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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |
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|  | Public Meeting held November 19, 2010 |
| Commissioners Present: |  |

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| James H. Cawley, Chairman |
| Tyrone J. Christy, Vice Chairman  John F. Coleman, Jr. |
| Wayne E. Gardner  Robert F. Powelson |
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| License Application of Xencom Green Energy LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Broker/Marketer | Docket No. A-2010-2192916 |

# ORDER

**BY THE COMMISSION:**

On July 23, 2010, Xencom Green Energy LLC (“Xencom” or “the Applicant”) filed an application seeking to become a licensed electric generation supplier (“EGS”) in the electric distribution company service territories throughout the Commonwealth of Pennsylvania. The application was filed pursuant to the Commission’s regulations at 52 Pa. Code §§54.31-54.43, which became effective on August 8, 1998, and which were established under Section 2809 of the Public Utility Code, 66 Pa. C.S. §2809.

Section 2809 provides in pertinent part as follows:

License Requirement.--No person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers and marketers, aggregators and other entities, shall engage in the business of an electric generation supplier in this Commonwealth unless the person or corporation holds a license issued by the Commission.

An electric generation supplier is defined as:

A person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers and marketers, aggregators or any other entities, that sells to end-use customers electricity or related services utilizing the jurisdictional transmission and distribution facilities of an electric distribution company or that purchases, brokers, arranges or markets electricity or related services to end-use customers utilizing the jurisdictional transmission and distribution facilities of an electric distribution company.

66 Pa. C.S. §2803.

Xencom is a foreign limited liability company formed on March 11, 2008, in the state of Texas. Xencom was registered by the Pennsylvania Department of State as a foreign limited liability company on April 12, 2010. By its application, Xencom proposes to act as a broker/marketer of electricity for large commercial (over 25 kW demand) customers. In this capacity, Xencom will broker energy transactions between retail energy providers and its large commercial clients. Xencom will be compensated for its services by receiving a commission on each kWh used by its clients, and the client must approve the commission amount. Xencom will not supply electricity to customers, will not take title to any electricity, and will not make or process utility payments on behalf of its customers.

At this time, Xencom does not intend to provide its services to residential customers. Therefore, the regulations at Chapter 56 of Title 52 of the Pennsylvania Code relating to Standards and Billing Practices for Residential Utility Service do not apply. However, should Xencom choose to provide broker/marketer services to residential customers in the future, it must file a request for a license modification with the Commission Secretary by letter immediately, and shall be required to comply with, and be governed by, applicable Chapter 56 residential service regulations as set forth in the Commission Order *Guidelines for Maintaining Customer Service at the Same Level of Quality Pursuant to 66 Pa. C.S. § 2807(d), and Assuring Conformance with 52 Pa. Code Chapter 56 Pursuant to 66 Pa. C.S. § 2809(e) and (f)* at Docket No. M-00960890 F0011, Order entered July 11, 1997. Thus, we deem it appropriate to address certain items relating to Chapter 56 of our regulations, particularly with respect to the issue of termination of residential accounts.

Initially, we note that an EGS cannot physically disconnect a residential customer from the electricity grid. Therefore, the rules relating to residential service termination are not directly applicable to EGSs. However, an EGS may seek to terminate its generation service to a customer through an appropriate written notice to the customer and that customer’s electric distribution company (“EDC”). The residential customer can then attempt to repair its relationship with the EGS, seek a new electricity supplier, or default to receiving electric utility service from the customer’s applicable default service provider (“DSP”) in accordance with the DSP's obligations under Section 2807(e) of the Public Utility Code, 66 Pa. C.S. §2807(e). The customer would only be disconnected from the electricity grid pursuant to applicable regulations if the customer failed to meet its obligations to the EDC, or to the EGS that has been designated by the Commission as that customer’s DSP, or provider of last resort.

Additionally, we specifically note that the licensee must comply with, and ensure that its employees, agents, representatives and independent contractors comply with the standards of conduct and disclosure for licensees set out in Commission regulations at 52 Pa. Code § 54.43 that were enacted to protect consumers of this Commonwealth. These standards include, *inter alia*, the provision of timely and accurate information about the services offered by the licensee, the practice of nondiscrimination in service in regard to race, color, religion, national origin, marital status, etc., the safeguarding of a consumer’s personal information, and compliance with applicable state and federal consumer protection laws. Also, we take this opportunity to remind the licensee of its agreement to abide by, and to ensure that its employees, representatives, agents and independent contractors abide by all applicable federal and state laws, and Commission regulations, procedures and orders, including Emergency Orders, which may be issued verbally or in writing during any emergency situations that may unexpectedly develop from time to time in the course of business.

Xencom has provided proofs of publication in appropriate Pennsylvania newspapers, and proofs of service to the interested parties as required by the Commission.

In accordance with the financial requirements of the EGS license application, Xencom has supplied financial information in the form of balance sheets depicting the company’s assets, liabilities and stockholders’ equity as of December 31, 2009 and June 30, 2010. Additionally, Xencom provided profit and loss statements for the periods January through December of 2009 as well as January through June of 2010. With regard to the technical fitness requirements of the EGS license application, Xencom provided summary resumes of its management team, as well as a link to its website where more detailed information regarding its operations can be found. We find that sufficient information has been provided by Xencom to demonstrate its financial and technical fitness in order to be licensed as an EGS in the Commonwealth of Pennsylvania.

