

March 8, 2006

**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 & Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. § 2807(e)(2); Docket Nos. M-00051865 and L-00040169;  
**COMMENTS OF DOMINION RETAIL INC. PURSUANT TO SECRETARIAL LETTER DATED FEBRUARY 8, 2006**

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and fifteen (15) 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.

Very truly yours,

Todd S. Stewart  
Counsel for Dominion Retail Inc.

TSS:smk  
Enclosures  
cc: Gary Jeffries

THE COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA PUBLIC  
UTILITY COMMISSION

Implementation of the Alternative	:	
Energy Portfolio Standards Act	:	Docket No. M-00051865
Of 2004	:	
	:	
Rulemaking Re: Electrical Distribution	:	
Companies' Obligation to Serve	:	Docket No. L-00040169
Retail Customers at the Conclusion	:	
of the Transition Period Pursuant	:	
to 66 Pa. C.S. §2807 (e) (2)	:	

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**COMMENTS OF DOMINION RETAIL INC.  
PURSUANT TO SECRETARIAL LETTER  
DATED FEBRUARY 8, 2006**

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On February 8, 2006, the Commission's Secretary issued a Secretarial Letter in the above-captioned dockets. That Letter had attached to it a list of eight questions/issues that were derived from the Commission's Order entered at the above-captioned dockets on November 18, 2005. In its November 18 Order, the Commission concluded that it should re-open the public comment period for the Rulemaking at Docket No. L-00040169 concerning the obligation of electric distribution companies at the end of the transition period. The Commission now seeks comments addressing the interplay between the Electricity Generation Customer Choice and Competition Act ("Choice Act"), 66 Pa. C.S. §2801 *et. seq.*, and the Alternative Energy Portfolio Standards Act of 2004 ("AEPSA"), 73 P.S. §§1648.1, *et seq.* In particular, the Commission wishes parties to address the impact of the cost recovery mechanisms specified in the AEPSA on the cost recovery mechanisms discussed at 66 Pa. C.S. §2807(e)(3). For the sake of clarity,

Dominion Retail's Comments will address the questions as set forth in the Commission's February 8, 2006 Secretarial Letter.

**Question No. 1 – Should AEPSA cost recovery be addressed in Default Service Regulations?**

Dominion Retail is an electric generation supplier ("EGS") in the Commonwealth of Pennsylvania and, therefore, its interests are affected both by the AEPSA and the Choice Act. Its ability to offer competitive electric generation service to customers is profoundly impacted by the means employed by electric distribution companies ("EDC") to pass-on costs to customers through default service rates. Dominion Retail continues to be concerned by the disparity between EDCs and EGSs in this regard that has only been exacerbated by the AEPSA. EDCs are able to pass AEPSA compliance costs on to customers on a reconciled basis, while such mechanisms are unavailable to EGSs in any practical sense. EGSs must include all of their costs, including AEPSA compliance costs, in their retail prices to customers. That price then competes directly against the "price to compare" or default service rate offered by an EDC. Dominion Retail believes that the AEPSA may require that AEPSA compliance costs be included in the default service rate, as a "cost of generation supply under 66 Pa. C.S. §2807" (73 P.S. § 1648.3(a)(3)(ii)). While including such costs in the default service rate may enhance price comparability and ensure that shopping customers do not pay the costs twice, like peeling an onion, it reveals yet another problem posed by the admixture of the AEPSA and the Choice Act.

Including AEPSA compliance costs in the default service rate solves one problem but creates another. Because the statute explicitly provides for reconciliation of an EDC's AEPSA costs, the default service rate or price to compare will have the very real potential to become volatile. Of greater concern is the likelihood that the after-the-fact collection of AEPSA

compliance costs, or the refund of over-collected AEPSA costs, will distort the price-to-compare so that it cannot reflect the actual market price during the collection period, thus violating 66 Pa. C.S. § 2807(e)(3). This distortion places EGSs at a significant competitive disadvantage in their ability to price their competitive service offerings in the first instance, because reconciling a portion of the price to compare creates another disparity--best described by pointing to the issues created by reconciliation in the natural gas market--that the price to compare is not comparable to anything. EGSs, who have no choice but to procure what they sell in a competitive, actual time market, compete largely on the basis of price, with a service whose price will never reflect the current market price and which may change dramatically for no reason that is readily apparent to customers.

Accordingly, Dominion Retail continues to believe that the most efficient and fair method of addressing the costs of AEPSA compliance would be to require EDCs to provide AEPSA credits for all customers regardless of whether those customers choose alternative suppliers. The EDCs have the ability to pass through those costs on a non-bypassable basis to all customers. Such a mechanism is consistent with the public benefits of the AEPSA being spread upon all customers. Such a mechanism also eliminates the disparity in the methodology of collection and the probable price distortion that will result. Dominion Retail continues to believe that its proposal is the best means of solving this competitive conundrum. In any event, however, the Commission must ensure that customers who shop do not pay for AEPSA compliance costs twice. That is, in no event can the costs of AEPSA compliance be included in rates charged to all customers unless all customers are receiving the benefit of those compliance costs. Dominion Retail believes that AEPSA cost recovery should be addressed in the default service regulations for that reason.

