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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17120** |  |
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|  | Public Meeting held July 21, 2016 |
| Commissioners Present: |  |

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| Gladys M. Brown, Chairman | |
| Andrew G. Place, Vice Chairman | |
| John F. Coleman, Jr.  Robert F. Powelson  David W. Sweet, Absent | |
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| Application of Early Bird Power, LLC for  Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services  as a Broker/Marketer | Docket Number:  A-2016-2542114 |

# ORDER

**BY THE COMMISSION:**

On April 28, 2016, the Commission accepted Early Bird Power, LLC’s (Early Bird), Utility Code 1112171, application seeking to become a licensed electric generation supplier (EGS) as a broker/marketer in all of 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.

§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. 66 Pa. C.S. §2809.

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 or distribution facilities of an electric distribution company, or that purchases, brokers, arranges or markets electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an electric distribution company. 66 Pa. C.S. §2803.

Early Bird is a foreign limited liability company, formed in the Commonwealth of Massachusetts as of April 9, 2009, and registered to do business in the Commonwealth of Pennsylvania on January 7, 2010. Early Bird proposes to act as a broker/marketer of retail electric power to residential, small commercial (25 kw and under demand), large commercial (over 25 kw demand) industrial, and governmental customers. Early Bird has indicated that it will not be taking title to electric power, nor paying customers’ bills in its broker/marketer role.

Regarding the financial and technical requirements of the license application, Early Bird has submitted two years of financial records accompanied by three consecutive months of bank statements. Early Bird has also supplied extensive resume data for its chief officer, copies of licenses in other states, its staffing structure and business plans for operations within the Commonwealth. Early Bird was issued an NGS license, at Docket No. A-2011-2275191, on October 14, 2010. We also note that Early Bird was previously issued an EGS license at Docket No. A-2010-2176721, on October 14, 2010, and that license was cancelled by the Commission on December 22, 2015, for failing to provide the required financial security. We find that sufficient information has been provided by Early Bird to demonstrate its financial and technical fitness in order to be licensed as a broker/marketer of retail electric power in the Commonwealth of Pennsylvania.

Since Early Bird will be providing electric generation supplier services to residential customers it is 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 reiterate certain items with respect to Chapter 56 of our regulations. Chapter 56 (52 Pa Code Chapter 56) is applicable to residential accounts. An electric generation supplier cannot physically disconnect a residential customer from the electricity grid; therefore, the rules relating to residential service termination are not applicable to electric generation suppliers. An electric generation supplier 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 return to utility service at default service 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 electric generation supplier 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. We further note that the licensee and its agents must comply with the Commission’s sales and marketing regulations at 52 Pa. Code §111.1, et seq. applicable to residential customers. Among other things, these regulations require the licensee and its agents to provide accurate information about products and services being offered and prohibit a licensee and its agents from engaging in misleading or deceptive conduct and from making false or misleading representations. 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.

Early Bird 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, Early Bird explains that it will not be collecting any gross receipts from its customers, paying customer bills or taking title to 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 Early Bird 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 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 Early Bird 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, Early Bird’s bonding level is contingent upon the company’s business model as described in this Order.If Early Bird 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 Early Bird to notify the Commission 45 days prior to a change in its business model, whereby Early Bird 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 Early Bird ‘s approved bonding level prior Early Bird implementing those changes.

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

As of July 12, 2016, 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.
3. 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 Early Bird Power, LLC is hereby approved, consistent with this Order.

2. That Early Bird Power, LLC’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 Early Bird Power, LLC as long as Early Bird Power, 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.

1. That a license be issued authorizing Early Bird Power, LLC to begin to offer, render, furnish or supply electricity or electric generation services as a broker/marketer to residential, small commercial (25 kw and under demand), large commercial (over 25 kw demand), industrial, and governmental customers in all of the electric distribution company service territories throughout the Commonwealth of Pennsylvania.
2. That if Early Bird Power, LLC 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 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 Early Bird Power, LLC’s bonding level and adjust as appropriate, prior to Early Bird Power, LLC implementing the proposed changes to its business model.
3. That if Early Bird Power, 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. 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.
4. That this proceeding at Docket No. A-2016-2542114 be closed.

**** **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 21, 2016

ORDER ENTERED: July 21, 2016