



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE

August 3, 2021

Docket No. A-2021-3027472
Utility Code: 1124378

EMAIL

ANTHONY GODFREY CFO
INSIGHT SOURCING GROUP LLC
5555 TRIANGLE PARKWAY SUITE 300
NORCROSS GA 30092

RE: Electric Generation Supplier License Application

Dear Mr. Godfrey:

On July 27, 2021, the Public Utility Commission accepted Insight Sourcing Group, LLC's application for an Electric Generation Supplier license. The application was incomplete. In order for us to complete our analysis of your application, the Energy Industry Group requires answers to the attached question(s).

Please be advised that you are directed to forward the requested information to the Commission within **20** days from the date of this letter. Failure to respond may result in the application being denied. As well, if Insight Sourcing Group, LLC has decided to withdraw its application, please reply notifying the Commission of such a decision.

Please forward the information to the Secretary of the Commission at the address listed below. When submitting documents, all documents requiring notary stamps must have original signatures. Please note that some responses may be e-filed to your case, <http://www.puc.pa.gov/efiling/default.aspx>. A list of document types allowed to be e-filed can be found at <http://www.puc.pa.gov/efiling/DocTypes.aspx>.

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Your answers should be verified per 52 Pa Code § 1.36. Accordingly, you must provide the following statement with your responses:

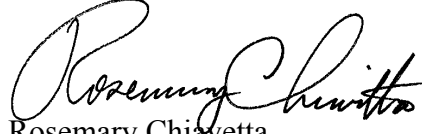
I, Tom Beaty, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the

statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

The blank should be filled in with the name of the appropriate company representative, and the signature of that representative should follow the statement.

In addition, to expedite completion of the application, please also e-mail the information to Jordan Van Order at jvanorder@pa.gov. Please direct any questions to Jordan Van Order, Bureau of Technical Utility Services, at jvanorder@pa.gov (preferred) or (717) 787-8763.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary

Enclosure

Docket No. A-2021-3027472
Insight Sourcing Group, LLC
Data Request

1. Reference Application, Section 5.c, Customer/Regulatory/Prosecutory Actions.
The Electric Generation Supplier (EGS) Application states: **Applicant should also include if it had a Pennsylvania PUC EGS or NGS license previously cancelled by the Commission.** Please confirm or deny if Insight Sourcing Group, LLC at Docket No. A-2021-3027472, currently applying for an EGS license, is the same Insight Sourcing Group, LLC at Docket No. A-2017-2639469 that had a license cancelled by the Pennsylvania Public Utility Commission on January 6, 2020. If this is the same company, the Applicant must provide an updated Application page with the requested information or its Application may be denied.

Please see the attached letter that the PA PUC issued ISG in response to our petition regarding our revoked license. Essentially we were late in providing our bond continuation certificate. While we were late, we did eventually provide the bond, but somehow it got lost within the PUC. Regardless of this fact, they still revoked the license.

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

Public Meeting held January 14, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
David W. Sweet, Vice Chairman
John F. Coleman, Jr.
Ralph V. Yanora

Petition of Insight Sourcing Group, LLC for
Reconsideration of the Pennsylvania Public Utility
Commission's Final Order entered January 6, 2020
and Reinstatement as a Broker/Marketer of Electric
Generation Supplier Services

A-2017-2639469

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) is the Petition of Insight Sourcing Group, LLC (ISG or the Company) for Reconsideration of the Commission's Final Order entered on January 6, 2020, which cancelled the Company's electric generation supplier (EGS) license.¹ Through this Petition, ISG seeks reinstatement of its license to operate as an EGS in the Commonwealth.

The Public Utility Code and Commission regulations require an EGS to furnish and maintain a bond or other financial security approved in form and amount by the Commission. *See* 66 Pa. C.S. § 2809(c)(1)(i) and 52 Pa. Code § 54.40. ISG's license was cancelled due to the Company's failure to maintain an approved financial security instrument on file at the Commission. Through this Order, the Commission denies ISG's

Petition for Reconsideration, but advises the Company that it may file a new application with the Commission if it wishes to provide electric generation supplier services in Pennsylvania as a broker/marketer in the future.

BACKGROUND

On March 1, 2018, the Commission issued ISG a license to provide electric generation supplier services in the Commonwealth as a broker/marketer. *See* Docket No. A-2017-2639469. ISG furnished a bond through Selective Insurance Company of America (Selective Insurance) effective July 24, 2017. On July 30, 2018, the original bond, which expired on September 1, 2018, was continued until September 1, 2019. By letter dated June 18, 2019, the Commission's Bureau of Technical Utility Services advised ISG (1) that its bond was set to expire on September 1, 2019 and (2) to file a new or updated financial security instrument with the Commission to maintain its license. ISG did not provide a new or updated financial security instrument.