**Question No. 2 – Is there a need for long term contracts for AEPSA credits?**

Dominion Retail does not believe that current market conditions require long-term contracts for alternative energy resources. The level of investment and expansion of renewable projects currently underway in the market place indicates that such long-term contracts are not required for continued development. What is required however, is certainty as to the long term existence of renewable requirements and consistency in the development and application of such requirements over the long period. Regulatory uncertainty creates huge amounts of risk for potential projects, and the sooner such certainty can be obtained and the more durable that regulatory certainty, the lower the risk for projects and the more likely that those projects will be developed. Dominion Retail recognizes that there is a tension between developing more general regulations that will be capable of withstanding changed circumstances over a long period of time, and the desire to fine tune or tweak such regulations once the market is more fully developed. However, Dominion Retail cautions against making significant changes in any regulation promulgated in this area because of the risk and insurmountable damage that it could cause to projects on an ongoing basis. Dominion Retail believes that EDCs and EGSs may wish to pursue long term contracts as part of a supply strategy but it does not believe that it is important for the Commission to impose any such obligation on any market participant.

**Question No. 3 – How should the Commission approach *Force Majeure*?**

The *force majeure* provisions of the AEPSA are a safety valve, available when the market has not produced sufficient AEPSA credits to meet the demand created by the retail electric supply in Pennsylvania. To the extent that there is such a scarcity of credits so that a

default provider is unable to obtain them through prudent behavior, a default service provider should be permitted to seek a *force majeure* determination.

Since Dominion Retail firmly believes that default service rates should not be reconciled, to the extent that a default service provider has included AEPSA compliant energy sources within its bid process, and a default wholesale supplier fails to provide those credits due to a *force majeure* condition, either the wholesale supplier or the EDC may be liable for any penalties incurred by the shortfall, absent an ability to seek *force majeure*. Dominion Retail does believe, however, that EDCs must be made to choose, at the time they submit default service plans, whether they will reconcile AEPSA costs or whether they will pass that risk on to their wholesale suppliers through a bid process, and that the party that bears the risk should be able to seek a determination of a *force majeure* condition if market conditions warrant. That is, if an EDC contractually obligates a wholesale supplier as part of the bid process to supply the requisite amount or AEPSA compliant energy and/or credits and the wholesale provider fails to do so because of a *force majeure* condition, the wholesale supplier must seek a *force majeure* determination and not pass on any extra costs to the EDC, which, in turn, should not be permitted to reconcile any such additional costs. Otherwise, customers would be forced to pay twice because they would be paying a higher default rate to compensate the wholesale supplier for AEPSA credits that were not provided, and then would be forced to pay the EDC for credits that it actually had to purchase to avoid penalty.

**Question No. 4 – Should solar photovoltaic resources be treated differently?**

AEPSA includes essentially three groups of resources in terms of compliance, solar photovoltaic, Tier I (non-solar), and Tier II. Tier I (non-solar) and Tier II have a non-compliance penalty of \$45.00/mwh, while the solar photovoltaic portion of Tier I has an unlimited non-

compliance penalty of 200% of the average value of credits in the marketplace. For purposes of passing on compliance costs, all three groups should be treated generally the same. Nonetheless, Dominion Retail continues to believe that the Commission should consider a level of credit cost for solar photovoltaic as being a *per se force majeure* condition. Otherwise, both EDC customers, and EGSs will face the potential of paying extraordinary prices for such credits.

**Question No. 5 – Should AEPSA reconciliation be made part of default service regulations?**

As discussed above in response to Question No. 1, Dominion Retail believes that if the Commission is not going to require EDCs to acquire AEPSA requirements for all customers and charge all customers accordingly, the Commission must ensure that the all costs of compliance are combined with the cost of energy to form an accurate price to compare. EGSs will have no choice but to price their products in that manner. Otherwise, the Commission would enshrine a disparity in the comparability of rates which will undoubtedly harm the competitive market. Such costs should be adjusted as infrequently as possible.

**Question No. 6 – Should long-term fixed price contracts be permitted?**

The essence of Question No. 6 is whether the price of AEPSA credits produced by long term fixed price contracts will reflect current market prices in the “out years” of such contracts, and will such contracts comply with 66 Pa. C.S. § 2807(e)(3). Dominion Retail agrees with the premise that such costs will not reflect current market prices in any year, and suggests that default service providers be required to competitively bid AEPSA credits in the same manner in which they bid energy supply, or in conjunction with bidding out energy supply, and over similar time periods, to ensure that AEPSA compliance costs are market based and reflect current market prices.

## **Conclusion**

Dominion Retail appreciates this opportunity to present its views on these subjects to the Commission. Dominion Retail wishes to commend the Commission for its diligence in ensuring that the implementation of the AEPSA does not destroy the competitive market opportunity that presently exists in Pennsylvania.

Respectfully submitted,

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Dated: March 8, 2006