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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held September 20, 2018 |
| Commissioners Present: |  |

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| Gladys M. Brown, Chairman | |  | |
| Andrew G. Place, Vice Chairman, Statement  Norman J. Kennard | |  | |
| David W. Sweet | |  | |
| John F. Coleman, Jr. | |  | |
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| Petition of the Retail Energy Supply Association to Simplify the Financial Security 5% Renewal Process | P-2017-2608078 | |

**TENTATIVE OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration is the Petition of the Retail Energy Supply Association (RESA) to Simplify the process for electric generation suppliers (EGSs) to seek a reduction in the financial security requirements in accordance with 52 Pa. Code § 54.40. For the reasons that follow, the Commission will grant the requested relief subject to the terms and conditions set forth in this Order.

**BACKGROUND**

Section 2809 of the Public Utility Code (Code), 66 Pa. C.S. § 2809(c), and the regulations promulgated thereunder, 52 Pa. Code § 54.40, require EGSs doing business in Pennsylvania to maintain financial security at levels meant to ensure the financial responsibility of the EGS. The specific purposes of the security requirement are (1) to ensure payment of the Gross Receipts Tax (GRT) owed to the Department of Revenue;[[1]](#footnote-1) (2) to ensure the supply of electricity at the retail level in accordance with contracts, agreements, or arrangements;[[2]](#footnote-2) and (3) to ensure payment of any alternative compliance payments owed to the Pennsylvania Sustainable Energy Funds under the Alternative Energy Portfolio Standards Act of 2004 (AEPS Act).[[3]](#footnote-3)

The Commission’s authority to establish financial security requirements for EGSs is set forth in the Code. *See* 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)(1)(i) (emphasis added). As emphasized above, the General Assembly granted the Commission authority to determine the “form and amount” of the 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 for each EGS operating in Pennsylvania is $250,000.[[4]](#footnote-4) 52 Pa. Code § 54.40(c). After the first year of an EGS’ operation, its security level is reviewed annually and modified primarily based on its reported annual gross receipts. 52 Pa. Code § 54.40(d). The default security level that an EGS must maintain after its first year of operation is 10% of its reported annual gross receipts or $250,000, whichever is higher.

During the Investigation of Pennsylvania’s Retail Electric Market (Docket No. I‑2011-2237952), a risk assessment working group comprising representatives from the Commission’s Office of Competitive Market Oversight, EGSs, electric distribution companies (EDCs) and RESA, was formed in April of 2013 to examine, among other things, security requirements that EGSs must comply with to participate in Pennsylvania’s retail electric market. Specifically, the working group was tasked with studying the feasibility of reducing the security amount EGSs were required to maintain after their first year of operation from 10% of annual gross receipts to 5% of annual gross receipts.[[5]](#footnote-5)

Comments received as part of the investigation overwhelmingly endorsed efforts to reduce the EGSs’ financial security requirements. The general feeling was that the 10% security level was excessive to the point that it could serve as a barrier to an EGS’ entry into Pennsylvania’s retail electric market, potentially stifling the very competition the Commonwealth was attempting to foster in that market. Commenters noted that the 10% security level far exceeded the potential risk the security was intended to cover—the GRT, which is set at 5.90% of gross receipts—and that a 5% security level was more than adequate to cover an EGS’ GRT liability.[[6]](#footnote-6)

In the *Final Security Order*, the Commission permitted an EGS, after its first year of operation, to seek a security level of 5% of its most recent 12 months of revenue[[7]](#footnote-7) or $250,000, whichever is higher. The Commission found that the 10% security level for EGSs after their first year of operation may be excessive in relation to the risk the security is intended to secure, which would unnecessarily burden EGSs and present a potential barrier to entry into Pennsylvania’s retail electric market. The Commission agreed with commenters who noted that the cost of the higher security level is passed on to consumers in the form of higher prices. Ultimately the Commission felt that the 5% security level was adequate in most circumstances to cover the liabilities the security was meant to insure.[[8]](#footnote-8)