On November 14, 2019, the Commission provided a second warning to ISG when it entered an Order tentatively cancelling the Company's EGS license due to its failure to maintain a bond or other financial security approved by the Commission.² The *Tentative Order* made clear that failure to timely file a proper financial security instrument may result in cancellation of ISG's license. *Tentative Order* at 2-3. The Commission served the *Tentative Order* on ISG, the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission's Bureau of Investigation & Enforcement, the Pennsylvania Department of Revenue, and all jurisdictional electric distribution companies (EDCs).

¹ *Electric Generation Supplier License Cancellations of Companies with an Expired Financial Security*, Docket No. M-2019-3006865 (Final Order entered January 6, 2020) (*Final Order*).

² *Electric Generation Supplier License Cancellations of Companies with an Expired Financial Security, Insufficient Financial Security Amount or Language*, Docket No. M-2019-3006865 (Tentative Order entered November 14, 2019) (*Tentative Order*).

The Commission also published the *Tentative Order* in the *Pennsylvania Bulletin*,³ providing for a 30-day comment period. The *Tentative Order* made clear that, absent the filing of adverse public comment or an approved financial security within those 30 days, the Commission would issue a final order formally cancelling ISG's EGS license. ISG did not file an adverse comment, nor did the Company timely file an approved financial security instrument with the Commission. No other party filed comments regarding the tentative cancellation of ISG's license. Therefore, the Commission entered its *Final Order* on January 6, 2020, cancelling ISG's EGS license.

On February 3, 2020, the Commission received ISG's Petition for Reconsideration of the *Final Order* and Reinstatement of its EGS License, which included a certificate continuing the Company's bond with Selective Insurance until September 1, 2020. However, the bond continuation certificate had no effect because it was received *after* ISG's license had been cancelled.

Although ISG described its February 3, 2020 filing as a Petition for Reconsideration, it was not filed within 15 days of the Commission's *Final Order* (entered January 6, 2020) as required by the Commission's regulations at 52 Pa. Code § 5.572(c). As such, the Company's Petition will be treated as a Petition for Rescission or Amendment, which can be filed at any time. *See* 66 Pa. C.S. § 703(g) and 52 Pa. Code Section 5.572(d).

DISCUSSION

A. Legal Standards

Both the Public Utility Code and Commission regulations require that an EGS furnish to the Commission a bond or other approved financial security instrument to ensure the EGS's financial responsibility and the supply of electricity at retail in

³ 49 Pa.B. 7148 (November 30, 2019).

accordance with contracts, agreements, or arrangements. 66 Pa. C.S. § 2809(c)(1)(i) and 52 Pa. Code § 54.40. No license will be issued or remain in force unless the EGS maintains and provides to the Commission a valid bond. *Id.*

Pursuant to the Public Utility Code, an EGS has the right to seek relief from a Commission order cancelling its license. *See* 66 Pa. C.S. § 703(g) (relating to the rescission and amendment of orders). Such a request for relief must be consistent with Commission regulations. *See* 52 Pa. Code § 5.572 (relating to petitions for relief following the issuance of a final decision).

The standards for granting a Petition for Rescission or Amendment were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982):

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard, we agree with the Court in the *Pennsylvania Railroad Company* case, wherein it was stated that “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them . . .” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.

Duick, 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)).

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince the Commission that it should exercise its discretion to amend or rescind a prior order, in whole or in part. However, such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked by the Commission. *Duick*, 56 Pa. P.U.C. at 559.

The Commission has administrative discretion regarding whether to grant or deny a petition for rescission or amendment of an order filed under 66 Pa. C.S. § 703(g). *West Penn Power Co. v. Public Utility Commission*, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995). However, such a petition should only be granted judiciously and under appropriate circumstances because such an action results in the disturbance of a final order. *Id.* As such, the Commission has wide latitude to deny a petition for rescission or amendment, and its decision will not be overturned by an appellate court absent a showing that the Commission abused its discretion. *Id.*

B. Petition

Through ISG's Petition, the Company requests that the Commission reconsider its *Final Order* cancelling its EGS license and reinstate the license. ISG claims that the Company maintained its bond coverage with Selective Insurance and that its bond renewal to September 1, 2020 was completed on time and sent to the Commission. However, ISG acknowledges that an error may have occurred when Selective Insurance sent the bond continuation certificate to the Commission.

In addition, ISG notes that on September 16, 2019 Selective Insurance issued a bond reinstatement notice to the Commission. Further, the Company claims that it received a copy of the bond continuation certificate provided to the Commission by Selective Insurance. Finally, ISG asserts that, after receiving the *Tentative Order*, the Company confirmed with Selective Insurance that bond coverage was in place and that the continuation certificate had been provided to the Commission. ISG admits that it took no further action to confirm receipt of the certificate by the Commission.

