**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held July 24, 2014 |
| Commissioners Present:  Robert F. Powelson, Chairman  John F. Coleman, Jr., Vice Chairman  James H. Cawley  Pamela A. Witmer  Gladys M. Brown |  |
| Public Utility Commission Bonding/Security Requirements for Electric Generation  Suppliers; Acceptable Security Instruments | M-2013-2393141 |
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**FINAL ORDER**

**BY THE COMMISSION:**

On December 5, 2013, the Public Utility Commission (Commission) issued a Tentative Order at this Docket that proposed adjusting the bonding requirements for electric generation suppliers (EGSs) and expanding the forms of acceptable security instruments. In that Tentative Order, the Commission sought formal comments on 1) whether the current level of security required for EGS operations after the first year of service is excessive, burdensome, and a potential barrier to market entry; 2) whether the Commission should expand the forms of acceptable security instruments; and 3) whether these changes could be implemented prior to or without a change to our current regulations at Section 54.40 in Title 52 of the Pennsylvania Code. *See* 52 Pa. Code § 54.40.

Comments were filed by the Retail Energy Supply Association (RESA), First Energy Solutions Corp. (FES), Starion Energy PA, Inc. (Starion), Plymouth Rock Energy (Plymouth), North American Power and Gas, LLC (NAPG), Duquesne Light Energy, LLC (DLE), and the Office of Consumer Advocate (OCA).

Through this Final Order, the Commission announces new policies to (1) accept a request by an EGS to reduce its level of security after the first year of operation to 5% of an EGS’s most recent 12 months of revenue or $250,000, whichever is higher, and (2) expand the forms of allowable security instruments consistent with this Final Order. It shall be the policy of the Commission to approve requests shown to be consistent with the Public Utility Code and the Commission’s bonding/security regulations. *See* 66 Pa. C.S. § 2809, 52 Pa. Code § 54.40. At this time, the Commission is planning to initiate a rulemaking within approximately nine months of the entry date of this Final Order, using that period of time determine if any adjustments must be made before codifying these policy changes in the Commission’s regulations.

**BACKGROUND**

During the Investigation of Pennsylvania’s Retail Electric Market, Docket No. I-2011-2237952, the Commission directed the formation of a risk assessment working group (Working Group) comprised of Electric Distribution Companies (EDCs), EGSs, and other interested parties to work with the Commission’s Office of Competitive Markets Oversight (OCMO) to examine current security requirements and security instruments that EGSs are required to post in order to operate in Pennsylvania’s retail electric market. The Working Group, comprised of OCMO, EDCs, EGSs, and representatives of the RESA, formed on April 15, 2013.

On May 22, 2013, OCMO Staff requested the Working Group to provide informal comments discussing potential modifications to those requirements, including:

* A reduction of the EGS security to be maintained after the first year of licensure from 10% of annual gross receipts to 5% of annual gross receipts;
* Expansion of the acceptable financial credit instruments to include parental guarantees and segregated cash accounts specific to Pennsylvania customers and callable only by the Commission.

OCMO Staff also requested informal comments on whether or not a mix of security instruments could cover the Commission’s EGS bonding requirements. OCMO Staff advised the Working Group that, given the limited resources the Commission has to both police collateral and execute on an instrument in the event of default, a blanket provision for customized security instruments for individual EGSs would not be considered.

Informal comments were submitted by the following parties: Washington Gas Energy Services, Inc. (WGES); Integrys Energy Services (IES); FES; Strategic Communications, LLC on behalf of Agway Energy Services (AES); Liberty Power, Corp. (Liberty Power); Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, FirstEnergy); Constellation NewEnergy, Inc. (Constellation); and RESA.

Upon review of those informal comments submitted to OCMO Staff, the Commission issued the December 5, 2013 Tentative Order, wherein the Commission invited formal comments on 1) whether the current level of security required for EGS operations after the first year of service is excessive, burdensome, and/or a potential barrier to market entry; 2) whether the Commission should expand the forms of acceptable security instruments; and 3) whether these changes could be implemented prior to or without a change to our current regulations at Section 54.40 in Title 52 of the Pennsylvania Code. *See* 52 Pa. Code § 54.40. Upon consideration of those formal comments to the December 5, 2013 Tentative Order, we issue this Final Order.

