**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held November 18, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

John F. Coleman, Jr., Vice Chairman

Ralph V. Yanora

Hudson Energy Services LLC Request for A-2010-2192137

Renewal of a Reduction in Level of Security

for Electric Generation Supplier

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Reconsideration from Staff Action (Petition) regarding Hudson Energy Services LLC (Hudson or the Company) filed on October 21, 2021.[[1]](#footnote-1) The Petition is in response to a Secretarial Letter issued by the Commission on October 1, 2021 (*October 2021 Secretarial Letter*). For the reasons stated herein, we shall deny the Petition, consistent with this Opinion and Order.

1. **History of the Proceeding**

On September 20, 2021, the Company filed a Compliance Filing with the Commission requesting permission to maintain its Electric Generation Supplier (EGS) financial security level of 5% of its most recent twelve months of gross revenue (5% Annual Compliance Filing).[[2]](#footnote-2) The Company requested that the same bond reduction renewal date of December 9, 2022, be set for it and its two affiliates, as has been done in the past, in order to streamline the process. Compliance Filing at 3-4. On September 29, 2021, the Company filed its Supplemental Compliance Filing, which included proof of payment of the Supplemental Assessment fee due October 10, 2021.

The *October 2021 Secretarial Letter* advised the Company that the 5% Annual Compliance Filing was denied.[[3]](#footnote-3) The reason for the denial of the 5% Annual Compliance Filing was stated as follows:

The financial security is designed “to ensure the financial responsibility of the electricity generation supplier and the supply of electricity at retail in accordance with contracts, agreements or arrangements[[4]](#footnote-4).” Because of the ongoing Bankruptcy Proceeding, we find considerable uncertainty regarding Hudson Energy Services’ ability to fulfil its future annual obligations under Section 2809. In particular, we have concerns regarding Hudson Energy Services’ ability to fulfil its obligations related to gross receipts taxes, Alternate Energy Portfolio Standards (AEPS) and the Commission’s Annual Fee levied on EGSs. Because of these uncertainties, we believe that it is prudent to require Hudson Energy Services to increase its current financial security level to 10% of its most recent four quarters of revenue.

*October 2021 Secretarial Letter* at 1.

In addition, the *October 2021 Secretarial Letter* notified the Company that the action contained therein would be deemed the final action of the Commission unless a petition for reconsideration is filed with the Secretary within twenty days. *Id*. at 2.

As stated, *supra*, on October 21, 2021, the instant Petition was filed by the Company. No response to the Petition has been filed.

1. **Background**

The Public Utility Code (Code), and the Commission’s Regulations promulgated thereunder, require EGSs doing business in Pennsylvania to maintain financial security at levels meant to ensure the financial responsibility of the EGS.[[5]](#footnote-5) 66 Pa. C.S. § 2809(c); 52 Pa. Code § 54.40. The specific purposes of the security requirement are: (1) to ensure payment of the Gross Receipts Tax (GRT) owed to the Department of Revenue; (2) to ensure the supply of electricity at the retail level in accordance with contracts, agreements, or arrangements; and (3) to ensure payment of any alternative compliance payments owed to the Pennsylvania Sustainable Energy Funds under the Alternative Energy Portfolio Standards Act of 2004 (AEPS Act).[[6]](#footnote-6) 66 Pa. C.S. §§ 2809(c)(1)(i) and (ii) and 2810; 52 Pa. Code § 54.40(f)(2); *See* 73 P.S. § 1648.3(f) and (g).

The Commission’s authority to establish, and determine the form and amount, of financial security requirements for EGSs is set forth in the Code. Section 2809(c) provides, in pertinent part:

In order to ensure the safety and reliability of the generation of electricity in this Commonwealth, no energy supplier license shall be issued or remain in force unless the holder…[f]urnishes a bond or other security approved by the Commission in form and amountto ensure the financial responsibility of the electric generation supplier and the supply of electricity at retail in accordance with contracts, agreements or arrangements.

66 Pa. C.S. § 2809(c)(1)(i).

The Commission’s Regulations at 52 Pa. Code § 54.40 provide specific details regarding the amount and form of bonds or other security for EGSs. The initial security level for each EGS operating in Pennsylvania is $250,000. After the first year of an EGS’ operation, its security level is reviewed annually and modified, if necessary, primarily based on its reported annual gross receipts. The default security level that an EGS must maintain after its first year of operation is 10% of its reported annual gross receipts or $250,000, whichever is higher. However, a licensee may seek approval from the Commission of an alternative level of bonding, commensurate with the nature and scope of its operations. 52 Pa. Code § 54.40(c) and (d).