C. Disposition

Although ISG's failure to file an updated bond appears to be unintentional, we will deny the Company's request for relief because it failed in its duty to file evidence of

continuous bond coverage with the Commission. The Commission does not take lightly an EGS's failure to furnish evidence of a bond, bond continuation certificate, or other financial security instrument.

ISG's bond through Selective Insurance on file with the Commission expired on September 1, 2019. On June 18, 2019, more than two months before the expiration date, the Commission sent the Company notice that its bond was set to expire on September 1. The notice letter also advised the Company that it would have to file a new or updated financial security instrument with the Commission to maintain its license. It appears that Selective Insurance may have continued ISG's bond through September 1, 2020. However, no such continuation certificate was provided to or received by the Commission until February 3, 2020, five months after the bond expired and almost one month after ISG's license was cancelled.

Accordingly, on November 14, 2019, the Commission entered its *Tentative Order*, which it published in the *Pennsylvania Bulletin*, tentatively cancelling ISG's license for failure to maintain a bond or other financial security. Even if ISG was under the mistaken impression that the Company or Selective Insurance had updated the bond, the *Tentative Order* put the Company on notice in mid-November that there was a problem.

Through the *Tentative Order*, the Commission again warned ISG that its bond had expired and gave the Company another opportunity to file an updated bond. ISG claims that it contacted Selective Insurance after receiving the *Tentative Order* and received communications from Selective Insurance that its bond had been properly updated and provided to the Commission. However, ISG took no steps to confirm with the Commission that the Commission had received and approved a bond or continuation certificate from Selective Insurance. On January 6, 2020, almost two months after entry of the *Tentative Order*, the Commission entered its *Final Order* formally cancelling

ISG's license. It was not until February 3, 2020, almost three months after entry of the *Tentative Order*, that the Company then attempted to contact the Commission to update its bond; however, by that time it was too late.

Although the Commission believes that ISG's failure to provide proof of its bond update was unintentional, that mistake does not excuse the Company's failure to respond to the Commission's warnings (via the bond renewal notice letter and the *Tentative Order*) or, more importantly, its failure to comply with the bonding requirements of the Public Utility Code and the Commission's regulations. 66 Pa. C.S. § 2809(c)(1)(i) and 52 Pa. Code § 54.40. Those requirements include a duty of the EGS/licensee to *furnish* a bond to the Commission and receive Commission approval of that bond. While ISG may have *maintained* a valid bond with its surety through September 1, 2020, the Company clearly failed to *furnish* the bond continuation certificate to the Commission and receive Commission approval. Under the circumstances, the Commission finds that ISG's Petition does not satisfy the *Duick* standard governing petitions for reconsideration, rescission, and/or amendment.

A petition for reconsideration is governed by *Duick*, which essentially requires the Commission to perform a two-step analysis. First, the Commission must determine whether the petitioner has offered any new arguments that were not addressed by the Commission in its previous order. The Commission will not reconsider its previous decision based on arguments that have already been made. Second, the Commission must evaluate any new argument or evidence and decide whether modification of its previous order is warranted. However, the Commission will not necessarily modify a prior order just because a petitioner offers a new argument that was not addressed by the Commission in its previous order.

Here, ISG argues in support of its Petition that (1) it maintained bond coverage with its surety; (2) its bond was renewed on time and (3) it mistakenly believed, after checking with the surety, that the bond continuation certificate was furnished to the Commission. To the extent that ISG's argument can be considered "new and novel" because it was not made to the Commission until *after* the *Final Order* had been entered, the Commission sees no reason to reconsider, rescind, or amend its *Final Order*. ISG's error is entirely self-inflicted. And because of that error, the Commission had reason to believe that the Company's bond had expired. ISG had sufficient warning and time to correct its mistake but failed to even attempt to do so until after its license had already been canceled. As such, the Company's Petition presents no compelling reason for the Commission to reconsider, rescind, or amend its *Final Order*.

ISG also asserts, correctly, that Selective Insurance issued a bond reinstatement notice to the Commission on September 16, 2019. However, that fact does not offer proof that the Company's bond was continued beyond its September 1, 2019 expiration date. As noted above, the Commission never received a certificate continuing ISG's bond beyond September 2019. On September 6, 2019, the Commission received from Selective Insurance a notice cancelling the ISG bond effective November 8, 2019. Ten days later, as ISG states, the Commission received from Selective Insurance a notice rescinding the prior cancellation and reinstating the bond. However, the Commission had no evidence that the bond had been continued beyond September 1, 2019. As such, it appeared to the Commission that ISG and Selective Insurance had cancelled and then reinstated a bond that had already expired. Again, these circumstances do not present a compelling reason for the Commission to reconsider, rescind, or amend its *Final Order*.