**DISCUSSION**

The Commission’s current authority to establish EGS bonding/financial security requirements (FSRs) is set forth in Section 2809 of the Public Utility Code (Code), 66 Pa. C.S. § 2809. Section 2809(c) provides, in pertinent part:

In order to ensure the safety and reliability of the generation of electricity in this Commonwealth, no energy supplier license shall be issued or remain in force unless the holder…[f]urnishes a ***bond or other security approved by the commission in form and amount*** to ensure the financial responsibility of the electric generation supplier and the supply of electricity at retail in accordance with contracts, agreements or arrangements.

66 Pa. C.S. § 2809(c) (emphasis added). Importantly, as illustrated above, the General Assembly granted the Commission discretion to determine the “form and amount” of the bond or other security.

The Commission’s regulations at 52 Pa. Code § 54.40 provide specific details regarding the amount and form of bonds or other security for EGSs. The initial security level currently required from each EGS license applicant that intends to take title to electricity is $250,000. 52 Pa. Code § 54.40(c). Historically, this requirement usually has been met by Letters of Credit (LOC) or Surety Bonds. After the first year of EGS operation, the security level for each EGS is reviewed annually and modified primarily based on the EGS’s reported annual gross receipts. 52 Pa. Code § 4.40(d).  Currently, the security level that must be maintained by the EGS for those subsequent years is 10% of the EGS’s reported annual gross receipts or $250,000, whichever is higher. 52 Pa. Code § 54.40(d). Importantly, our regulations also allow an EGS to seek an alternative level of security commensurate with the nature and scope of the EGS’s operations.[[1]](#footnote-1) *See id.*

The purpose of the security level is to ensure payment of the Gross Receipts Tax (GRT)[[2]](#footnote-2) and to ensure the supply of electricity at the retail level in accordance with contracts, agreements, or arrangements. 52 Pa. Code § 54.40(f)(2). As to the prioritization of claims for payment under the security, the Commonwealth of Pennsylvania has top priority, followed by the EDCs for the reimbursement of GRT,[[3]](#footnote-3) and private individuals. 52 Pa. Code § 54.40(f)(3). The Commonwealth’s primary interest concerns the demand of any missed GRT payments by the EGS. The Commonwealth also has an interest in receiving an EGS’s alternative compliance payments (ACPs)[[4]](#footnote-4) under the Alternative Energy Portfolio Standards Act of 2004. 73 P.S. § 1648.3(f). Alternative compliance payments are paid into a special fund of the Pennsylvania Sustainable Energy Board for sole use in projects that will increase the amount of electric energy generated from alternative energy resources. 73 P.S. § 1648.3(g).

**Comments to the December 5, 2013 Tentative Order**

Level of Bonding/Financial Security Protection

The commenters overwhelmingly support Commission efforts to reduce the bonding and financial security requirements, contending that, after the first year of EGS operation, a security requirement of 10% of an EGS’s annual gross receipts is overly excessive and burdensome. *See* NAPG Comments at 1-2; DLE Comments at 1-2; Plymouth Comments at 3; Starion Comments at 2; FES Comments at 2-3; RESA Comments at 3-11. NAPG further states that more reasonable security requirements would create a more attractive retail market for all EGSs in Pennsylvania, yielding new suppliers with innovative and competitive products. Comments at 2. Starion submits that these higher requirements substantially inhibit an EGS’s ability to grow and expand into other markets. Comments at 2; *see also* RESA Comments at 1 (contending that the 10% bonding requirement creates a potential barrier to entry).