As a result of the Commission’s Investigation of Pennsylvania’s Retail Electric Market at Docket No. I‑2011-2237952, the feasibility of reducing the security amount EGSs were required to maintain after their first year of operation from 10% of annual gross receipts to 5% of annual gross receipts was reviewed. Following this review, the Commission issued an Order permitting an EGS, after its first year of operation, to seek a security level of 5% of its most recent twelve months of revenue or $250,000, whichever is higher. *Public Utility Commission Bonding/Security Requirements for Electric Generation Suppliers; Acceptable Security Instruments*, Docket No. M-2013-2393141 (Order entered July 24, 2014). The Commission concluded that, among other things, requiring an EGS to post a bond or security in the amount of 10% of gross receipts after the first year of operation “may be excessive in relation to the risk intended to be secured, unnecessarily burdening EGSs, and presenting a potential barrier to entry into Pennsylvania’s retail electric market.” *Id*. at 10. Ultimately, the Commission felt that the 5% security level was adequate in most circumstances to cover the liabilities the security was meant to insure. Going forward, an EGS seeking to reduce its security level was required to file a formal petition, and certain supporting information, with the Commission and the authority to review uncontested requests for a reduction in the level of bonding was delegated to the Commission’s Bureau of Technical Utility Services. *Id*.[[7]](#footnote-7)

The Commission further streamlined the process for EGSs to obtain reductions in their annual security obligations in an Order entered on September 20, 2018. This revised process allowed for the submittal of a Compliance Filing for the renewal of security rather than a formal Petition for EGSs that have received prior approval for a reduced financial security amount of 5%. The previous requirement that a Secretarial Letter be issued approving the bond reduction renewal was also rescinded. *Petition of the Retail Energy Supply Association to Simplify the Financial Security 5% Renewal Process*, Docket No. P-2017-2608078 (Order entered September 20, 2018).

Hudson was initially approved for a 5% financial security reduction by Secretarial Letter on December 22, 2015. Thereafter, the Company received subsequent approvals to maintain the 5% level, including a Secretarial Letter issued on October 29, 2018, granting the level until the Company’s next financial security expiration/anniversary date.

1. **Discussion**
2. **Legal Standards**

Petitions for Reconsideration from Staff Action are governed by Section 5.44(a) of the Commission’s Rules of Administrative Practice and Procedure, which provides the following:

Actions taken by staff, other than a presiding officer, under authority delegated by the Commission, will be deemed to be the final action of the Commission unless appealed to the Commission within 20 days after service of notice of the action, unless a different time period is specified in this chapter or in the act.

52 Pa. Code § 5.44(a).

Before addressing the Petition, we are reminded that we are not required to consider, expressly or at great length, each and every contention raised by a party to our proceedings. *University of Pennsylvania, et al. v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

1. **Petition and Disposition**

In its Petition, the Company requests that the Commission reconsider the Commission Staff’s denial to maintain its EGS financial security level and approve the renewal of its reduced security amount of 5% of its most recent twelve months of revenue. Petition at 1, 12. The Company argues that reconsideration is appropriate because the denial of its reduced security level was based only on Commission Staff’s uncertainty regarding the Company’s ability to meet its GRT obligations, AEPS Act obligations, and its annual Commission assessment obligation during the twelve-month period beginning December 9, 2021. *Id*. at 5.

The Company avers that the Petition, the Affidavit of Just Energy Group, Inc.’s Chief Financial Officer Michael Carter, and additional materials, information and considerations provided therein, which was not previously considered by the Commission or Commission Staff, eliminates any uncertainty the Commission might have regarding the Company’s ability to meet its obligations. Specifically, the Company contends that any increase in its security costs is unnecessary and unreasonable due to: (1) the protection and future relief from claims provided by the Bankruptcy Proceeding; (2) the interim financing the Company has in place; (3) the Company’s ability to continue to meet its financial obligations in the normal course; and (4) potential legislative relief from some of the extraordinary costs that necessitated the Bankruptcy Proceeding in the form of new securitization funds. The Company also states that granting this Petition will assist it by eliminating additional financial costs, which can be done without undue risk to the public interest. *Id*.