It is incumbent upon every EGS to take steps to ensure not only that its financial security is updated with its surety or bank, but also that the updated bond or letter of credit is submitted to and accepted by the Commission. That ISG failed to ensure that the

Commission received and approved its bond continuation certificate is the Company's fault alone.

Ultimately, ISG did not meet the Commission's requirement to furnish evidence that the Company was in compliance with its bonding obligations under Section 2809(c) of the Public Utility Code. 66 Pa. C.S. § 2809(c). The Company's bond on file with the Commission expired on September 1, 2019. Although Selective Insurance may have continued ISG's bond to September 1, 2020, ISG clearly did not follow applicable procedures to ensure that the continuation certificate was *furnished* to and approved by the Commission. This, despite the fact that, the Commission—through the *Tentative Order* entered on November 14, 2019—put ISG on notice that its bond had expired and gave the Company nearly two months to take corrective action, such as filing comments or contacting Commission staff, before its license was cancelled via the *Final Order*. The duty is expressly on the EGS to provide the Commission with a valid financial security instrument. 66 Pa. C.S. § 2809(c)(1)(i) and 52 Pa. Code § 54.40. ISG failed to do that.

Furthermore, in applying for an EGS License, ISG agreed to lawfully abide by all Commission regulations, procedures, and orders. To be licensed as an EGS and to maintain that license, ISG must demonstrate that it “is fit, willing and able to properly perform the service proposed in conformance with applicable provisions of the code and the lawful Commission orders and regulations” to perform the functions of an EGS, as a broker/marketer. *See* 52 Pa. Code § 54.37(a)(1). In its Petition, ISG admitted that it only communicated with Selective Insurance, not the Commission after it received notice that the Commission did not have a valid bond on file for ISG.

While we appreciate ISG's candor, we find that these admissions demonstrate that

ISG lacks the technical fitness to be a licensed EGS in this Commonwealth. ISG should have had business controls in place to ensure that its surety transmitted the bond continuation to the Commission and that the Commission accepted and approved that continuation. Accordingly, in addition to its failure to maintain an approved bond or surety with the Commission, we find that ISG's lacks the technical fitness to be a licensed EGS in this Commonwealth and deny the Petition on this ground as well.

It is incumbent upon every EGS to ensure that its financial security updates are received and approved by the Commission. In addition, it is incumbent on all licensed EGSs to demonstrate and maintain their fitness to perform all the services of that license and conform with all applicable provisions of the code and the lawful Commission orders and regulations, which ISG failed to demonstrate. Accordingly, we will deny ISG's Petition for Reconsideration. However, we note that the Company may file a new application with the Commission if it wishes to provide electric generation supplier services as a broker/marketer in Pennsylvania.

CONCLUSION

The Commission has broad discretion to deny ISG's request to reconsider, rescind, or amend a *Final Order*. Given the importance of the EGS financial security requirements to the operation of Pennsylvania's competitive retail electric market, ISG's failure to furnish an updated bond to the Commission cannot be excused. As such, the Commission denies the Company's Petition. However, in recognition of the fact that ISG's failure to update its bond appears to be a one-time mistake and of the Company's efforts to update its bond, the Commission notes that ISG may file a new application to provide electric generation supplier services as a broker/marketer in the Commonwealth. If ISG, or any of its successors, does apply to provide electric generation supplier services, in any capacity, it must acknowledge this license cancellation and provide

information on what business controls it has in place to ensure compliance with the Code and the lawful Commission orders and regulations.

THEREFORE,

IT IS ORDERED:

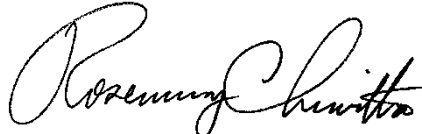
1. That Insight Sourcing Group, LLC's Petition for Reconsideration and request for reinstatement of its electric generation supplier license is denied consistent with this Opinion and Order.

2. That Insight Sourcing Group, LLC may file with the Commission a new application for an electric generation supplier license. If Insight Sourcing Group, LLC, or any of its successors, does apply to provide electric generation supplier services, in any capacity, it must acknowledge this license cancellation and provide information on what business controls it has in place to ensure compliance with the Code and the lawful Commission orders and regulations.

3. That a copy of this Order be served on Insight Sourcing Group, LLC; the Office of Consumer Advocate; the Office of Small Business Advocate; the Commission's Bureau of Investigation and Enforcement; the Pennsylvania Department of Revenue – Bureau of Compliance, Business License Clearance Division; and all jurisdictional electric distribution companies.

4. That this proceeding at Docket No. A-2017-2639469 be marked as closed.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 14, 2021

ORDER ENTERED: January 14, 2021