FES asserts that the 10% bonding requirement “far exceeds the potential credit risk the obligation is intended to cover [the GRT], and is much larger than bonding requirements of public utility commissions in other states.” Comments at 2; *see also* RESA Comments at 9-11. Through a hypothetical illustration, RESA demonstrates that a 5% reduction in security amount is more than sufficient to cover GRT liability for the current year. Comments at 6-7. In comparing FSR requirements in Pennsylvania to other restructured states, RESA demonstrates that, even with the 5% reduction in security amount, FSRs in Pennsylvania would still be more stringent than FSRs in Illinois, Connecticut, New Jersey, Maryland, Delaware, and Michigan. *Id.* at 3, 10-11.

Starion, FES, and DLE fully support the Commission’s proposal to reduce the security requirement from 10% to 5% of an EGS’s annual gross receipts after the EGS’s first year of operation. NAPG asks the Commission to establish a set amount for on-going financial security requirements instead of using a percentage of an EGS’s annual gross receipts, contending that the percentage method unfairly punishes an EGS as that EGS grows in Pennsylvania. Comments at 1-2. RESA similarly states that “reliance on a percentage of receipts…is not an ideal approach.” Comments at 3. RESA contends that since FSRs are a cost of doing business, FSRs in the form of a percentage of gross receipts artificially drive up prices for consumer products. *Id.* at 4.

Plymouth recommends a cap on the amount of security required, but fails to specify what that cap should be. Comments at 3. RESA supports the Commission’s reduction from 10% to 5% of gross receipts after the first year of operation, but also asks the Commission to consider implementing a $1 million cap on the security amount. Comments at 3. RESA contends that imposing no cap on the financial security requirement will only serve to perpetuate the over-securitization that currently exists. *Id.*

Commenters further suggest that high FSRs negatively impact consumers. *See* RESA Comments at 1, 4-6; NAPG Comments at 2. RESA contends that “well-designed security requirements result in lower costs for EGSs and potentially better prices for consumers while still ensuring reasonable security is available for identifiable risks.” RESA Comments at 1, 4-5 (demonstrating how Pennsylvania’s higher FSRs result in higher prices for consumers in contrast to the lower FSRs yielding lower prices for consumers in New Jersey).

Only the OCA expressed hesitation regarding a reduction in the bonding/security requirement, emphasizing that the Commission’s December 5, 2013 Tentative Order did not account for risks other than the GRT. The OCA contends that any reduction in the EGS bonding requirement should account for potential risks to consumers, including scenarios where customers are owed refunds or rebates or compensation arising from a contract violation by a defaulting EGS. OCA Comments at 3-4.

The Nature and Forms of Acceptable Security Instruments

Commenters are also overwhelmingly supportive of the Commission’s proposal to expand the nature and form of acceptable FSRs beyond letters of credit and surety bonds. DLE and RESA fully support the use of the three forms of FSRs proposed in the December 5, 2013 Tentative Order: 1) parental guarantees, wherein the parent maintains an investment-grade long-term bond rating from two of four specified rating agencies: Standard & Poors, Moody’s Investors’ Services, Fitch IBCA, and Duff and Phelps Credit Rating Company; 2) segregated cash accounts, held by federally insured financial institutions, specific to Pennsylvania customers and callable only by the Commission; and 3) a mix of bonds, LOCs, parental guarantees, and/or segregated cash accounts that in combination meet 5% of annual gross receipts of the EGS. *See* DLE Comments at 2, RESA Comments at 12.

Starion supports the use of surety bonds, letters of credit, guarantees, or cash. Comments at 2. FES supports the use of parental guarantees (issued by an investment-grade parent) and segregated cash accounts. Comments at 4. Plymouth suggests investment-grade guarantees, such as a long-term agreement between a wholesale supplier and an EGS. Comments at 3.

NAPG suggests expanding guarantees to the use of corporate and not just parental guarantees. Comments at 2. RESA also requests that parental guarantees should be extended to encompass other corporate relationships, such as guarantees from affiliates or subsidiaries. RESA Comments at 12. RESA contends that these corporate guarantees would “promote the public interest by providing more secure and greater protection for the Commonwealth.” *Id.* at 13. Additionally, limiting financial guarantees to parent companies would create an uneven playing field by furnishing a competitive advantage to EGSs with large corporate parents over privately-held EGSs or EGSs without a parent-subsidiary corporate structure. *Id.* at 14.

