|  |  |  |
| --- | --- | --- |
| PUC logo | COMMONWEALTH OF PENNSYLVANIAPENNSYLVANIA PUBLIC UTILITY COMMISSION400 NORTH STREET, HARRISBURG, PA 17120 | **IN REPLY PLEASE REFER TO OUR FILE** |

April 7, 2017

Docket No: A-2009-2109812

Utility Code: 1111129

**CERTIFIED**

ENERNOC INC

ONE MARINA PARK DR STE 400

BOSTON MA 02210

RE: License Bond or Other Financial Security Update Notice

To Electric Generation Suppliers:

 The Commission requires an EGS to file an **original** bond, or other security, approved by the Commission, to ensure the EGS’s financial responsibility under Section 2809(c) of the Public Utility Code.

On March 10, 2016, the Commission updated the language to be included in the financial security and requested that EGSs update their financial securities to include the new language. The attached templates for a Bond (Attachment A) and a Letter of Credit (Attachment B) contain the required language.

 As of the date of this letter, your company has not filed a financial security which contains the updated language. This letter is being provided as notice that you are required to file a financial security containing the updated language.

Please be advised that **within 30 days of the date of this letter**, you **MUST** file with the Commission an **ORIGINAL** amendment or rider. **If the documentation filed is not an original, the documentation will be rejected and returned to you.**

File an **original** bond, letter of credit, continuation certificate, amendment, or other financial instrument using the one of the attached templates. Original financial instruments must display “wet” signatures or digital signatures, preferably in blue ink, and display a “raised seal” or original notary stamp. If the documentation filed is not an original, it will be rejected and returned.

The name of the principal on the original financial instrument must **match exactly** with the name that appears on the supplier’s license issued (excluding fictitious names) by the Commission. If you are not sure of the correct name on your PUC license, you may review it online at the Commission’s website ([www.puc.pa.gov](http://www.puc.pa.gov)) by searching under your A docket number. If your company has changed its name, you are required to notify the Commission in writing, and obtain the necessary approvals prior to the submission of the financial instrument.

 Failure to file the requested documentation may cause Commission staff to initiate a formal proceeding that may lead to cancellation of your electric supplier license, fines and penalties, removal of the your company’s information from the Commission’s website and notification to all electric distribution companies, in which your company is licensed to do business. If your company has decided to abandon its license, please notify the Commission of such decision.

 All original documentation must be sent to the Secretary of the Commission at:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

400 North Street

Harrisburg, Pennsylvania 17120

 Please respond to Stephen Jakab of the Commission’s Bureau of Technical Utility Services within fifteen (15) days of the date of this letter with your intent to update your financial security language. You may email sjakab@pa.gov (preferred) or call (717) 783-6174 with any questions.

****

 Sincerely,

 Rosemary Chiavetta

 Secretary

Cc: FILE

Enclosure

**Attachment A**

**Required of ALL Electric Generation Suppliers regardless of operating as a supplier, broker, marketer, or aggregator.**

**Electric Generation Supplier (EGS) License Bonds**

 EGSs operating as Suppliers are required to provide a financial security instrument that is the greater of $250,000 or 10% of Gross Receipts, unless it has previously received Commission approval for a reduced level from the greater of $250,000 or 10% of Gross Receipts down to the greater of $250,000 or 5% of Gross Receipts.

 EGSs operating exclusively as Brokers/Marketers are required to provide a financial security instrument in the amount of $10,000.

The security instrument should name the Pennsylvania Public Utility Commission as the obligee or beneficiary, and should contain the following language:

 This bond is written in accordance with Section 2809(c)(1)(i) of the Public Utility Code, 66 Pa. C.S. § 2809(c)(1)(i), to assure compliance with applicable provisions of the Public Utility Code, 66 Pa. C.S. §§101, et seq., and the rules and regulations of the Pennsylvania Public Utility Commission by the Principle as a licensed electric generation supplier; to ensure the payment of Gross Receipts Tax as required by Section 2810 of the Public Utility Code, 66 Pa. C.S. § 2810; to ensure the payment of annual fees as authorized by Act 155 of 2014; to adhere to the requirements of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1 *et seq*. and 52 Pa.Code 75.1 *et seq*.; and to ensure the supply of electricity at retail in accordance with contracts, agreements or arrangements. Payment of claims shall have the following priority: (i) The Commonwealth; (ii) Electric Distribution Companies for the reimbursement of Gross Receipts Tax; and (iii) Private individuals. Proceeds of the bond may not be used to pay any penalties or fines levied against the Principal for violations of the law, or for payment of any other tax obligations owed to the Commonwealth.

