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March 6, 2012

VIA ELECTRONIC FILING AND HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

RE: **PETITION OF DOMINION RETAIL, INC., INTERSTATE GAS SUPPLY, INC.,
AND SHIPLEY CHOICE, LLC FOR DECLARTORY ORDER**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are the original and three (3) copies of the Petition of Dominion Retail, Inc., Interstate Gas Supply, Inc. and Shipley Choice LLC. in the above-captioned docket. Copies of this Petition have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions related to this filing, please contact the undersigned.

Very truly yours,

Todd S. Stewart
*Counsel for Dominion Retail, Inc., Interstate
Gas Supply, Inc., Shipley Choice LLC.*

TSS/alh
Enclosures

cc: Honorable Robert F. Powelson, Chairman;
Honorable John F. Coleman, Jr., Vice Chairman;
Honorable Wayne E. Gardner, Commissioner;
Honorable James H. Cawley, Commissioner;
Honorable Pamela A. Witmer, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in the manner indicated below, and in accordance with the requirements of 52 P.A. Code §1.54 (relating to service by a party).

VIA FIRST CLASS MAIL

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Todd S. Stewart

Dated this 6th day of March, 2012

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF DOMINION RETAIL, INC., :
INTERSTATE GAS SUPPLY, INC., AND : Docket P-2012-_____
SHIPLEY CHOICE, LLC FOR A :
DECLARATORY ORDER :

**PETITION OF
DOMINION RETAIL, INC.
INTERSTATE GAS SUPPLY, INC.
AND SHIPLEY CHOICE, LLC
FOR DECLARTORY ORDER**

AND NOW, comes Dominion Retail, Inc. d/b/a Dominion Energy Solutions (“DES”), Interstate Gas Supply, Inc. d/b/a Interstate Energy (“IGS”) and Shipley Choice, LLC d/b/a Shipley Energy (“Shipley”), by and through their counsel in the above-captioned matter, Hawke McKeon & Sniscak LLP, and hereby Petition the Pennsylvania Public Utility Commission (“Commission”), pursuant to 66 Pa. C.S. § 331(f), and 52 Pa. Code § 5.42, for an Order declaring that natural gas distribution companies continue to be responsible under the Commission’s Regulations¹ and Orders² to provide customer lists to natural gas suppliers (“NGS”) in their service territories upon request and that said customer list must include the complete information required by the Commission’s orders, unless otherwise restricted by the customer. In support thereof, DES, IGS, and Shipley state and aver as follows:

¹ 52 Pa. Code § 62.78

² *Procedures Applicable to Natural Gas Distribution Companies and Natural Gas Suppliers During the Transition to Full Retail Choice; Request for Comments*, Docket No. M-00991249F0009 (Tentative Order entered April 13, 2000 (“Tentative Order”); Final Order entered May 11, 2000 (“Final Order”)).

I. Introduction.

1. DES, IGS and Shipley (“Suppliers”) are represented in this matter by:

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2. Suppliers are Natural Gas Suppliers (“NGS”) as that term is defined by 66 Pa. C.S. § 2202. DES is licensed to provide natural gas supply service in Natural Gas Distribution Company (“NGDC”) service territories throughout Pennsylvania. IGS and Shipley are licensed to provide NGS service on a number of NGDC systems across the state. All three are licensed in the service territory of Columbia Gas of Pennsylvania (“Columbia”). DES and IGS are also authorized to provide service in the service territory of National Fuel Gas Distribution Corporation (“NFGD”).

3. In their efforts to enroll customers, the Suppliers often use direct mail. The most effective way of marketing by direct mail is to obtain the list of actual natural gas customers from the host NGDC. That list is supposed to include the customer’s name, service address, mailing address, rate class information, historical usage as well as customer account numbers - if the customer has not exercised their option to restrict the release of their information. The information in this list is quite sparse in contrast to the amount of information that is provided to Electric Generation Suppliers (“EGS”) by Electric Distribution Companies (“EDC”).

4. The customer account number is particularly important because enrolling customers via direct mail typically requires the customer to return some form of written consent to the Supplier through the mail, usually in the form of a Business Reply Card in a postage paid

envelope. Those mail pieces are bar coded so that when they are returned, the Suppliers can scan the customer to the customer list, which includes the customer account number. It is critical to have the account number to ensure that the Supplier is switching the correct customer and because NGDCs will not switch the customer if the switch transaction does not include the complete and correct account number.