The OCA states that the Commission’s proposed expansion of allowable security instruments appears reasonable, but emphasizes that the Commission should make sure that it can still call on all security forms as needed and in a timely fashion. Comments at 5. The OCA suggests that the Commission examine regulations from the State of Maine for use of language that provides ready access to funds. *See* *id.* (citing 65-407-305 Me. Code R. § 3(e) (2006)).

The Commission’s Process to Implement the Proposed Changes

Only RESA, the OCA, DLE, and FES comment on whether a rulemaking is necessary to amend the Commission’s regulations in order to adjust bonding/security requirements and acceptable security forms, all agreeing that the Commission could immediately implement its proposals under the current regulation. FES Comments at 4, RESA Comments at 15-16, OCA Comments at 5, DLE Comments at 3. RESA believes that current regulations contemplate modifications of the security amount by allowing a licensee to seek approval from the Commission of an alternative level of security commensurate with the nature and scope of the EGS’s operations. RESA Comments at 15-16 (citing 52 Pa. Code § 54.40(c)-(d)). RESA maintains that the Commission has flexibility under the current regulations and Commission precedent to waive the current regulations, pending a final rulemaking. Comments at 17. However, the OCA emphasizes that any waiver of current regulations must be limited in scope and time and be immediately followed by a rulemaking. Comments at 5. DLE, the OCA, and FES believe that the Commission must soon implement a rulemaking to permanently effectuate these changes since Commission regulations clearly state that the “security level will be 10% of the licensee’s reported gross profits.” *See* 52 Pa. Code § 54.40(d); *see* DLE Comments at 2-3, OCA Comments at 5-6, FES Comments at 4-5.

As to the issue of expanding the form of acceptable security instruments, FES notes that the Public Utility Code grants the Commission the discretion to determine the forms of security instruments that can be used to satisfy the bonding requirement. FES Comments at 4.

RESA also asks the Commission to “adopt a timely and administratively efficient process for modifying each EGS’s financial security requirements” consistent with the Commission’s final determination in this proceeding. Comments at 18. RESA recommends that the Commission not require an EGS to file a new or amended application with the Commission, but allow the EGS to work with staff outside of a formal filing to demonstrate proof that the EGS has complied with the Commission’s FSRs. *Id.* at 19, fn. 40. Under this approach, the Commission would receive updated documentation and information regarding an EGS’s form and amount of security without the need for the Commission to engage in a more burdensome and time-consuming approval process through the issuance of an Order or Secretarial Letter. *Id.* at 18-19.

**Disposition**

Amount of Bonding/Financial Security Requirement

Based upon our review of OCMO’s informal proposal, the informal comments submitted thereto, and the formal comments submitted to our December 5, 2013 Tentative Order, we will maintain our current requirement for an initial security amount of $250,000 for the first year of an EGS’s operation for an EGS that intends to take title to electricity. *See* 52 Pa. Code § 54.40(c). Upon review, we also find that requiring an EGS to post a bond or security in the amount of 10% of reported gross receipts after the first year of EGS operation may be excessive in relation to the risk intended to be secured, unnecessarily burdening EGSs, and presenting a potential barrier to entry into Pennsylvania’s retail electric market. *See* NAPG Comments at 1-2; DLE Comments at 1-2; Plymouth Comments at 3; Starion Comments at 2; FES Comments at 2-3; RESA Comments at 3-11. We find persuasive comments suggesting that Pennsylvania’s higher FSRs may negatively impact consumers by resulting in products higher in price than they otherwise would be without this requirement. RESA Comments at 1, 4-6); *see also* NAPG Comments at 2.