The Commission did not engage in a formal rulemaking proceeding to implement the change in security level from 10% of annual gross receipts to 5%. Instead, the Commission relied on (1) its discretionary authority under Section 2809 of the Code, 66 Pa. C.S. § 2809(c), to approve the “form and amount” of an EGS’ security instrument and (2) the regulations at 52 Pa. Code § 54.40(d) that allow an EGS to seek an alternative level of security appropriate for the nature and scope of its operations.[[9]](#footnote-9)

To implement the change, the Commission required an EGS seeking to reduce its security level to 5% of gross receipts to file a formal petition with the Commission “so that the most updated and approved bond/security is documented on the record at the EGS’ Application docket number.”[[10]](#footnote-10) The EGS was to work informally with Commission staff during the filing process to obtain guidance regarding the information staff would require to process the petitions. The Commission delegated its authority to review uncontested petitions to the Bureau of Technical Utility Services (TUS), which would approve or deny the petitions through a Secretarial Letter. Contested petitions were to be transferred to the Office of Administrative Law Judge for a determination.[[11]](#footnote-11)

In the *Final Security Order*, the Commission required an EGS seeking to reduce its security level to 5% of its most recent 12 months of revenue to provide to TUS, at a minimum, the following information along with its petition: (1) its gross revenue from the sale of electricity to retail customers in Pennsylvania for the most recent 12 months; (2) the amount of gross receipts taxes the EGS has prepaid toward its estimated revenue for the current calendar year; (3) AEPS compliance data from the most recent 12 months; and (4) copies of all Department of Revenue documents that support the EGS’ request. The Commission made clear that submission of this information alone would not result in automatic approval of the EGS’ petition. The EGSs would have to provide any additional information requested by TUS and would still have to comply with all other requirements of the Code and Commission regulations.[[12]](#footnote-12)

On April 8, 2016, TUS, via Secretarial Letter (*2016 Guidance Letter*), offered guidance to EGSs regarding the process for renewing their security level at 5% of gross receipts. The Letter noted that a reduction in an EGS’ security level to 5% is effective only for one year, subject to annual renewal by the Commission. To renew its 5% security level, an EGS must provide—each year at least 90 days prior to the current security’s expiration date—documentation, including but not limited to the following:

* A petition for renewal to be filed with the Commission’s Secretary’s Bureau.
* A $350 filing fee.
* Proof of service of the petition on the statutory advocates and all affected EDCs.
* A Tax Status Letter of Good Standing from the Department of Revenue.
* The EGS’ gross receipts for the most recent four quarters.[[13]](#footnote-13)

On June 6, 2017, RESA filed a Petition (Petition) requesting that the annual process for an EGS to renew its 5% security level be streamlined. The Commission received no comments or replies in response to that Petition.

**SUMMARY OF PETITION**

RESA, a trade association representing member retail energy suppliers, including EGSs, filed its Petition to request that the Commission simplify the process for an EGS to renew its 5% security level. Ultimately, RESA proposes a streamlined 5% renewal process where the Commission “permits EGSs **who have already been approved** for the 5% level to submit a compliance template (with appropriate supporting documents) to continue the 5% level,”[[14]](#footnote-14) as opposed to having to submit a formal petition each year. According to RESA, that change would make the 5% security renewal process simpler and more efficient for both EGSs and Commission staff.[[15]](#footnote-15) RESA notes that an EGS is not required to submit a formal petition each year to renew its security at 10% of its gross receipts. However, for an EGS to renew its security level at 5% of gross receipts it must submit a formal petition to the Commission each year.[[16]](#footnote-16)

According to RESA, the requirements for an EGS to renew its security at the 5% level as outlined by the Commission in its 2016 Guidance Letter are difficult to meet. Specifically, the filing deadline, considering the documentation that must be submitted along with the petition, is difficult for an EGS to meet. Failure to meet the deadline could cause the EGS’ security instrument (bond, letter of credit, etc.) to expire, which in turn could result in the cancelation of the EGS’ license to operate in Pennsylvania.[[17]](#footnote-17)