II. The Issue.

5. It has been the practice of Columbia to provide customer lists to the Suppliers, for a substantial fee. However, Columbia does not provide the complete customer number as part of that list. Rather, Columbia withholds a single digit of the customer number as a “check digit.” It is Columbia’s position that the Suppliers must obtain this extra digit from the customer to ensure that the customer has actually spoken with the Supplier and that the customer must provide the Supplier with this digit as a means of preventing slamming.

6. It is rather obvious, that in a direct mail context, the Supplier’s contact with the customer in many instances is limited to an enrollment through a verification card, limiting the amount of contact the supplier has with the customer. Although it is possible to include a request that the customer include the account number on the enrollment card, doing so creates additional steps that otherwise would be unnecessary for the customer to exercise his or her intention to enroll. Moreover, at times, numbers are incorrectly entered by the customer, which can add an additional step that also is necessary – all after the intention to enroll is clearly manifested. In addition, having the customer account number pre-associated with the consumer’s other identification makes enrollment a very simple and streamlined process. Conversely, without the account number it is more time consuming and therefore, more expensive, to enroll customers

that otherwise would like to do so. Moreover, it has been the Suppliers' experience, that requesting customers to seek out a recent gas bill and enter the full account number on the postcard before returning is equally unproductive, because customers often provide an incorrect, incomplete or illegible account number. Requiring the customer to write in the account number also requires that large numbers of cards be read manually, because using a scanner could result in the mis-read of an illegibly written number and might actually create a correct customer account number, but for the wrong customer – a source of inevitable slamming complaints. This serious problem would be avoided if the complete customer account number would be provided in the first place.

7. Despite not providing the full account number on the lists that it provides to the Suppliers, it had been Columbia's practice that when the Suppliers submitted a customer enrollment without the check digit, Columbia would provide the complete customer number back to the Supplier so that the Supplier could re-enroll the customer, albeit after several days of unnecessary delay. Also, because of Columbia's enrollment process, which includes black-out dates, if the enrollment issues are not corrected quickly, the enrollment may fall into the Black-Out Period, which could result in even more delay.

8. However, at a recent meeting between Columbia and various NGSs, including IGS, Shipley, and DES, DES raised the issue of the incomplete customer account numbers provided to the Suppliers by Columbia on the Customer List, in an effort to seek Columbia's agreement to provide the entire account number. Rather than resulting in a positive change, Columbia has instead changed its process for the worse, and now refuses to provide the full customer number - ever.

9. Columbia's refusal requires the Suppliers to now contact every customer that recently has tried to enroll by mail, in an effort to obtain the entire customer number, just to enroll the customer where the number was either not provided or illegible. To date, this has caused significant problems with at least one of the Suppliers seeking to enroll customers on Columbia's system, and for that Supplier has created significant backlogs of several hundred customers at some periods of time that cannot be enrolled because of a lack of a single check digit, causing the enrollment process to slow down significantly. Going forward, the Suppliers will be required to ask customers to fill in at least part of their account number, which, based upon experience, will result in a greater likelihood of erroneous enrollments and other problems such as delays that result from incorrect numbers or spaces on enrollment cards.

10. In 2010, NFGD made it clear in response to a request by IGS and possibly others, that it no longer believed that it was responsible to provide customer lists, in any form, to the Suppliers and that the Commission's regulations and Order's to the contrary no longer applied. IGS brought the matter to the attention of the Commission's Office of Competitive Market Oversight, but no voluntary resolution was achieved.

III. The Law.

11. As part of the implementation of the *Natural Gas Choice and Competition Act*, 66 Pa. C.S. § 2201 *et seq.* ("*Competition Act*"), the Commission entered a Tentative Order on April 13, 2000 seeking comments on its initial proposals for requiring NGDCs to update their customer lists, and to provide those customer lists to NGSs, among other topics. The Commission tentatively proposed that the "updating process should continue until January 1, 2004, unless this program is altered, terminated or superceded by Commission order." (Tentative

Order, slip op. at 8). The Commission also discussed the need for natural gas suppliers to have access to customer lists in the first instance, (Tentative Order, slip op. at 8), making it clear that providing customer information, and account numbers in particular, was vital to reducing slamming issues, and increasing the efficiency of the enrollment process by reducing errors and shortening the actual enrollment time for customers.