 The **ORIGINAL** bond or other financial instrument must be submitted by overnight delivery to the Secretary of the Pennsylvania Public Utility Commission, 400 North Street, Keystone Building, Harrisburg, PA 17120.

**Bond**

**Bond Number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **KNOW ALL MEN BY THESE PRESENTS** that **[*APPLICANT NAME]*** as Principal, and ***[NAME OF SURETY COMPANY]*** of ***[CITY]****,* ***[STATE]***, as Surety, are firmly bound unto Pennsylvania Public Utility Commission, as Obligee, in the penal sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_dollars ($\_\_\_\_\_\_\_\_\_), lawful money of the United States of America for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly, severally, and firmly by these presents.

 **THE CONDITION OF THIS OBLIGATION IS SUCH,** that Whereas the Principal has made application for a license to the Obligee to offer, render, furnish or supply electricity or electric generation services to the public.

 **NOW THEREFORE,** the condition of this obligation is such that the Principal must act in accordance with Section 2809(c)(1)(i) of the Public Utility Code, 66 Pa. C.S. 2809(c)(1)(i), to assure compliance with applicable provisions of the Public Utility Code, 66 Pa. C.S. 101, et seq. and the rules and regulation of the Pennsylvania Public Utility Commission by the Principal as a licensed electric generation supplier; to ensure the payment of Gross Receipts Tax as required by Section 2810 of the Public Utility Code, 66 Pa. C.S. 2810; to ensure the payment of annual fees as authorized by Act 155 of 2014; to adhere to the requirements of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1 et seq. and 52 Pa. Code 75.1 et seq.; and to ensure the supply of electricity at retail in accordance with contracts, agreements or arrangement. Payment of claims shall have the following priority: (I) The Commonwealth of Pennsylvania; (II) Electric Distribution Companies for the reimbursement of Gross Receipts Tax; and (III) Private Individuals. Proceeds of the bond may not be used to pay any penalties or fines levied against the Principal for violations of the law, or for the payment of any other tax obligations owed to the Commonwealth of Pennsylvania.

 **NOW THEREFORE,** if the Principal shall, during the period commencing on the aforesaid date, faithfully observe and honestly comply with such rules, regulations and statutes that are applicable to an electric generation supplier licensed in Pennsylvania, fulfill its obligation to pay the Gross Receipts Tax to the Commonwealth, fulfill its payment of the annual fees, adhere to the requirements of the Alternative Energy Portfolio Standards Act, and fulfill its obligation to deliver electricity at retail in accordance with contracts, agreements and arrangements, require the execution of this bond, then this obligation shall become void and of no effect.

 **PROVIDED**, the Surety may terminate its future liability under this Bond sixty (60) days after furnishing written notice of such intention to terminate. This termination shall not affect the liability of the Surety and the Principal for any liability incurred by the Principal prior to the effective date of such termination. Any claim under this bond must be instituted within three (3) months of the effective date of termination.

 **THIS BOND WILL EXPIRE *[MONTH DAY, YEAR]***, but may be continued by continuation certificate signed by Principal and Surety. Surety may at any time terminate its liability by giving sixty (60) days written notice of the Obligee, and Surety shall not be liable for any default after such sixty-day notice period, except for defaults occurring prior thereto.

Signed, sealed and dated ***[MONTH DAY, YEAR]***. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Principal

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

COUNTERSIGNED BY Surety

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Surety Agent Attorney-in-Fact

**Attachment B**

**Required of ALL Electric Generation Suppliers regardless of operating as a supplier, broker, marketer, or aggregator.**

**Electric Generation Supplier (EGS) License Letters of Credit**

 EGSs operating as Suppliers are required to provide a financial security instrument that is the greater of $250,000 or 10% of Gross Receipts, unless it has previously received Commission approval for a reduced level from the greater of $250,000 or 10% of Gross Receipts down to the greater of $250,000 or 5% of Gross Receipts.