RESA expresses support for the Commission’s 2014 decision to allow for a 5% security level and notes that it is unaware of any situation in which that level has been insufficient to cover an EGS’ obligations or in which the Commission experienced any problems in making a claim on a 5% security. RESA states, however, that a number of its members find the Commission’s requirement for annual renewal petitions to be cumbersome and in need of simplification.[[18]](#footnote-18)

The primary issue RESA has with the Commission’s process for renewing an EGS’ 5% security level is the 90‑day time frame between the due date for the renewal petition and the expiration of the current security instrument. Within that time frame, the EGS must file its petition to renew the 5% security level, wait to receive approval from TUS, then submit an appropriately dated new financial security instrument. That time frame is difficult for an EGS to manage and any delays can cause problems for the EGS. Although an EGS can take steps to resolve those problems, those steps may be expensive and time consuming.[[19]](#footnote-19)

The timing issue arises when the petition to renew is approved just before the current security expires or when the petition is not approved until after the current security expires. When that happens, the EGS may have to renew its security instrument at the 10% level then adjust it back down to 5% after approval is secured. The EGS can manage such a situation using a short-term security instrument; however, that fix can be expensive and time consuming.[[20]](#footnote-20)

Some EGSs operate in multiple jurisdictions, each having varying security requirements. The EGSs can gain efficiencies—saving both time and money—by consolidating their varying security instruments; however, the coordination necessary to achieve that consolidation is made more difficult by the timing problem. In addition, because the amount of security is based on the EGS’ most recent 12 months of gross receipts, the timing issue—that is, the petition being due 90 days before the current security expires—creates uncertainty about the appropriate amount of security. Furthermore, EGSs that maintain several financial securities with different renewal dates must put considerable effort into managing the renewals and deadlines. Finally, it can take a significant amount of time for an EGS to meet the Commission’s requirement that it obtain from the Department of Revenue a Tax Status Letter of Good Standing (Letter of Good Standing). Delays in obtaining that letter, through no fault of the EGS, can delay the submission and approval of the EGS’ 5% security renewal petition.[[21]](#footnote-21)

To alleviate these problems, RESA proposes a streamlining of the 5% security renewal process. If adopted, RESA claims that its process would ultimately benefit consumers as it would allow EGSs to “focus their resources on developing and offering more attractive products and services.” In addition, RESA asserts its proposal would benefit the EGSs and the Commission by reducing the time and resources each must dedicate to 5% renewal requests.[[22]](#footnote-22)

Ultimately, RESA proposes a simplified filing process—a less burdensome “compliance filing” as opposed to a formal petition—for an EGS that was already approved for a 5% security level in a prior year and is now simply attempting to renew its authorization for that level. As proposed by RESA, the EGS would have to provide the following information with its compliance filing:

* Its most recent 12 months of gross receipts and a 5% gross receipt calculation.
* An original financial security instrument covering 5% of its most recent 12 months of gross receipts or evidence that the original security instrument has been sent to the Commission.
* If the EGS has on file with the Commission a security instrument containing an automatic renewal provision and the amount of that instrument is enough to cover the new 5% gross receipt calculation, a letter so advising the Commission.
* An attestation signed by an officer of the EGS that the EGS will pay all taxes it is subject to in Pennsylvania.[[23]](#footnote-23)

RESA proposes that the compliance filing be due 30 days before the expiration of an EGS’s security instrument, which it believes will give TUS enough time to review the filing and communicate any deficiencies to the EGS for correction. In addition, RESA proposes that an EGS’s 5% security level automatically be continued upon submission of its compliance filing “unless the Commission issues a disapproval requiring the [EGS] to renew its security at the 10% level.”[[24]](#footnote-24)