12. In its May 11, 2000 Final Order, at the same Docket, the Commission required NGDC's to update customer lists on a regular and ongoing basis and to provide those lists to NGSs at no charge. Also in its Final Order, in discussing the comments of the various parties on the same subject, namely the composition of the customer list, the Commission noted that the Pennsylvania Gas Association ("PGA") and some NGDCs "opposed the release of customer account numbers to NGS', arguing that sharing this information would facilitate slamming." (Final Order, slip op. at 8). The Commission resolved the "composition of the customer list" issue by stating:

As we have indicated in connection with the release of customer information in the electric industry, we do not view withholding account numbers as an effective means of curtailing instances of slamming. We have learned through that experience that making account numbers available to alternative suppliers can have the opposite effect. Specifically, if NGS' are equipped with accurate account numbers, our expectation is that fewer instances of unintentional slamming will occur.

(Final Order, slip op. at 9).

13. The Commission also required the NGDC's to update and provide the lists on a going forward basis. In its Tentative Order, the Commission had proposed that customer lists should be updated by NGDCs on a quarterly basis through January 1, 2004. One Commenter had proposed "that the updated lists should be provided indefinitely and with the imposition of

fees.” (Final Order, slip op. at 10). However, in resolving the matter in the Final Order, the Commission stated,

We agree that fees should not be imposed for the updating of these lists since this information is held by NGDCs and is needed for NGS’ to communicate with customers and prepare offers. As to whether these lists should be updated indefinitely, we are not inclined to address this proposal at this time. We will consider that issue again after assessing how this market develops.

(Final Order, slip. op. at 10). While it is true that the Final Order did leave open the possibility that it would at some point in the future excuse NGDC’s from updating and providing the lists to NGSs, it did not impose such an end date in its Final Order, nor has it done so since.

IV. Argument.

14. The Commission’s regulations at 52 Pa. Code § 62.78, and the Final Order, create an ongoing requirement that NGDCs provide updated customer lists to NGSs with no fees. While the Commission’s Final Order at Docket No. M-00991249F0009 (Slip Op. at 10) does leave open the question of how long NGDCs will be required to continue to provide these lists, the Commission has not since modified or rescinded this Order and therefore the requirement remains in full effect. Moreover, the Commission’s regulations that allow customers to restrict the release of some or all of their information (as part of NGDC’s “updating the customer lists”) likewise are still effective. 52 Pa. Code § 62.78.

15. Many years prior to Columbia’s refusal to provide a complete account number as a means of preventing slamming, the Commission squarely addressed and rejected the notion that providing customer account numbers to NGSs would lead to slamming, and instead required NGDCs to release to suppliers (subject to the customers’ ability to prevent disclosure of the information): “the name, billing address, service address, rate class, rate sub-class (if available),

account number and load data for all customers.” (Final Order, slip op. at 8). There simply is no basis in law or in fact to support the notion that providing licensed NGSs with the complete customer list information has or will lead to slamming and there is no sound reason, other than the obvious effort to complicate customer switching efforts, for any NGDC to act otherwise.

16. The NGDC’s suggestion that the Final Order is no longer effective suggests that the NGDCs may in fact be arguing that the requirements set out in the Order are no longer needed. This again is an argument that is off-target. When one considers the Commission’s ongoing examination of the competitiveness of the natural gas markets through the SEARCH process, and the fact that the Commission’s most recent efforts are not even final at this point, it is clear that it will be necessary for these requirements to continue indefinitely. The Commission understands the need of NGSs to have the customer lists and the need for the NGSs to have complete lists that include the complete customer account number without paying the extraordinary fees charged by at least one NGDC for those lists. Withholding even a single digit of a customer number is the same as withholding the entire number - it is a useless number unless it is complete. Suggesting that the justification for such withholding is to prevent slamming, runs counter to the Commission’s clear and unequivocal finding to the contrary - it simply is not accepted as a valid rationale by the Commission. Simply put, an NGDC’s refusal to provide these lists or parts thereof on the grounds of “customer privacy” or slamming prevention is unfounded and contrary to law.

17. Likewise, at least one NGDC charges a substantial fee for access to its customer lists, without any cost justification and in clear contradiction to the Commission’s directive in the Final Order that such lists be provided without a fee.