 EGSs operating exclusively as Brokers/Marketers are required to provide a financial security instrument in the amount of $10,000.

The security instrument should name the Pennsylvania Public Utility Commission as the obligee or beneficiary, and should contain the following language:

 This bond is written in accordance with Section 2809(c)(1)(i) of the Public Utility Code, 66 Pa. C.S. § 2809(c)(1)(i), to assure compliance with applicable provisions of the Public Utility Code, 66 Pa. C.S. §§101, et seq., and the rules and regulations of the Pennsylvania Public Utility Commission by the Principle as a licensed electric generation supplier; to ensure the payment of Gross Receipts Tax as required by Section 2810 of the Public Utility Code, 66 Pa. C.S. § 2810; to ensure the payment of annual fees as authorized by Act 155 of 2014; to adhere to the requirements of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1 *et seq*. and 52 Pa. Code 75.1 *et seq*.; and to ensure the supply of electricity at retail in accordance with contracts, agreements or arrangements. Payment of claims shall have the following priority: (i) The Commonwealth; (ii) Electric Distribution Companies for the reimbursement of Gross Receipts Tax; and (iii) Private individuals. Proceeds of the bond may not be used to pay any penalties or fines levied against the Principal for violations of the law, or for payment of any other tax obligations owed to the Commonwealth.

 The **ORIGINAL** bond or other financial instrument must be submitted by overnight delivery to the Secretary of the Pennsylvania Public Utility Commission, 400 North Street, Keystone Building, Harrisburg, PA 17120.

Letter of Credit

|  |  |  |
| --- | --- | --- |
| **ISSUING BANK, HEREINAFTER SURETY:**[Bank Name][Bank Address] | **IRREVOCABLESTANDBYLETTER OF CREDIT** | **NUMBER** |
| **PLACE OF ISSUE, HEREINAFTER SURETY LOCATION:**[Bank Location] | **AMOUNT:** USD $\_\_\_\_\_\_\_\_\_UP TO AN AGGREGATE THEREOF |
| **APPLICANT:** | **BENEFICIARY:**PENNSYLVANIA PUBLIC UTILITY COMMISSION400 NORTH STREETHARRISBURG, PA 17120 |
| **DATE OF ISSUE:**[Date of Issue] | **PLACE AND DATE OF EXPIRY:**[Expiration Date]AT OUR COUNTERS |
| **PARTIAL DRAWINGS PERMITTED** | **CREDIT AVAILABLE WITH:**[Bank Name][Bank Division][Bank Address]**BY: PAYMENT**AGAINST PRESENTATION OF DOCUMENTSDETAILED HEREIN AND DRAFTS AT SIGHT**DRAWN ON:**[Bank Name][Bank Location] |

LADIES/GENTLEMEN,

WE HEREBY ISSUE OUR IRREVOCABLE LETTER OF CREDIT NO. ***[LETTER OF CREDIT NUMBER]*** IN YOUR FAVOR FOR THE ACCOUNT OF ***[APPLICANT NAME]***, HEREINAFTER PRINCIPAL,FOR AN AGGREGATE AMOUNT UP TO USD \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ US DOLLARS). THIS LETTER OF CREDIT WILL EXPIRE ON ***[MONTH DAY, YEAR]****.*

THIS LETTER OF CREDIT IS WRITTEN IN ACCORDANCE WITH SECTION 2809 (C)(1)(I) OF THE PUBLIC UTILITY CODE, 66 PA. C.S. SECTION 2809 (C)(1)(I), AND WE ARE ADVISED THAT IT WILL ENSURE COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE PUBLIC UTILITY CODE, 66 PA. C.S. SECTION 101, ET SEQ, AND THE RULES AND REGULATIONS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION BY PRINCIPAL, AS A LICENSED ELECTRIC GENERATION SUPPLIER, TO ENSURE THE PAYMENT OF GROSS RECEIPTS TAX AS REQUIRED BY SECTION 2810 OF THE PUBLIC UTILITY CODE, 66 PA. C.S. SECTION 2810; TO ENSURE THE PAYMENT OF ANNUAL FEES AS AUTHORIZED BY ACT 155 OF 2014; TO ADHERE TO THE REQUIREMENTS OF THE ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT, 73 P.S. § 1648.1 ET SEQ. AND 52 PA.CODE 75.1 ET SEQ.; AND TO ENSURE THE SUPPLY OF ELECTRICITY AT RETAIL IN ACCORDANCE WITH CONTRACTS, AGREEMENTS OR ARRANGEMENTS.