RESA notes several advantages to its proposed 5% security level renewal process. First, it would provide some level of assurance to an EGS—provided the EGS submits its compliance filing and the Commission does not act to the contrary—that its security level will continue at the 5% level, which will facilitate the EGS’s dealings with its surety. Second, it relies on existing Commission notification procedures (i.e., 60‑day letter) regarding filing deadlines, so no changes will be required in that regard. Third, it would streamline the renewal process—making that process more efficient for both the EGS and Commission staff—by providing all the currently required information (i.e., the supporting documentation and the updated security instrument) at one time with the compliance filing, as opposed to providing the information separately as is done now.[[25]](#footnote-25)

According to RESA, the Commission has the legal authority to implement the proposed changes to the 5% security level renewal process. Section 501 of the Code authorizes the Commission to carry out, by its regulations and orders, all provisions of the Code. 66 Pa. C.S. § 501. Commission regulations allow an EGS to request approval for “an alternative level of bonding”—other than the standard 10% security level—appropriate to the nature and scope of its operations. 52 Pa. Code § 54.40(d). Given that discretion and the fact that the Commission, via Secretarial Letter and Order, has already established procedures for EGSs to gain and renew approval for a 5% security level, RESA believes the Commission has the authority to implement the proposed modifications to that renewal process.[[26]](#footnote-26)

Further, RESA asserts that implementation of its proposal would not frustrate the Commission’s objectives to ensure payment of the Gross Receipts Tax and the supply of electricity in accordance with contracts, agreements, or arrangements. RESA asserts that it would also maintain the Commission’s ability to increase the security level of an EGS if the Commission finds it necessary to do so to ensure the its financial responsibility.[[27]](#footnote-27)

For the reasons identified above, RESA recommends that the Commission (1) issue an Order granting its Petition to Simplify the Financial Security 5% Renewal Process and (2) adopt the procedures it proposed to streamline that process.[[28]](#footnote-28)

**DISCUSSION**

**A. Petition For Renewal Of Bond Reduction**

The Commission’s *Final Security Order* requires an EGS seeking a 5% financial security reduction to file a formal petition with the Commission. The Commission delegated authority to review uncontested petitions to TUS and required the bureau to approve or deny the reduction petition through the issuance of a Secretarial Letter.[[29]](#footnote-29) RESA, through its Petition, seeks an amendment to the *Final Security Order* entered July 24, 2014 at Docket No. M‑2013‑2393141. The Code establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

**1. RESA Proposals**

In its Petition, RESA requests that the Commission modify the process for EGSs to renew their 5% financial security reduction. RESA proposes that the Commission authorize EGSs (with a previously approved 5% Financial Security Reduction Petition) to submit an annual compliance filing with supporting documentation, instead of a petition to renew its 5% Financial Security Reduction Petition approval. Additionally, RESA proposes that the annual compliance filing be due 30 days prior to the expiration/anniversary date of an EGS’s financial security. RESA further proposes that upon filing of the annual compliance filing, an EGS’s 5% financial security reduction should be continued unless the Commission issues a denial requiring the EGS to renew its security at the previously required 10% level.

**2. Disposition**

We agree with RESA that requiring EGSs to file annual petitions to maintain a previously approved security reduction may be cumbersome and present unnecessary challenges that could be addressed through a more simplified process that would improve administrative efficiencies for both EGSs and Commission staff. As such, we approve RESA’s suggestion that an EGS, with an approved 5% reduction to their financial security, may provide an annual compliance filing in lieu of an annual petition to renew its reduced security level.

However, we do not agree with RESA’s proposal that the annual compliance filing be submitted 30 days prior to the expiration of an EGS’ financial security. In its Petition, RESA asserts that 30 days provides Commission staff ample opportunity to review filings and communicate any deficiencies. RESA states that the current 60‑day Financial Security Renewal Secretarial Letter sent by Commission staff[[30]](#footnote-30) to notify each EGS about its upcoming financial security expiration date could serve the purpose of providing notice to EGSs with already approved security level reductions of the due date to submit a 5% annual compliance filing.

