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December 13, 2006

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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. L-00060180; **COMMENTS OF DOMINION RETAIL, INC., TO PROPOSED RULEMAKING ORDER**

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.

If you have any further questions, please feel free to contact me.

Very truly yours,  


Todd S. Stewart  
Counsel for Dominion Retail, Inc.

TSS/bks  
Enclosures  
cc: Gary Jeffries

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BEFORE THE PENNSYLVANIA PUBLIC  
UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Implementation of the Alternative :  
Energy Portfolio Standards Act :  
of 2004 : Docket No. L-00060180  
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**COMMENTS OF DOMINION RETAIL, INC.  
TO PROPOSED RULEMAKING ORDER**

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AND NOW comes Dominion Retail, Inc., and offers these comments to the Commission's Proposed Rulemaking Order entered July 25, 2006, in the above-captioned matter. As required by that Order, comments are due within sixty (60) days of publication in the Pennsylvania Bulletin. Dominion Retail, Inc.'s Comments are limited to a few areas of disagreement with the proposed regulations as follows:

**1. Interpretation of Proposed Section 75.33(d).**

Dominion Retail, Inc. does not agree with the proposed Section 75.33(d) which currently proposes that alternative energy credits associated with qualified alternative systems located outside of Pennsylvania are eligible for compliance only in the portions of Pennsylvania within the boundaries of the same RTO control area as the alternative energy system. To the contrary, Dominion Retail submits that the statute clearly provides, in Section 1648.4, that energy in **any** Regional Transmission Organization that serves **any** part of the Commonwealth shall be eligible to meet compliance of the Act. 73 P.S. § 1648.4. Dominion Retail, Inc., believes that the

proposed Section 75.33(d) is inconsistent with the Act and will economically harm consumers by limiting potential complying sources of credits. Ultimately, all the costs of these new regulations related to renewables will cost consumers, meaning, as a supplier Dominion Retail adds a premium to its price to cover the actual costs or projected costs of such renewable programs, which basically increases the price of electricity for end-users. In our view these programs are not going to end up lowering the costs of energy for consumers. EDC will undoubtedly do the same. Therefore, in order to keep the end-user impact to potentially a lesser amount and comply with the spirit and letter of the legislation, Dominion Retail, Inc., strongly suggests that the Commission revisit the statutory language and modify proposed Section 75.33(d) to require that alternative energy credits associated with any qualified alternative system located outside of Pennsylvania shall be eligible for compliance purposes in Pennsylvania if that alternative energy system is located within the boundaries of an RTO which also serves Pennsylvania.

**2. Role of The Department of Environmental Protection.**

Dominion Retail, Inc. has serious concerns regarding proposed Sections 75.35(4)(5), as well as (6). These provisions together require that the Administrator refer applications for qualification to the Department of Environmental Protection (“DEP”) to determine environmental compliance and to determine whether an applicant meets the requirements for alternative energy resources. However, under Section 75.35(6) the Administrator is required to follow DEP’s determinations on these issues. Dominion Retail, Inc., agrees with Commissioner Fitzpatrick that these provisions give DEP a binding decision making role within the formal adjudicatory process. At the same time, DEP is not precluded from becoming involved in the same proceeding as a full party litigant. It is not clear at all, with this type of process, whether an appeal would lie from DEP’s determination of noncompliance or whether a party would have to appeal from a Commission Order which is the product of DEP’s binding evidence. Moreover,

allowing DEP, at the same time, to participate as a full party litigant implies, at least, that DEP will be able take on an advocacy role, rather than one of merely judging the sufficiency of an application with regard to the statute. These possibly conflicting roles coupled with the uncertainty of the status of a DEP decision that an applicant may not qualify, creates tremendous regulatory uncertainty for potential projects which will likely have a chilling effect on the capital markets that support the construction of qualifying facilities. Certainly, DEP has the option to participate. However, Dominion Retail, Inc., believes, that “one” administrator, the PUC, must reach the final determination. This simple change would address both of Dominion Retail, Inc.’s concerns.

### **3. Long-Term Contracts.**

Dominion Retail, Inc. disagrees with the conclusion on Page 19 of the Commission’s rulemaking Order,<sup>1</sup> wherein the Commission suggests that electric utilities may enter into long term contracts with Alternative Energy’s Resources at a fixed price. Again, Dominion Retail, Inc., concurs with Commissioner Fitzpatrick in believing that such contracts will not provide for the acquisition of credits at prevailing market prices to serve customers as required by the POLR provisions of the *Electricity Generation Customer Choice and Competition Act*, 66 Pa. § 2807(e)(3). Electric utilities have a statutory right to reconciliation of these charges and to pass the charges through to customers on a dollar for dollar basis in real time. However, allowing for the reconciliation of these long-term contracts would create confusion for consumers and potentially may require switching customers to pay these costs twice. Accordingly, Dominion Retail, Inc. believes that the Commission should revise its rulemaking Order to ensure that electric utilities do not engage in contracts for these purchases beyond the terms of their approved POLR plans.

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<sup>1</sup> *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-00060180 (proposed rulemaking Order entered July 25, 2006, at Page 19).

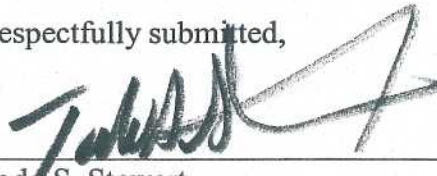
**4. Force Majeure.**

While Dominion Retail appreciates the Commission's pro-active approach to *force majeure* determinations—making the determination beforehand—it disagrees with the requirement that suppliers are nonetheless required to pay penalties, when a *force majeure* does exist. By definition, *force majeure* implies that the cause is beyond the control of the parties. To punish suppliers for deficiencies when there was no realistic opportunity to comply with the requirement stands this concept on its head and is confiscatory. Dominion Retail suggests that the proposed regulations be appropriately modified.

**5. Conclusion.**

With the changes suggested here, Dominion Retail, Inc. believes that the Commission's proposed rulemaking Order provides a workable framework for the implementation of the Alternative Energy Portfolio Standards Act and commends the Commission for all its hard work and effort in quickly implementing this important Act. At the same time, however, Dominion Retail, Inc. urges the Commission to be ever vigilant to avoid allowing the Act to create barriers to what it hopes will be the continuing development of competitive markets for electricity once the electric distribution utilities rate caps expire in the near future.

Respectfully submitted,



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Dated: December 13, 2006

Counsel for Dominion Retail, Inc.