative, the Commission, would be tasked with trying to develop a means of collecting these costs and of adding them into a price to compare in a way that

does not distort or misrepresent the true cost of the acquisition of these credits and their associated costs so that suppliers have fair means of competing against the price to compare. Dominion believes that such a task is daunting and it is unlikely to produce a fair competitive bogey.

Such a mechanism would have no negative impacts on the goals of The Act, which is to encourage the purchase of energy from alternative energy resources or to provide funds for the construction of said resources. However, to allow an anti-competition recovery mechanism would cause a severe negative anti-competitive impact that would run contrary to the goals of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801 *et seq.* Consequently, Dominion believes that the best course is to translate the costs of compliance into a separately stated non-bypassable charge on the bills of all customers in any particular EDC service territory.

### ***Force Majeure***

The Act provides with regard to “force Majeure” that

upon its own initiative or upon a request of an electric distribution company or an electric generator [*sic*] supplier, the Pennsylvania Public Utility Commission, within 60 days, shall determine if alternative energy resources are reasonably available in the market place in sufficient quantities for the electric distribution companies and electric generation suppliers to meet their obligations for that reporting period under this act. If the commission determines that alternative energy resources are not reasonably available in sufficient quantities in the market place for the electric distribution companies and electric generation suppliers to meet their obligation under this act, then the commission shall modify the underlying obligation of the electric distribution company or electric generation supplier or recommend to the general assembly that the underlying obligation be eliminated.

(Section 2).

For the purposes of electric generation suppliers (“EGS”) and electric distribution companies (“EDC”) the operative part of this section is the phrase “if alternative energy resources are reasonably available in the market place in sufficient quantities.” Dominion believes that for purposes of implementing The Act it is absolutely necessary for the Commission to define this short phrase, and in particular, the terms “reasonably available” and “insufficient quantities.” If EDCs and EGSs do not have a reasonable basis upon which to determine, ahead of time, a reasonable definition of those terms, particularly with regard to the credits for the photovoltaic component of Tier I, the potential liability could be huge and potentially life threatening for EGSs. Since the Act requires that such costs be passed through on a current basis, such a large liability could cause severe hardship on EDC customers as well.

Dominion believes that a reasonable determination of whether resources are reasonably available in sufficient quantities would involve a three-step inquiry. At the threshold, the Commission must determine the existence, and level of penetration, of the equivalent capacity of resources within the appropriate geographic region, of photovoltaic, Tier I and Tier II resources. Equivalent capacity involves an adjustment to total capacity to account for the fact that some of these resources have very low capacity factors. If the Commission determines that there is no equivalent capacity or insufficient equivalent capacity, there should be an automatic adjustment to the compliance requirements. If such a situation persists, the Commission should strongly consider recommending to the General Assembly that the particular requirement be reduced or eliminated.

The next stage of an inquiry should focus on the availability of the credits for these resources in the market place. Again, this inquiry would apply to all resources, photovoltaic, Tier I and Tier II. That is, it is possible that there may be sufficient equivalent capacity of a particular group of resources within the relevant geographic area, but due to such things as banking or the refusal to sell those resources, there may not be enough credits offered in the market. Such an inquiry should be relatively easy based upon a survey of resources being offered in the trading mechanism ultimately employed.

The final inquiry would concern only the photovoltaic share of the Tier I resources, and is driven by what appears to be a limitless price on the credits for those resources and therefore the alternative payment amount. The Commission should determine that photovoltaic resources are reasonably available only if they are being offered in the marketplace at a reasonable price. If the owners of these resources were to demand prices for credits that far exceed what is reasonable, such resources, in Dominion's view, are not reasonably available in the market place. Accordingly, Dominion believes that the Commission should predetermine what a reasonable price would be. Dominion believes that a market price should not exceed \$300.00 for purposes of setting the alternative compliance payment. Dominion bases this view on an analysis of the current market and the level of penalties in other states as well as the analysis supporting those penalties. Dominion believes that prices up to this level are more than adequate to stimulate the market, but that consumers should not be exposed to prices above this level.

Because the Act requires that the maximum alternative payment for the photovoltaic share is 200% of the price in the market place, the alternative payment is

essentially unlimited. Clearly the legislature did not intend customers to be saddled with such potentially huge costs. Accordingly, any definition of what is reasonably available must address the price issue.

If the Commission adopts this three-step definition to use in the determination of whether a *force Majeure* condition exists, Dominion believes that EGSs and EDCs can reasonably assess risks and adjust purchasing strategies beforehand.

### **Trading Platform**

While Dominion understands that the PJM currently is in the process of developing an electronic trading platform for these credits, Dominion hopes that such a program is similar to the program currently employed in the New England ISO territory. That system has proven to be a cost effective methodology of trading of credits. Since the cost of administrating the credit trading program will be passed on to users of the system, Dominion's main concern is that system be usable and cost effective. As with most processes at PJM, Dominion believes that suppliers should have the ability to participate in any process, which sets up the parameters for such a system.

### **Conclusion**

Dominion stands ready to respond to any questions that the participants may have with regard to its Comments and thanks the Commission for the opportunity to provide its input at this early stage of the process.

Respectfully submitted,

Todd S. Stewart  
Counsel for Dominion Retail, Inc.

Dated: January 14, 2005

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the person and in the manner indicated below.

### **SERVICE BY FIRST CLASS AND ELECTRONIC MAIL:**

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Todd S. Stewart

DATE: January 14, 2005