WE ARE ADVISED THAT: 1. PAYMENTS MADE PURSUANT TO THIS LETTER OF CREDIT SHALL BE APPLIED FIRST TO THE BENEFIT OF THE COMMONWEALTH, AND SECOND, TO ANY AND ALL RETAIL ELECTRIC GENERATION CUSTOMERS TO WHOM PRINCIPALMAY BE HELD LEGALLY LIABLE FOR FAILURE TO SUPPLY ELECTRIC GENERATION PURSUANT TO CONTRACT, AGREEMENTS OR ARRANGEMENTS; 2. ANY CLAIMS MADE BY THE COMMONWEALTH SHALL HAVE PRIORITY OVER CLAIMS MADE BY PRIVATE INDIVIDUALS; AND 3. PROCEEDS OF THE LETTER OF CREDIT MAY NOT BE USED TO PAY PENALITIES OR FINES LEVIED AGAINST PRINCIPAL FOR VIOLATIONS OF THE LAW, OR FOR PAYMENT OF ANY OTHER OBLIGATIONS OWED TO THE COMMONWEALTH.

THE SAID AMOUNT IS AVAILABLE BY DRAFTS ON US BY THE PENNSYLVANIA PUBLIC UTILITY COMMISSION ("PUC") AT SIGHT ACCOMPANIED BY THE PUC'S LETTER REQUESTING PAYMENT UNDER THIS CREDIT AND PURPORTEDLY SIGNED BY EITHER AN OFFICER OF THE PUC OR THE SECRETARY OF THE PUC. SUCH LETTER FROM THE PUC SHALL INCLUDE THE PRINCIPAL’S NAME, A STATEMENT OF THE AMOUNT OWED THE PUC, AND A STATEMENT THAT "SUCH AMOUNT IS DUE TO THE PUC PURSUANT TO THE PUBLIC UTILITY CODE, THE GROSS RECEIPTS TAX, THE ANNUAL FEES, THE REQUIREMENTS OF THE ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT, OR ELECTRICITY SUPPLY OBLIGATIONS OF PRINCIPAL’SLICENSE TO OFFER, RENDER, FURNISH OR SUPPLY ELECTRICITY OR ELECTRIC GENERATION SERVICES TO THE PUBLIC IN THE COMMONWEALTH OF PENNSYLVANIA; AND, THAT PRINCIPAL FAILED TO PAY THAT AMOUNT."

PARTIAL DRAWINGS ARE PERMITTED UNDER THIS CREDIT.

THIS LETTER OF CREDIT EXPIRES AT THIS OFFICE AT OUR CLOSE OF BUSINESS ON ***[MONTH DAY, YEAR]***.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED FOR PERIODS OF ONE YEAR EACH FROM THE PRESENT OR ANY FUTURE EXPIRY DATE, UNLESS WE NOTIFY YOU IN WRITING AT LEAST 90 DAYS PRIOR TO SUCH EXPIRY DATE THAT WE ELECT NOT TO FURTHER EXTEND THIS LETTER OF CREDIT UPON RECEIPT OF SUCH NOTICE, YOU MAY DRAW ON THIS LETTER OF CREDIT, UP TO THE UNUSED BALANCE, BY PRESENTATION OF YOUR SIGHT DRAFT DRAWN ON SURETY, AT SURETY LOCATION, ON OR BEFORE THE THEN RELEVANT EXPIRY DATE.

EACH DRAFT MUST BE MARKED TO INCLUDE THE SURETY NAME, SURETY LOCATION, AND LETTER OF CREDIT NUMBER.

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE “UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600".

WE HEREBY AGREE WITH YOU THAT YOUR DRAFTS DRAWN HEREUNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF PRESENTED TO US AT OUR ADDRESS SHOWN ABOVE BEFORE OUR CLOSE OF BUSINESS ON THE ABOVE MENTIONED DATE.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 AUTHORIZED SIGNATURE AUTHORIZED SIGNATURE