We find that submission of the annual compliance filing 30 days prior to the EGS’ financial security expiration date does not provide adequate time for the Commission to administratively process the filing. The 2016 Guidance Letter stated that to be eligible for the renewal, an EGS must provide annual documentation of its eligibility for a financial security reduction at least 90-days prior to the current security’s expiration date.[[31]](#footnote-31) Commission staff review the filing may involve some or all of the following; a request for additional data if the filing is not complete or clear; request the EGS to correct any deficiencies in language or amount on the financial security; and potentially issue a formal decision to deny the 5% renewal. We find that submission of the annual compliance filing at least 90 days prior to the expiration of an EGS’ financial security is reasonable and necessary for Commission staff to process the renewal request prior to the expiration of the EGS’ current security. Therefore, we affirm the directive provided in the 2016 Guidance Letter that a 5% financial security renewal request must be filed at least 90 days prior to the expiration date of the EGS’ current financial security.

In addition, RESA proposes that a timely and properly filed annual compliance filing would not require a formal approval, by Secretarial Letter, but result in an EGS’ 5% financial security reduction being continued unless the Commission formally acts to deny the renewal. We agree and will adopt RESA’s proposal as the requirement that an EGS file its annual compliance filing at least 90 days prior to the expiration of its current financial security provides sufficient time for Commission staff to work with an EGS to correct any deficiencies in the filing or reject the renewal and require the EGS to renew its security at the 10% level. We note that under this renewal process, the EGS is to provide an original bond, letter of credit, rider, amendment, or other financial instrument in an amount equal to 5% of the EGS’ most recent 12-months of gross receipts. Acceptance of this financial instrument, without request for modification or rejection, we find is adequate to inform the EGS that its renewal was approved. Accordingly, we rescind the requirement set forth in the *Final Security Order* that TUS issue a Secretarial Letter approving the bond reduction renewal.

**B. Annual Compliance Filing**

The Commission’s *Final Security Order* requires an EGS seeking a 5% financial security reduction to provide information in five specific subject areas and noted that Commission staff may seek more information from the EGS.[[32]](#footnote-32)

**1. RESA Proposal**

As previously noted, RESA proposes that an EGS would provide certain information with its Annual Compliance filing. First, RESA proposes that an EGS would include its most recent 12 months of gross receipts and a 5% gross receipt calculation in its filing. Additionally, RESA proposes that the Commission allow EGSs to file an original financial security instrument covering the 5% of the most recent 12 months of gross receipts at the time of the filing. RESA further submits that if an EGS has a financial security instrument on file with the Commission that contains an automatic renewal provision and the amount of the instrument is enough to cover the 5% gross receipt calculation, the EGS would advise the Commission of such in its filing. Finally, RESA proposes that an EGS is to include an attestation signed by an officer of the EGS, verifying that it will pay all taxes it is subject to in Pennsylvania.

**2. Disposition**

The *Final Security Order* required an EGS to provide its gross revenues for the sale of electricity to retail customers in Pennsylvania for the most recent 12 months.[[33]](#footnote-33) RESA’s proposal to continue this reporting requirement and add the additional step of calculating and presenting the 5% gross receipt figure has merit and we adopt it. Since the financial security amount is based on the 5% gross receipt figure, we believe that it is important for both the Commission and the EGS to clearly understand and agree upon the data and calculations that underpin the financial security amount.

Additionally, RESA proposes that EGSs be allowed to file the financial security covering the 5% gross receipt amount at the time of the its filing. The current protocol requires the EGS to submit the financial security after Commission approval of the 5% bond reduction renewal petition. RESA further purposes that if an EGS has a financial security instrument on file with the Commission that contains an automatic renewal provision and the amount continues to cover the 5% gross receipts calculation, the EGS must state this in its filing and not be required to submit a new financial instrument.

