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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |
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|  | Public Meeting held January 13, 2011 |
| 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 Capital Energy, Inc. for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Broker/Marketer of Retail Electric Power. | Docket Number: A-2010-2209014 |

# ORDER

**BY THE COMMISSION:**

On November 4, 2010, Capital Energy, Inc. (Capital) filed an application seeking to become a licensed electric broker/marketer in the service territory of PECO Energy in 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 that:

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 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.

Capital is a foreign Corporation, incorporated in the State of New York on August 27, 2010, and registered to do business in the Commonwealth of Pennsylvania as of September 23, 2010. Capital proposes to act as a broker of alternative energy supply services to governmental, small commercial (25 kw and under demand), large commercial (over 25 kw demand), and industrial customers. Capital states that it will not be paying customer bills in its broker services role, nor taking title to the electricity. Customers will continue to pay their bills directly to the electric distribution company (EDC) or EGS, as appropriate. Capital will be compensated for its broker services by the EGS or by the customer with all fees being disclosed. A Capital customer may, at its sole discretion, select or decline any electricity marketer or contract presented by Capital. Currently, Capital does not intend to provide these services to residential customers. Therefore, Chapter 56 residential service regulations do not apply.

If Capital chooses to provide broker/marketer services to residential customers in the future, however, Capital 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-00960890F0011, Order entered July 11, 1997. Thus, we deem it appropriate to reiterate certain items with respect to Chapter 56 of our regulations. Chapter 56 (52 Pa. Code Chapter 56) is applicable to residential accounts. An EGS cannot physically disconnect a residential customer from the electricity grid; therefore, the rules relating to residential service termination are not applicable to EGSs. An EGS may seek to terminate its generation service through an appropriate written notice to the customer and the distribution company. The residential customer can then attempt to repair their relationship with the supplier, seek a new supplier, or default to utility service at capped rates in accordance with the utility's obligations under section 2807(e), 66 Pa. C.S. § 2807(e). The customer would only be disconnected from the electricity grid pursuant to appropriate regulations if the customer failed to meet its obligations to the utility or the EGS that has been designated by the Commission as the 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 doing business in Pennsylvania.

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

Regarding the financial and technical requirements of the license application, Capital has supplied an opening balance sheet dated October 1, 2010, that has been reviewed by a public accountant. Capital has also provided historical employment information for the president of the company which indicates the necessary consulting, utility and/or regulatory experience. Sufficient information has been provided by Capital to demonstrate its financial and technical fitness in order to be licensed as a broker/marketer in the Commonwealth of Pennsylvania.

Capital did not provide a $250,000 bond as required by the license application; however, it did provide 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, Capital explains that it will not be collecting any gross receipts from its customers or generating electricity. Its services include analyzing client electricity loads and negotiating the purchase of electricity for its clients.

The Commission believes that the reasoning on which Capital bases its request for a bond reduction from $250,000 to $10,000 is similar to that offered by the other EGSs that have successfully petitioned the Commission for a bonding level of $10,000. Two of the EGSs are Co-eXprise, Inc. (Co-eX), at Docket No. A-110166, whose request was granted January 20, 2006, and Premier Energy Solutions (Premier), at Docket No. A-110170, whose request was granted July 26, 2006. In the case of Co-eX, the company explained that, as a consultant, it will provide its customers with an evaluation and selection process from which to select the best positioned licensed electricity supplier/generator and award business. 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 will not take title to power.

The Commission believes that Capital 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, Capital’s bonding level is contingent upon the company’s business model as described in this Order.If Capital 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 Capital to notify the Commission 45 days prior to a change in its business model, whereby Capital 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 Capital’s approved bonding level prior to Capital implementing those changes.

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

As of January 4, 2011, no protests have been filed.

We find that the applicant:

1. 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. 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.

We further find that 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.

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 Capital Energy, Inc. is hereby approved, consistent with this Order.

2. That Capital Energy, Inc.’s request for a reduction in the bond level from $250,000 to $10,000 is hereby granted.

3. That the security amount of $10,000 shall remain in effect for Capital Energy, Inc. as long as Capital Energy, Inc. 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.

4. That a license be issued authorizing Capital Energy, Inc. to begin to offer, render, furnish or supply electric generation supplier services to small commercial (25 kw and under demand), large commercial (over 25 kw demand), industrial, and governmental customers in the electric distribution company service territory of PECO Energy in the Commonwealth of Pennsylvania, as specified in the Order.

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

6. That if Capital Energy, Inc. 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. 2 shall cease effective with 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 52 Pa. Code § 54.40, whichever is greater.

7. That this proceeding at Docket No. A-2010-2209014 be closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: January 13, 2011

ORDER ENTERED: January 19, 2011