

PROPOSED RULEMAKING

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 54]

[L-00020158]

Electric Generation Supplier

Public Meeting held
December 19, 2002

Commissioners Present: Glen R. Thomas, Chairperson; Robert K. Bloom, Vice-Chairperson; Aaron Wilson, Jr., Statement follows; Terrance J. Fitzpatrick; Kim Piz-zingrilli

Advance Notice of Proposed Rulemaking for Revision of Chapter 54 of the Pennsylvania Code Pertaining to Electric Generation Supplier Licensing; Doc. No. L-00020158; P-00021938

Advance Notice of Proposed Rulemaking Order

By the Commission:

The Commission's regulation governing the bonding requirements of Electricity Generation Suppliers at 52 Pa. Code § 54.40 is under scrutiny. On January 16, 2002, the Energy Association of Pennsylvania (Energy Association), acting on behalf of its electric distribution company (EDC) members, filed a Petition for Amendment of 52 Pa. Code § 54.40 (Electricity Generation Supplier Licensing: Bonds or Other Security). Specifically, the Energy Association petitioned the Commission to initiate a rule-making proceeding to amend § 54.40 of the Pennsylvania Code to: (1) increase the security requirement; (2) alter the review period for making initial adjustments to the security level in specified circumstances; (3) identify additional instruments (specifically letters of credit and corporate guarantees) that can be used to satisfy the security requirement; and (4) recognize the right of the EDCs to implement their own financial assurance requirements through provisions in their tariffs.

The Attorney General's Office of Consumer Advocate (OCA) filed an Answer on February 5, 2002, stating that it did not oppose the initiation of a rulemaking proceeding to revisit the current EGS licensing regulations. Specifically, the OCA stated that the Petition raises important questions regarding the adequacy of the current electric generation supplier licensing regulations. By intervening in this Petition, the OCA seeks to assist in the investigation of whether the current bonding requirements are sufficient to ensure that the purposes of the electric restructuring law and this Commission's regulations are being met. The OCA was the only party that filed any response to the Energy Association's Petition.

In support of its Petition, the Energy Association argues that experience has shown that the present bonding level requirements for EGSs in § 54.40 are insufficient to ensure performance of the EGSs' obligations specified in § 54.40 and the corresponding provisions of the Electric Choice Act. The Energy Association refers to the situation involving the sudden departure of Utility.com, Inc., an EGS. In the Utility.com, Inc. case, the bond it had was insufficient to cover expenses incurred by the EDCs when they returned Utility.com, Inc.'s customers to their Provider of Last Resort (POLR). It is alleged by the Energy Association that Utility.com's improper exit

from the market when it became insolvent resulted in a gross receipts tax (GRT) deficiency of approximately \$472,178, which was, by itself, in excess of Utility.com's \$250,000 bond.

According to the Energy Association, Utility.com's departure caused EDCs to incur specifically: (1) data transfer and other costs to switch Utility.com's customers to POLR service outside of standard procedures; (2) administrative costs to calculate nonstandard bills and then field the resulting customer inquiries; (3) power pool penalties; (4) notification costs in advising Utility.com customers of what happened and what was being done; (5) purchase costs for generation to serve the switched customers; (6) administrative costs to compile data for the Office of Consumer Advocate; and (7) expenses to compensate customers for damages suffered as a result of Utility.com's failure to comply with its supply contracts and Commission regulations. The Energy Association argues that the current bonding regulations in effect force the EDCs to assume an unreasonable financial risk every time an EGS defaults on its obligations.

In light of the Energy Association's Petition, the Commission has determined that it is appropriate to examine its regulation governing the licensing and bonding requirements of EGSs. Toward this end, we are initiating this Advance Notice of Proposed Rulemaking. We encourage members of the regulated industry, the public and any other interested parties to file comments with the Commission. The comments should include specific section references to the Commission's regulations. Comments should delineate the rationale for the proposed change as well as specific proposed language for the regulations.

Due to the comprehensive nature of this rulemaking, interested parties will be given sixty (60) days from the date of publication of the Advance Notice of Proposed Rulemaking in the *Pennsylvania Bulletin* for the submission of comments. The Commission is committed to completing the revisions to its regulations in a timely fashion. Since the comment period is a generous one, no extensions will be granted for the filing of comments; *Therefore,*

It Is Ordered:

1. That the Energy Association's Petition for Amendment of 52 Pa. Code § 54.40 (Electricity Generation Customer Choice: Electricity Supplier Licensing: Bonds or Other Security) is granted inasmuch as a rulemaking proceeding to amend 52 Pa. Code § 54.40 is hereby initiated at this docket to consider the revision of the regulation appearing in Chapter 54 of Title 52 of the *Pennsylvania Code*, relating to the Commission's rules governing the licensing and bonding requirements of Electricity Generation Suppliers.

2. That an Advance Notice of Proposed Rulemaking similar to the draft attached hereto as Appendix A be published in the *Pennsylvania Bulletin*.

3. That a copy of this Order be mailed to the Office of Consumer Advocate, Office of Small Business Advocate, Office of Trial Staff, member companies of the Energy Association of Pennsylvania, all licensed Electricity Generation Suppliers, and the Pennsylvania Department of Revenue.