Since we are replacing the annual 5% bond reduction renewal petition and associated approval via Secretarial Letter with an annual compliance filing, we find the RESA proposal reasonable and we adopt it. We note that the financial security submitted with the annual compliance filing must have an effective date that coincides with the expiration/anniversary date of the EGS’ current financial security.

Finally, regarding RESA’s request that an EGS be permitted to include an attestation signed by a corporate officer verifying that it will pay all taxes it is subject to in Pennsylvania in lieu of providing any documentation from the Department of Revenue as required by the *Final Security Order*[[34]](#footnote-34) and the 2016 Guidance Letter, we find that an attestation is inadequate. The 2016 Guidance Letter detailed several items that must be filed to be eligible for a 5% financial security reduction renewal. One of the items was the Letter of Good Standing from the Department of Revenue. RESA submits that the process for EGSs to obtain the Letter of Good Standing has been lengthy and tedious for some EGSs. RESA states that some EGSs without any outstanding tax issues, wait months for a response from the Department of Revenue to the request for a Letter of Good Standing. RESA avers that while the process for obtaining the letter appears to be more streamlined recently, suppliers should not be subject to Department of Revenue impediments that create unnecessary delays and administrative burdens for EGSs.

We do not agree that an attestation signed by an officer of an EGS verifying compliance with Pennsylvania gross receipt tax obligations is sufficient. We find that Department of Revenue compliance documentation is necessary. In addition to the Letter of Good Standing, TUS staff has required that an EGS requesting a 5% financial security reduction file the Department of Revenue’s REV‑423 PA Corporation Specialty Tax Estimated Payment form (REV-423 form). This form is used to verify the requirement in the *Final Security Order* that an EGS provide the amount of gross receipts taxes it has prepaid toward its estimated taxes for the current year.[[35]](#footnote-35)

As the specific purposes of the security requirement are (1) to ensure payment of the GRT owed to the Department of Revenue; (2) to ensure the supply of electricity at the retail level in accordance with contracts, agreements, or arrangements; and (3) to ensure payment of any alternative compliance payments owed to the Pennsylvania Sustainable Energy Funds under the AEPS Act, a Letter of Good Standing and a recent REV‑423 form from the Department of Revenue demonstrates that the EGS has substantially meet its GRT obligations. We note that the GRT is 5.90% of the EGS’ gross receipts. Obviously, a 5% bond alone, would not cover the entire 5.90% and may not cover the EGS’ AEPS obligations if it were to default on those obligations. We find that having a Letter of Good Standing and a recent REV‑423 form from the department of Revenue demonstrates that the EGS is in substantial compliance with its GRT obligations and that the EGS is has substantially met its financial obligations pursuant to its business operations and practices. Such a business practice makes it more likely than not that a 5% bonding level will cover any remaining financial liability related to GRT, supply of electricity at retail and the AEPS Act obligations that may arise.

Regarding RESA’s assertion that acquiring the necessary documentation from the Department of Revenue is difficult and time consuming, we find, even if true, eliminating such inconvenience does not outweigh the requirement that the bonding levels must be in the form and amount to meet the EGS’ financial obligations related to GRT, supply of electricity at the retail, and the AEPS Act. We also find it significant that, as RESA acknowledges,[[36]](#footnote-36) the process for obtaining the Letters of Good Standing from the Department of Revenue has improved, reducing any inconvenience the EGSs may have experienced in the past. Accordingly, we will require both a Letter of Good Standing and the most recent REV‑423 form from the Department of Revenue to demonstrate past and present gross receipt tax compliance in order to maintain a 5% bonding level.