In lieu of the $250,000 bond required to be furnished by the EGS applicant in accordance with the license application, Xencom provided a bond in the amount of $10,000, and requests that the Commission reduce its security requirement from $250,000 to $10,000. In support of this request, Xencom explains that it will not take title to electricity, will not be responsible for paying gross receipts tax, and will not make or process any payments on behalf of customers.

Our regulation at 52 Pa. Code §54.40(c) provides that “[m]odifications of [the required $250,000 bond amount] commensurate with the nature and scope of business anticipated to be conducted in this Commonwealth may be granted where substantial evidence is submitted in support of the modification.” We find that Xencom has provided such evidence to support a bond reduction from $250,000 to $10,000, and we note that the reasoning on which it bases its request for the reduction is similar to that offered by other EGSs that have successfully petitioned this Commission for a bonding level of $10,000. Two such EGSs are Co-eXprise, Inc. (“Co-eX”), whose license application was granted on January 20, 2006 at Docket No. A-110166, and Premier Energy Solutions (“Premier”), whose license application was granted on July 26, 2006, at Docket No. A-110170. In the case of Co-eX, the company explained that, as a consultant, it would provide its customers with an evaluation and selection process from which to select the best positioned licensed electricity supplier/generator and award business. Co-eX stated that it would not take title to power. In the case of Premier, the company explained that it requested an EGS license to become EDI certified with the utilities in order to be able to efficiently and effectively obtain electricity usage information for the customers to whom it provides consulting services. Premier intended to utilize the information to help its customers reduce their overall spending for electricity. Premier also stated that it would not take title to power.

The Commission believes that Xencom operates in a similar manner and therefore should be granted similar relief and be permitted to provide a bond or other approved security in the reduced amount of $10,000. However, Xencom’s bonding level is contingent upon the Applicant’s business model as described in this Order.If Xencom takes title to generation supply for its customers, and/or charges customers directly for that generation supply, a $10,000 level of bonding may not be appropriate.Therefore, we will direct Xencom to notify the Commission 45 days prior to a change in its business model, whereby Xencom takes title to generation supply and/or bills its customers directly for that generation supply. This will provide the Commission with an opportunity to review and adjust Xencom’s approved bonding level prior to the Applicant implementing those changes.

Xencom has provided the required Pennsylvania Emergency Management Agency (PEMA) contact information.

As of October 27, 2010, no protests have been filed.

In summary, we find that:

1. The Applicant is fit, willing and able to properly perform the service proposed in conformance with applicable provisions of the Public Utility Code and lawful Commission orders and regulations, specifically including 52 Pa. Code Chapter 56 (relating to Standards and Billing Practices for Residential Utility Service).

2. The Applicant has agreed to lawfully abide by all Commission regulations, procedures and orders, including Emergency Orders, which may be issued verbally or in writing during any emergency situations that may unexpectedly develop from time to time in the course of doing business in Pennsylvania.

3. The proposed service, to the extent authorized by the license, will be consistent with the public interest and the policy declared in the Electricity Generation Customer Choice and Competition Act.

Accordingly, upon full consideration of all matters of record, we find that approval of this application is necessary and proper for the service, accommodation and convenience of the public; **THEREFORE,**

**IT IS ORDERED:**

1. That the application of Xencom Green Energy LLC is hereby approved, consistent with this Order.

2. That a license be issued authorizing Xencom Green Energy LLC to begin to offer, render, furnish or supply electric generation supplier services to large commercial (over 25 kW demand) customers in the electric distribution company service territories throughout the Commonwealth of Pennsylvania, as specified in this Order.

3. That Xencom Green Energy LLC’s request for a reduction in the bond level from $250,000 to $10,000 is hereby granted.

4. That the security amount of $10,000 shall remain in effect for Xencom Green Energy LLC as long as Xencom Green Energy LLC does not make a change to its business model in Pennsylvania, whereby it would take title to generation supply and/or bill its customers directly for generation supply.

5. That if Xencom Green Energy LLC proposes to change its business model as described in Ordering Paragraph No. 4, it must notify the Commission at least 45 days prior to the changes. With the notice, Xencom Green Energy LLC must provide an update to the information regarding the nature and scope of its business that it initially provided pursuant to of 52 Pa. Code §54.40(c) to justify the modification granted in Ordering Paragraph No. 3. This will provide the Commission the opportunity to review Xencom Green Energy LLC’s bonding level and adjust as appropriate, prior to Xencom Green Energy LLC implementing the proposed changes to its business model.

6. That if Xencom Green Energy LLC changes its business model without providing to the Commission the notice and information required in Ordering Paragraph No. 5, then the reduced bonding level permitted by Ordering Paragraph No. 3 shall cease to be effective as of the date of the change in the business model. The level of bonding effective at that time shall be $250,000, or the level required by of 52 Pa. Code §54.40, whichever is greater.

7. That this proceeding at Docket No. A-2010-2192916 be marked closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: November 19, 2010

ORDER ENTERED: November 19, 2010