We also find persuasive RESA’s comments that provide empirical evidence comparing the FSR requirements in Pennsylvania to other restructured states to demonstrate that Pennsylvania’s adjusted FSRs as a result of this Order will still be more stringent than FSRs in those restructured states. Comments at 9-11. RESA also provided a hypothetical example to demonstrate that the 5% reduction in security amount is more than sufficient to cover GRT liability for the current year. *Id.* at 6-7. Similarly, FES asserted that the 10% bonding requirement “far exceeds the potential credit risk the obligation is intended to cover [the GRT], and is much larger than bonding requirements of public utility commissions in other states.” Comments at 2.

Therefore, we find that, after the first year of EGS operation, a security level of 5% of an EGS’s most recent 12 months of revenue or $250,000, whichever is higher, is adequate to meet the intended risks in most circumstances. Therefore, we announce our new policy that the bond or security for an EGS after the first year of operation should be in the amount of 5% of the EGS’s most recent 12 months of revenue[[5]](#footnote-5) or $250,000, whichever is higher, as we find that this bonding/security amount is commensurate with the nature and scope of a typical EGS’s operations. *See* 52 Pa. Code § 54.40(d). Accordingly, it shall be the policy of the Commission to accept a request by an EGS to reduce its level of security after the first year of operation, consistent with this Final Order, the Public Utility Code, and our regulations.

The Commission’s Process for Allowing the Reduction in Bonding/Security

Regarding the issue of whether a rulemaking is necessary to implement these changes, we appreciate the comments submitted by RESA, the OCA, DLE, and FES, all of whom agreed that the Commission could immediately implement these changes under the current regulation. *See* FES Comments at 4, RESA Comments at 15-16, OCA Comments at 5, DLE Comments at 3. However, DLE, the OCA, and FES believe that the Commission must soon implement a rulemaking to permanently effectuate these changes since current Commission regulations provide for a 10% security requirement. *See* DLE Comments at 2-3, OCA Comments at 5-6, FES Comments at 4-5. RESA also asked the Commission to “adopt a timely and administratively efficient process for modifying each EGS’s financial security requirements” consistent with the Commission’s final determination in this proceeding. *See* Comments at 18.

As to our authority to implement these changes, we recognize that authorized regulations of an agency have the force of law and bind not only the regulated community, but the agency as well. *See Herdelin v. Greenberg*, 328 A.2d 552, 554-5 (Pa. Cmwlth. 1974). Accordingly, we are not issuing a blanket waiver of our regulations to substitute 5% for 10% into the regulatory language that states the “security level will be 10% of the licensee’s reported gross receipts.” *See* 52 Pa. Code § 54.40(d). Rather, we issue this Final Order pursuant to our discretionary authority under the Public Utility Code to approve a form and amount as determined by the Commission and our current regulations that allow an EGS to seek an alternative level of bonding/security commensurate with its nature and scope of operations and for us to accept that alternative level. *See* 66 Pa. C.S. § 2809(c); 52 Pa. Code § 54.40(d). Thus, upon the effective date of this Final Order, we will accept a bond/security sought by an EGS for subsequent years of operation at a level of 5% of the EGS’s most recent 12 months of revenue or $250,000, whichever is higher, so long as the revised bond/security still meets the other criteria that we already require under our regulations. *See* 52 Pa. Code § 54.40(f) (providing criteria that must be stated in writing in the bond). Due to this reduction in the amount of bonding/security required, we emphasize the importance of ongoing EGS compliance with our reporting requirements at 52 Pa. Code § 54.39 (requiring an EGS to submit quarterly gross receipts and an annual report to the Commission).

As to our process for implementing these changes, RESA recommends that the Commission not require an EGS to file a new or amended application with the Commission, but allow the EGS to work with Commission staff outside of a formal filing to demonstrate proof that the EGS has complied with the Commission’s financial security requirements. *See* Comments at 19, fn. 40. We agree with RESA that this should be a timely and administratively efficient process, as requiring an EGS to submit a formal petition followed by a Commission order could be needlessly burdensome and time-consuming for both parties. However, just like an EGS formally files a Certificate of Continuation to renew an annual bond with the Commission, an EGS must formally file a petition to amend its Application to revise or reduce its bond/security with the Secretary’s Bureau so that the most updated and approved bond/security is documented on the record at the EGS’s Application docket number. We invite EGSs seeking a reduction in security from 10% to 5% to work informally with Commission staff during the filing process to obtain guidance from staff as to the appropriate information[[6]](#footnote-6) that staff will require in processing these requests.