**C. Summary Of Annual Compliance Filing Requirements**

As this Order modifies, but does not vacate, the filing requirements set forth in the *Final Security Order*, we require an EGS seeking to maintain a previously approved 5% financial security reduction, the EGS must make an annual compliance filing at least 90‑days prior to the EGS’s current financial security expiration date. We also direct that the annual compliance filing must include the following information and documentation:

* Intent to renew 5% Financial Security Reduction.
* EGS’ licensed name, docket number, and utility code.
* EGS’ contact information (name, address, email, and phone number).
* The expiration/anniversary date of its current Financial Security.
* Certificate of Service showing that the 5% annual compliance filing was served on the statutory advocates and all affected EDCs.
* A recent Department of Revenue Tax Status Letter of Good Standing.
* EGS’ most recent Department of Revenue REV‑423 PA Corporation Specialty Tax Estimated Payment form.
* EGS’ most recent 12-months of gross receipts.
* EGS’ 5% gross receipts calculation using the EGS’ most recent 12‑months of gross receipts.
* An original bond, letter of credit, rider, amendment, or other financial instrument in an amount equal to 5% of the EGS’ most recent 12-months of gross receipts (effective on the expiration/anniversary date of the EGS’s current financial security).

As noted in the *Final Security Order*, Commission staff may seek more information from an EGS as required.

**CONCLUSION**

The Commission adopts RESA’s financial security renewal proposal as modified by this Order. The Commission notes that, the process and fee set forth in the *Final Security Order*[[37]](#footnote-37) for obtaining an initial reduction in financial security to 5% is not being revised by this Order and remains in effect.

For EGSs that have received approval for a reduced financial security amount of 5%, the Commission is amending the *Final Security Order* in accordance with our authority under Section 703(g) of the Code, 66 Pa. C.S. § 703(g)[[38]](#footnote-38)and will no longer require a petition for renewal to be filed with the Commission’s Secretary’s Bureau or a $350 filing fee. The Commission will, however, require EGSs that wish to maintain the reduced security amount to submit an annual compliance filing containing the information and documentation required by this Order at least 90 days prior to the expiration/anniversary date of the EGS’ current financial security. In the event the EGS fails to make the required annual compliance filing 90 days prior to the EGS’s financial security expiration/anniversary date, the EGS’ financial security requirement will revert to 10% of its most recent 12-months of gross receipts, pursuant to 52 Pa. Code

§ 54.40(d); **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition of the Retail Energy Supply Association to Simplify the Financial Security 5% Renewal Process is granted as modified by this Order.

2. That the Commission’s Final Order in Public Utility Commission Bonding/Security Requirements for Electric Generation Supplier; Acceptable Security Instruments at Docket No. M‑2013‑2393141 entered on July 24, 2014 is amended as set forth in this Order.

3. That this Tentative Opinion and Order be served on all Electric Distribution Companies, all licensed Electric Generation Suppliers, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Pennsylvania Department of Revenue, the Retail Energy Supply Association, and the Energy Association of Pennsylvania.

4. That the Law Bureau shall deposit a copy of this Tentative Opinion and Order with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

5. That a copy of this Tentative Opinion and Order shall be posed on the Commission’s website at the Office of Competitive Market Oversight’s web page.

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

7. That if no adverse comments are received within ten days of publication in the *Pennsylvania Bulletin*, this Tentative Opinion and Order shall become final without further Commission action.

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

9. That this proceeding at Docket No. P-2017-2608078 be closed if no adverse comments are received and upon this Tentative Opinion and Order becoming final.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 20, 2018

