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July 28, 2011

**VIA HAND-DELIVERY**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Interim Guidelines for Eligible Customer Lists, PPL Electric Utilities Corporation Utilities Markets, Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 through May 31, 2013; Docket Nos. M-2010-2183412, M-2009-2104271, P-2009-2135500; **Reply Comments of Dominion Retail, Inc. d/b/a Dominion Energy Solutions**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the original and one copy of the Reply Comments of Dominion Retail, Inc. d/b/a Dominion Energy Solutions, in the above-captioned matter.

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  
Enclosures

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**BEFORE THE PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Interim Guidelines	:	Docket No, M-2010-2183412
For Eligible Customer Lists	:	
	:	
PPL Electric Utilities Corporation	:	Docket No. M-2009-2104271
Retail Markets	:	
	:	
Petition of Duquesne Light Company for	:	Docket No. P-2009-2135500
Approval of Default Service Plan for the	:	
Period January 1, 2011 through	:	
May 31, 2013	:	

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**REPLY 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 Solutions (“DES”) by and through its counsel and hereby submits these replies to the comments filed by other parties in the above-captioned matters. DES provided comments at earlier stages of these proceedings, including the Pennsylvania Public Utility Commission’s (“Commission”) November 12, 2010 Order in the Interim Guidelines Order Docket M-2010-2183412 and the appeals filed by the Office of Consumer Advocate (“OCA”) and Pennsylvania Coalition Against Domestic Violence (“PCADV”) before the Commonwealth Court. DES supported the Commission’s Petition for Remand of those appeals.

During the appellate process, DES made it clear that it was satisfied with the *status quo* that preceded the Commission’s November 12 Order. Specifically, DES supported allowing customers to opt out of providing all customer information to electric generation suppliers, and it continues to believe that such an approach is a sufficient and an acceptable alternative to what

the Commission proposed in its November 12 Order the elimination of that option for customers. Ultimately, the Commonwealth Court agreed to remand the proceedings back to the Commission for further consideration of the Commission's November 12, 2010 Order. By Order entered on June 13, 2011, the Commission requested interested parties to submit comments and reply comments suggesting how the Commission might modify its November 12, 2010 Order to address the concerns raised by the parties to the appeals.

The stated basis for both appeals was the November 12, 2010 Order's removal of the condition that would have allowed customers to restrict release of all of their customer information held by an EDC. Additionally, PCADV challenged the opt-out methodology for obtaining customer consent.

DES submitted comments in response to the Commission's June 13, 2011 Order. DES's comments were straightforward-the only requirement of the November 12 Order for which there was and is any substantial basis for alteration is the requirement that eliminated customers' ability to restrict release of all of their information. There simply is no evidence to support any further change. That is, despite the voluminous nature of the PCADV's comments, there is not even one credible suggestion that any customer in Pennsylvania has been harmed by the opt-out process currently employed in the Commonwealth. While there may be a number of additional commenters who join the PCADV in its cause, none can even suggest that there has been any harm as a result of opt-out in Pennsylvania, where the process has been used successfully for more than twelve years. Moreover, the OCA generally agrees that the current process is sufficient. Accordingly, DES urges the Commission to make the minor yet significant change to the November 12 Order to allow customers to restrict the release of all of their information.

## **Replies to Specific Comments.**

Duquesne Light Company (“Duquesne”) states in its comments that having the customer list available to EGSs is beneficial to competition. However, Duquesne goes on to suggest that, because customer participation in the opt-out process has risen from 3% to the most recent level of 16.9%, the opt-out process may need revision. It suggests that this change in customer attitudes is a potential basis for reconsidering whether the opt-out process is the appropriate methodology for allowing customers to restrict the release of their information. DES respectfully disagrees. The fact that customers are opting out at 16.9% points out very clearly that customer are aware of their ability to opt-out of releasing their information and are availing themselves of the opportunity to do so. In other words, as Duquesne’s comments make patently clear, the opt-out is effective. The greater the customer awareness of their ability to opt-out, the greater the ability for customers to protect their own information. This type of a process puts the responsibility for restricting the release of information on the customer, but, for those that have an interest in doing so, such an opportunity is sufficient. Duquesne’s data make it clear that customers understand their responsibility.