To expedite the process for approving these petitions, the Commission is delegating its authority to review uncontested petitions to the Bureau of Technical Utility Services through issuance of a Secretarial Letter approving or denying the reduction in the bonding request. *See* 66 Pa. C.S. § 305(c) (providing the Commission the power to delegate more routine and ministerial work to Commission staff). For any denial, the Bureau of Technical Utility Services will state how the request is not consistent with the Public Utility Code and the Commission’s bonding/security regulations. *See* 52 Pa. Code §§ 54.31-54.43. An EGS may appeal the determination of the Bureau of Technical Utility Services to the Commission in accordance with 52 Pa. Code § 5.44 (relating to petitions for appeal from actions of the staff). Contested petitions will be transferred to the Office of Administrative Law Judge and ruled upon by the Commission following notice and an opportunity for a hearing as necessary. *See* 66 Pa. C.S. § 703; *see also* 52 Pa. Code § 54.36.

Consistent with other amendments to an EGS’s license, we will require a $350 fee[[7]](#footnote-7) for a request by a Commission-licensed electric generation supplier to reduce its level of bonding following the first year of operation from 10% to 5% of the electric generation supplier’s last 12 months of revenue. We impose this $350 fee pursuant to our authority under the Public Utility Code and our regulations to require information we deem appropriate to accompany an EGS license application or an amendment thereto. *See* 66 Pa. C.S. § 2809(b); 52 Pa. Code § 54.32(c)(requiring an application fee for an EGS license application); 52 Pa. Code § 1.43 (requiring a $350 fee for each filing of an amendment to a certificate, permit, or license).

The Nature and Forms of Acceptable Security Instruments

Furthermore, based upon our review of the comments to the December 5, 2013 Tentative Order, we find it reasonable to expand the forms of security instruments that should be accepted by the Commission in an EGS’s initial licensure application and for subsequent years of EGS operation. Specifically, aside from surety bonds and letters of credit, we will also accept the following forms of security:

* Parental or corporate guarantee, in a form acceptable to the Commission, where the parent or corporate relation maintains an investment-grade long-term bond rating from at least two of the four following rating agencies:

Standard & Poors BBB- or higher

Moody’s Investors’ Services Baa3 or higher

Fitch IBCA BBB- or higher

Duff and Phelps Credit BBB- or higher

Rating Company

* Segregated cash accounts, held by federally insured financial institutions, specific to Pennsylvania customers and callable only by the Commission.
* A mix of security instruments through the use of bonds, LOCs, parental/corporate guarantees, and/or segregated cash accounts as set forth above sufficient meet the required security amount.

As indicated above, we agree with the comments of NAPG and RESA that parental guarantees should be extended to encompass other corporate relationships, such as guarantees from affiliates or subsidiaries. However, we emphasize that the corporate parent, relation, affiliate, or subsidiary used by the EGS for the security requirement must maintain an investment-grade[[8]](#footnote-8) long-term bond rating from at least two of the four aforementioned rating agencies with ratings at least as high as stated above. All available additional ratings of an EGS’s guarantor from any of the above-listed agencies must also be investment-grade. An EGS must inform the Commission when the EGS’s guarantor’s rating from any of the above-listed agencies falls below investment grade. Furthermore, all forms of securities must comply with the requirements of 52 Pa. Code § 54.40(f).

As to the mix of security instruments, we will accept any mix of security instruments as described in this Final Order that is sufficient to cover the required security amount, either for an EGS’s initial licensure application for the first year of operation or for subsequent years of EGS operation.