ORDER ENTERED: September 20, 2018

1. *See* 66 Pa. C.S. §§ 2809(c)(1)(ii) & 2810; 52 Pa. Code § 54.40(f)(2). [↑](#footnote-ref-1)
2. *See* 66 Pa. C.S. § 2809(c)(1)(i); 52 Pa. Code § 54.40(f)(2). [↑](#footnote-ref-2)
3. *See* 73 P.S. § 1648.3(f) & (g). [↑](#footnote-ref-3)
4. Under the applicable regulations, the Commission has routinely approved waivers requesting a reduced financial security 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. *See Application of Advisors Energy Group LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Broker/Marketer*, Order at Docket No. A‑2017‑2625563. [↑](#footnote-ref-4)
5. *In Re: Public Utility Commission Bonding/Security Requirements for Electric Generation Suppliers; Acceptable Security Instruments*, Final Order at Docket No. M-2013-2393141 (entered July 24, 2014) (*Final Security Order*) at 2-3. [↑](#footnote-ref-5)
6. *Final Security Order* at 5-7. [↑](#footnote-ref-6)
7. The Commission had previously based the calculation on the EGS’ reported gross receipts from the last annual reporting period; however, the Commission changed that to the “most recent 12 months of revenue” because the Commission found that measure was more accurate and more likely to protect against default risk in light of the reduced security requirement. *Final Security Order* at 10-11 [↑](#footnote-ref-7)
8. *Final Security Order* at 10-11. [↑](#footnote-ref-8)
9. *Final Security Order* at 11-12. [↑](#footnote-ref-9)
10. *Final Security Order* at 12*.* [↑](#footnote-ref-10)
11. *Final Security Order* at 12-13. [↑](#footnote-ref-11)
12. *Final Security Order* at 16*.* [↑](#footnote-ref-12)
13. *Guidance on Electric Generation Supplier Licensee Financial Security*, Docket No. M-2013-2393141, Secretarial Letter dated April 8, 2016. [↑](#footnote-ref-13)
14. *Petition of the Retail Energy Supply Association to Simplify the Financial Security 5% Renewal Process*, Docket No. P-2017-2608078, at 2 (emphasis original) (*RESA Petition*). A copy of RESA’s proposed compliance template is attached to the Petition as “Attachment A.” [↑](#footnote-ref-14)
15. *RESA Petition* at 2. [↑](#footnote-ref-15)
16. *RESA Petition* at ¶¶ 6-9. [↑](#footnote-ref-16)
17. *RESA Petition* at 6-7. [↑](#footnote-ref-17)
18. *RESA Petition* at ¶ 16-17. [↑](#footnote-ref-18)
19. *RESA Petition* at ¶ 18. [↑](#footnote-ref-19)
20. *RESA Petition* at ¶ 19. [↑](#footnote-ref-20)
21. *RESA Petition* at ¶¶ 20-24. [↑](#footnote-ref-21)
22. *RESA Petition* at ¶ 25. [↑](#footnote-ref-22)
23. *RESA Petition* at ¶ 26. [↑](#footnote-ref-23)
24. *RESA Petition* at ¶ 26. [↑](#footnote-ref-24)
25. *RESA Petition* at ¶¶ 27-30. [↑](#footnote-ref-25)
26. *RESA Petition* at ¶¶ 31-32. [↑](#footnote-ref-26)
27. *RESA Petition* at ¶¶ 33-34. [↑](#footnote-ref-27)
28. *RESA Petition* at 15. [↑](#footnote-ref-28)
29. *Final Security Order* at 12-13. [↑](#footnote-ref-29)
30. Since May 2017, the Commission staff has sent a 90-day Financial Security Renewal Secretarial Letter to EGSs. [↑](#footnote-ref-30)
31. *Guidance on Electric Generation Supplier Licensee Financial Security*, Docket No. M-2013-2393141, Secretarial Letter dated April 8, 2016. [↑](#footnote-ref-31)
32. *Final Security Order* at 16. [↑](#footnote-ref-32)
33. *Final Security Order* at 16. [↑](#footnote-ref-33)
34. *Final Security Order* at 16*.* [↑](#footnote-ref-34)
35. *Final Security Order* at 16. [↑](#footnote-ref-35)
36. *RESA Petition* at ¶ 24. [↑](#footnote-ref-36)
37. *Final Security Order* at pgs. 12-13. [↑](#footnote-ref-37)
38. Section 703(g) provides that the Commission may amend its prior orders after notice and opportunity to be heard. Accordingly, the Commission is issuing this order as a Tentative Opinion and Order so as to provide interested persons with notice and an opportunity to file comments for our consideration before it becomes final. [↑](#footnote-ref-38)