18. The positions of these two NGDCs, Columbia and NFGD, are surprising in light of the Commission's recent orders in the electricity industry that require electric distribution companies to update the lists quarterly, and to provide considerably more information to competitive suppliers, without fees. *See, Interim Guidelines For Eligible Customer Lists*; Docket No. M-2010-2183412, (Opinion and Order, entered November 12, 2010, Final Order on Reconsideration entered November 15, 2011)

V. Petition for Declaratory Order

19. The Pennsylvania Public Utility Code, 66 Pa. C.S. § 331(f), and the Commission's regulation at 52 Pa. Code § 5.4 permit parties to file petitions seeking issuance of a declaratory order to terminate a controversy or remove uncertainty. The Suppliers believe and therefore Aver that the statements by NFGD and the recent actions of Columbia, as discussed herein, have raised a substantial controversy over the responsibilities of NGDCs to provide complete and updated customer lists to suppliers, and the interpretation of the Commission's Orders and Regulations regarding natural gas competition. Petitioners submit that any interpretation of those requirements that suggests that NGDCs no longer must provide updated and complete customer lists are incorrect.

20. It appears that no other Pennsylvania NGDCs have taken the legal position that NGDCs are not required to continue to provide the customer information in question on an ongoing basis. Moreover, as initial requirement of the Commission's recent focus on enhancing electric competition, it required electric distribution companies to update customer lists monthly on an ongoing basis and to make them available to suppliers without charge. Those customer lists include far more detailed and complete information that is sought to be obtained through

this Declaratory Order. *See, Interim Guidelines For Eligible Customer Lists*; Docket No. M-2010-2183412, (Opinion and Order, entered November 12, 2010, Final Order on Reconsideration entered November 15, 2011). The same result should apply here.

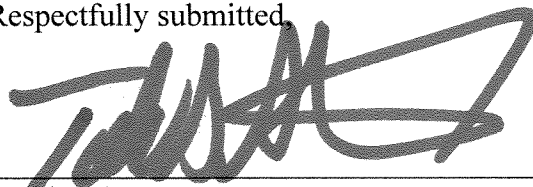
21. It is absolutely without question that NGSs need accurate and complete customer lists in order to operate. Withholding those lists, or even parts thereof, make the transactions more difficult, as evidenced by the recent experience by DES in the Columbia service territory. With regard to Columbia's refusal to provide the "check digit," purportedly to prevent slamming, its own actions belie its argument. That is, until recently Columbia provided the "check digit" after the 1st attempt at enrollment, and there were no slamming issues. The Commission's conclusions on the need for the complete account number are as true today as they were in 2000.

22. Finally, the facts that underlie this Petition are not subject to reasonable dispute. That is, Columbia cannot reasonably deny that it currently does not provide the complete customer account number to NGSs operating on its system. Likewise, it is not likely that NFGD has changed its position with regard to its duty to provide customer lists—at least if it has not notified the suppliers. Accordingly, the Commission is able to decide this controversy regarding the appropriate interpretation of its Orders and Regulations as a matter of law.

23. Accordingly, the Suppliers seek an Order, Declaring that the Final Order at Docket M-00991249F009 continues in full force today and continues to require that NGDCs regularly update their customer lists at no charge to NGSs, and that they provide those complete customer lists to NGSs at no charge. The Suppliers are not aware of any Commission action to rescind or amend said Order, 66 Pa. C. S. § 703(g), and accordingly, there appears to be no question of the Orders' ongoing effectiveness, but for the actions of the two NGDCs. If the Commission were to conclude that the Final Order is no longer effective, the Suppliers request

that the Commission nonetheless issue an Order requiring all NGDCs to update and provide the customer lists, as specified in the Final Order, pending the outcome of a process to determine what data elements should be provided to NGSs, and how often the lists must be refreshed, and what if any fees are to be charged for providing such lists for the indefinite future.

Respectfully submitted,



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Dated March 6, 2012

VERIFICATION

I, Todd S. Stewart, certify that I am counsel for Dominion Retail, Inc., Interstate Gas Supply, Inc., and Shipley Choice, LLC and that, in this capacity, I am authorized to and do make this Verification on their behalf, that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that Dominion Retail, Inc., Interstate Gas Supply, Inc., and Shipley Choice, LLC, expect to be able to prove the same at any hearing that may be held in this matter. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.



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DATED: March 6, 2012