The Public Utility Code and our regulations provide us with the discretionary authority to expand the forms of security instruments to forms acceptable to the Commission. *See* 66 Pa. C.S. § 2809(c); 52 Pa. Code § 54.40(d). Accordingly, we will begin accepting the aforementioned forms of security instruments upon the effective date of this Final Order.

The Commission’s Process for Accepting Requests to Change EGS’s Form of Security

To expedite the process for approving petitions to change the EGS’s form of security instrument, the Commission is also delegating its authority to review uncontested petitions to the Bureau of Technical Utility Services through issuance of a Secretarial Letter approving or denying the EGS’s request to change its form of security. *See* 66 Pa. C.S. § 305(c) (providing the Commission the power to delegate more routine and ministerial work to Commission staff). If a request is denied, the Bureau of Technical Utility Services will state how the request is not consistent with the Public Utility Code and the Commission’s bonding/security regulations. *See* 52 Pa. Code §§ 54.31-54.43. An EGS may appeal the determination of the Bureau of Technical Utility Services to the Commission in accordance with 52 Pa. Code § 5.44. Contested petitions will be transferred to the Office of Administrative Law Judge and ruled upon by the Commission following notice and an opportunity for a hearing as necessary. *See* 66 Pa. C.S. § 703; *see also* 52 Pa. Code § 54.36.

Unlike an EGS’s request to lower its bonding/security amount from 10% to 5% of the most recent 12 months of revenues, we will not impose a separate $350 fee to process an EGS’s request to change its form of security.

Bureau of Technical Utility Services Staff Review of EGS Requests

Commission staff will still apply careful scrutiny in reviewing an EGS’s request to reduce the level of bonding/security from 10% to 5% of the most recent 12 months of revenue or an EGS’s request to change its form of security. At a minimum, Commission staff will require each EGS seeking this change to:

1. Provide its gross revenues for the sale of electricity to retail customers in Pennsylvania for the most recent 12 months;
2. Provide the amount of gross receipts taxes that the EGS has prepaid towards its estimated revenues for the current calendar year;
3. Submit documentation, if the EGS is proposing to utilize a parental or corporate guarantee, that demonstrates that the guarantor meets the required long-term bond rating from two of the approved rating agencies;
4. Provide available AEPS compliance data from the most recent 12 months; and
5. Provide copies of all Department of Revenue documents that support the EGS’s request.

Depending on the nature of the EGS’s request, Commission staff may seek more information from the EGS, such as demonstration that the EGS has paid Pennsylvania GRT for the previous calendar year(s). We note that submission of this information alone will not result in automatic approval, as the bond/security instrument(s) must still comply with the Public Utility Code and Commission regulations. *See* 66 Pa. C.S. § 2809, 52 Pa. Code § 54.40.

Within approximately nine months of the entry date of this Order we plan to initiate a rulemaking to effectuate and codify these policy changes in our regulations. In that rulemaking, we will invite comments from stakeholders and the regulated community concerning any potential revisions to Section 54.40 of our regulations to ensure that the amount of the bonds and securities we approve is proportionate to the risk the security obligation is intended to cover and accounts for all identifiable risks to the Commonwealth and the consumers of Pennsylvania. *See* OCA Comments at 5.

**Conclusion**

Based upon the foregoing discussion, we finalize the proposals of the December 5, 2013 Tentative Order consistent with this Final Order. Accordingly, it shall be the policy of the Commission to accept a request by an EGS to reduce its level of bonding/security after the first year of operation to 5% of the EGS’s most recent 12 months of revenue or $250,000, whichever is higher. It shall also be the policy of the Commission to expand the forms of allowable security instruments, consistent with this Final Order. We delegate our authority to the Bureau of Technical Utility Services to approve uncontested petitions regarding an EGS’s request to reduce its bonding/security amount from 10% to 5% of the EGS’s most recent 12 months of revenue or an EGS’s request to change its form of security when it is found that the revised security/bond complies with the Public Utility Code and the Commission’s regulations. Contested petitions will be transferred to the Office of Administrative Law Judge. *See* 66 Pa. C.S. § 703; *see also* 52 Pa. Code § 54.36. Within approximately nine months, we plan to initiate a rulemaking consistent with this Final Order regarding revisions to the Commission’s bonding and security regulations for electric generation suppliers in Section 54.40 of Title 52 of the Pennsylvania Code; **THEREFORE,**