DES also rejects Duquesne’s claim that the secondary information is not necessary for marketing. As discussed more thoroughly below, DES believes that, while not all secondary elements are necessary for marketing, some are.

The Office of Consumer Advocate (“OCA”) generally accepts the process that existed prior to the Commission’s November 12 Order with the exception that they do not agree that telephone number should be on the eligible customer list. DES agrees with the OCA that the customer should have the ability to restrict all of their information. DES agrees, for the most part, with the OCA that the elements that the OCA contends should be available to Electric Generation Suppliers (“EGS”) but not all. However, DES does not believe that there is a compelling argument at this point to change the November 12, 2010 Order on this subject.

DES also agrees with the OCA that the Commission should make clear that intentional violations of privacy will be met with the utmost in punishment. However, it should be noted that DES is not aware of any situation where an EGS has released customer information or used customer information for purposes other than those permitted by the Commission's regulations. Accordingly DES suggests that much of the basis of the OCA's comments, to a certain extent, and the comments of many others, to a much greater extent, are based upon speculative fear at best, and not facts. This speculation is not an adequate basis to overturn the current opt-out process.

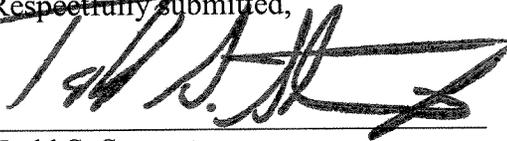
The OCA spends considerable time arguing that the Commission needs to address the requirement that customers affirmatively agree to release smart meter data. DES understands the OCA's position that there is at least a likelihood that certain criminal entities could use this information in a way that is detrimental to specific customers. However, the OCA's blanket restriction on the release of this information is far too broad. DES understands the privacy concerns regarding the potential for malicious use of such information and would agree to participate in a process to develop regulations to address the release and use of such information.

It would be incorrect, however, to assert that all of the additional information included in the eligible customer list in the Commission's November 12 Order is of a character that would cause the privacy or anonymity of customers to be compromised or to subject those customers to potential identity theft as some commenters, such as PULP and others, suggest. These allegations are pure speculation and have no basis in the facts. The Commonwealth Court ruled early on in the competitive process in Pennsylvania that an opt-out was sufficient to protect customers, despite the OCA's statements to the contrary, and the expansion of the information on the list does not justify overturning that longstanding process. There simply are no satisfactory alternatives. Accordingly, DES urges rejection of the comments of these parties.

Simply put, there is no basis in fact to support the notion that the opt-out process currently employed in Pennsylvania, when coupled with the ability of customers to restrict the release of all of their information, is insufficient. The past twelve plus years that it has been employed prove the contrary point. While it may be true that additional information may be released to an EGS, there has been no reason to suspect that EGS' have been using this information or will use it for malevolent or malicious purposes. There are at the same time, however, numerous reasons why this information is important to EGS, including ensuring that signing up customers is efficient and effective. In DES' experience, the rejection rate for customer switch transactions is considerably higher if it does not base its submissions on data received from the EDC. This causes customer dissatisfaction and casts a pall over the entire shopping experience. Without the ability to obtain the customer list from EDCs, it would be substantially more difficult for EGS' to market to and sign up customers and would pose a serious barrier to entry. The suggestion, that to increase in the breath of information that would be made available should automatically lead to the elimination of the opt-out process in favor of opt-in, is without support.

Accordingly, DES respectfully requests that the Pennsylvania Public Utility Commission modify the November 12 Order by allowing customers to restrict the release of all of their information, and that it make no further modifications. However, if the Commission is concerned that the release of all of the information other than the primary list would compromise customer security, they could restrict the release without compromising DES' position. Otherwise, DES supports the notion of maintaining the status quo with regard to the opt-out process which allows customers who are concerned the ability to restrict the release of all of their information. No other changes are necessary or warranted.

Respectfully submitted,



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