4. That interested parties shall have 60 days from the date of publication in the *Pennsylvania Bulletin* of the

Advance Notice of Proposed Rulemaking to file written comments and 90 days from the date of publication in the *Pennsylvania Bulletin* to file reply comments.

5. That comments should include, where appropriate, a numerical reference to the existing regulation(s) which the comment(s) address, the proposed language for revision, and a clear explanation for the recommendation.

6. That interested parties should file an original plus ten copies of each comment to the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. The Commission's contact person is Assistant Counsel Elizabeth H. Barnes, (717) 772-5408.

JAMES J. MCNULTY,
Secretary

APPENDIX A

Advance Notice of Proposed Rulemaking; Petition of the Energy Association of Pennsylvania for Amendment of 52 Pa. Code § 54.40 (Electricity Generation Customer Choice: Electricity Generation Supplier Licensing: Bonds or Other Security), Docket No. L-00020158

The Commission is considering amendments to its existing licensing and bonding requirements for Electricity Generation Suppliers (EGSs), which are appropriate within a competitive generation market. To facilitate this effort, the Commission is issuing this advance notice to solicit comments from electric distribution companies (EDCs), EGSs, power marketers, and other parties of interest.

Comments are requested on the Commission's scope of authority with regard to the language in § 54.40 of the Commission's regulations, 52 Pa. Code § 54.40 (relating to Electricity Generation Supplier Licensing: Bonds or Other Security).

The Commission seeks comments concerning the following issues.

Issue List

1. Whether § 54.40 should be amended to establish an initial bonding requirement equal to either a specified percentage (now 10%) of the EGS's forecasted gross receipts for the first consecutive 12 months, or \$250,000, whichever is greater. Comments are requested regarding: (1) whether the existing bonding level of 10% should be increased; and 2) whether the default level of \$250,000 should be changed. For a start-up company, what criteria should be used to forecast gross receipts for the first 12 months?

2. If an EGS does not have a business history in the Commonwealth, whether it should be required to update its gross receipts revenue forecast quarterly for the initial consecutive twelve-month period. How would this be done for a start-up company? Normally, the gross receipts tax is based upon two-year old data. What is the impact of this?

3. Whether on December 1 of each year, every EGS should be required to provide the Commission with a gross receipts revenue forecast for the next calendar year, if only to ensure the EGS' financial security is sufficient to satisfy its GRT obligation. How would this requirement work for start-up companies?

4. Whether § 54.40 should specify what "other security approved by the Commission" is and whether letters of credit and corporate guarantees should be listed as approved types of security.

5. Whether the current bonding requirements cause EDCs to assume an unreasonable financial risk when EGSs default on their obligations.

6. Whether EDCs should be permitted to establish and enforce company-specific financial assurances provisions which EGSs would be required to meet as a condition of each EDC's Electric Generation Supplier Coordination Tariff.

7. What is the likelihood of a Utility.com situation reoccurring?

8. Whether the Commission should continue its role as a bond obligee.

9. Whether the process should change through which claims are made on bonds.

10. Whether the entities listed in the prioritization of claims should be assigned different positions and whether there should be additions or deletions to the list.

11. What are the financial impacts of amending § 54.40 on EDCs, EGSs, the consumers, PUC, Department of Revenue?

12. Whether the regulations should provide for PJM Board default letters to be provided to the PUC by the supplier in default within 15 days of the date of the letters. These letters are referenced in PJM Interconnection, L.L.C., First Revised Rate Schedule FERC No. 24, Section 15.2 (relating to enforcement of obligations)

Interested parties are invited to address related issues in their comments. Written comments, an original and 15 copies, must be filed within 60 days after the date this notice is published in the *Pennsylvania Bulletin*. Reply comments must be filed within 90 days after the date this notice is published in the *Pennsylvania Bulletin*. The contact persons are Robert Bennett, Bureau of Fixed Utility Services, (717) 787-5553 (technical) and Elizabeth Barnes, Law Bureau, (717) 772-5408 (legal).

This is an advance notice of proposed rulemaking and is in addition to the normal rulemaking procedures for publication and comment established under the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law.

Statement of Commissioner Aaron Wilson, Jr.

Staff recommends granting the Petition of the Energy Association of Pennsylvania (EAP) in which the EAP asks the Commission to initiate a rulemaking on the bonding requirements for electricity Generation Suppliers (EGS) under 52 Pa. Code § 54.40. However, staff's recommendation confines the solicitation of comments to specific section references, the rationale for any proposed change, and proposed language for any proposed change.

The regulated community and the interested public may have concerns other than those governed under the specific sections of our existing regulations. The regulated community and the interested public are urged to submit comments on any relevant issue even if it is not currently addressed within any specific section of our existing regulations. As with the specific sections of our existing regulations, the commenting party should (a) identify the concern; (b) explain the rationale for addressing this concern; and (c) propose language resolving the concern.

One additional issue is whether, and how, the Commission's regulations should include an EGS' tax liabilities other than liability for the Gross Receipts Tax (GRT). Although the statute and our regulations include GRT, an EGS' inability or failure to remit other tax liabilities due and owing within the Commonwealth (such as sales tax)

have fiscal impacts on the General Fund and other funds.
I would like to know whether this is a concern we should
address and, if so, how we should address it.

[Pa.B. Doc. No. 03-14. Filed for public inspection January 3, 2003, 9:00 a.m.]