**IT IS ORDERED:**

1. That this Final Order shall be served on all Electric Distribution Companies, all licensed Electric Generation Suppliers, the Bureau of Investigation & Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Pennsylvania Department of Revenue, the Retail Energy Supply Association, the Energy Association of Pennsylvania, and the parties that filed comments to the December 5, 2013 Tentative Order.

2. That the Secretary shall deposit a copy of this Final Order with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. That a copy of this Final Order shall be posted on the Commission’s website at the Office of Competitive Market Oversight’s web page.

4. That the Office of Competitive Market Oversight shall electronically serve a copy of this Final Order on all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity.

5. That the Commission delegates its authority to approve uncontested petitions to revise or reduce the level of bonding/security or change the form of security for an electric generation supplier to the Bureau of Technical Utility Services consistent with this Final Order.

6. That a $350 fee shall be required for a request by a Commission-licensed electric generation supplier to reduce its level of bonding following the first year of operation from 10% to 5% of the electric generation supplier’s last 12 months of revenue.

7. That the contact information for this Final Order is the Bureau of Technical Utility Services, Energy Section, (717)-783-5242.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 24, 2014

ORDER ENTERED: July 24, 2014

1. Under our regulations, the Commission has routinely approved a reduced bonding level in the amount of $10,000 for brokers/marketers, who do not take title to electricity, do not pay gross receipts taxes, and do not make payments on behalf of clients. [↑](#footnote-ref-1)
2. Section 2809(c) of the Public Utility Code requires the EGS licensee to certify to the Commission that the EGS will pay in full the taxes owed to the Commonwealth or face revocation of its license. 66 Pa. C.S. § 2809(c)(ii)-(iv). [↑](#footnote-ref-2)
3. If an EGS fails to pay its GRT, the EDC in that EGS’s territory must “remit the unpaid tax, as a tax on the use of electricity in [the] Commonwealth, to the Department of Revenue and may collect or seek reimbursement of the tax so paid.” 66 Pa. C.S. § 2809(c)(2). [↑](#footnote-ref-3)
4. ACPs are imposed on EGSs that fail to comply with the AEPS Act’s alternative energy portfolio standards requirements. 73 P.S. § 1648.3(f). [↑](#footnote-ref-4)
5. Previously, as a matter of internal practice, we used an EGS’s reported gross receipts from the last annual reporting of those revenues and not necessarily the most recent 12 months of revenues to determine the bonding requirement for subsequent years of EGS operation. Since using the most recent 12 months of revenue is more accurate and more likely to protect against risk, especially in light of our new policy through this Order that lowers bonding/security requirements, we will ask each EGS to provide us with its most recent 12 months of revenue as an EGS requests to lower its bonding/security. [↑](#footnote-ref-5)
6. In processing these requests to revise an EGS’s security amount or form, the Commission’s Bureau of Technical Utility Services will require an EGS to submit certain information, which is discussed on pages 15-16 of this Order. [↑](#footnote-ref-6)
7. Presently, the Commission charges a $350 fee for Initial Licensure Applications and for license amendments. Since the Commission will incur more work in processing a request to reduce a bonding level, which, if approved, results in a change to an EGS’s Application, the Commission finds it reasonable to charge a $350 fee for this request. [↑](#footnote-ref-7)
8. We define investment-grade with reference to those above listed ratings of the four listed rating agencies: BBB- or higher for Standard & Poors, Baa3 or higher for Moody’s Investors’ Services, BBB- or higher for Fitch IBCA, and BBB- or higher for Duff and Phelps Credit Rating Company. [↑](#footnote-ref-8)