The Company explains that it, along with other Just Energy Group, Inc. affiliates (Just Energy Entities), filed for and has been granted bankruptcy protection in the United States Bankruptcy Court for the Southern District of Texas and the Ontario Superior Court of Justice in Canada. The Bankruptcy Proceedings were initiated due to significant losses and liquidity challenges for the Just Energy Entities resulting from 2021 winter storms in Texas that required the use of spot market purchases at high costs to meet extraordinarily high customer demand because significant energy resources went offline. The purpose of the Bankruptcy Proceedings is to allow a restructuring of the finances of the Just Energy Entities, while continuing operations under the bankruptcy protection. Petition at 5-7; Appendix 3, Affidavit of Michael Carter, Chief Financial Officer, Just Energy Group, Inc. (Affidavit) at 1-2.

The Company states that it is committed to continuing to meet its financial and regulatory operations during the pendency of the Bankruptcy Proceedings. The Company notes that the Ontario Superior Court of Justice approved a debtor-in-possession financing facility for $125 million, and these funds are allocated, as needed, to the Company and its affiliates for operational and regulatory purposes. Also, the Company states that FTI Consulting Canada, the Bankruptcy Proceedings Monitor (Bankruptcy Monitor), submitted a cash flow forecast in September 2021 indicating that for the period ending on January 1, 2022, the Just Energy Entities will have $76.6 million in cash on hand to use to continue to meet operational costs in the normal course of business.[[8]](#footnote-8) Petition at 7-8; Affidavit at 2-3.

The Company also describes legislation signed by the Governor of Texas on June 16, 2021 (HB 4492), which provides a mechanism for the partial recovery of costs incurred by certain energy market participants, including the Just Energy Entities, during a winter storm in Texas in February 2021. HB 4492 provides for the securitization of certain costs that occurred during the weather event. The Company states that the approved securitization mechanism provides an opportunity for partial financial recovery to the Just Energy Entities that will strengthen their financial position. Petition at 8; Affidavit at 3-4.

Regarding the financial uncertainty raised in the *October 2021 Secretarial Letter* to pay the GRT due in the twelve months beginning December 9, 2021, the Company contends that adequate financial resources will be available to meet its 2022 GRT obligation. The Company states that the GRT for a calendar year is paid by March 15 of that year with a subsequent reconciliation payment of actual taxes owed, resulting in the majority of the GRT payments being made in March. The Company avers that following the initiation of the Bankruptcy Proceedings on March 9, 2021, it paid its GRT requirements on March 15, 2021, and it argues that this demonstrates the Just Energy Entities’ commitment to continue to make required payments to the tax and other regulatory authorities throughout the Bankruptcy Proceedings. The Company avers that the Just Energy Entities have taken actions since the winter storm in Texas in February 2021 that have stabilized the business and helped meet all of its customer and regulatory obligations, and it points to the Bankruptcy Monitor’s cash flow forecast to support its contention that the Just Energy Entities will have cash on hand, not including any securitization funds resulting from the HB 4492 process, to enable them to meet operational costs, including the Company’s GRT payment in 2022. Petition at 8-9; Affidavit at 4.

On the financial uncertainty raised regarding the Company’s ongoing ability to purchase appropriate amounts of alternative energy credits to satisfy its AEPS Act obligations, the Company points to its satisfaction of the AEPS Act requirements for energy year 2021 and its procurement of its estimated AEPS Act requirements for energy year 2022. The Company explains that the AEPS Act energy year runs from June through the following May, and it has already procured an approximate number of credits based on purchases made historically to satisfy its obligations for energy year 2022. While the final number of the AEPS Act requirements for energy year 2022 cannot be confirmed until electricity sales for that period have occurred, the Company contends that its advanced purchase of “typical” AEPS Act requirements substantially reduces any uncertainty regarding whether it will be able to fulfill this financial obligation. Petition at 9-10; Affidavit at 4-5.

Regarding financial uncertainty to satisfy the payment of the Commission’s annual regulatory fees, the Company states that in 2021 it paid its minimum EGS fees by July 1, 2021, and October 10, 2021, after the Bankruptcy Proceedings commenced. Also, the Company reiterates that the Just Energy Entities have taken actions since the winter storm in Texas in February 2021 to stabilize the business, and it also points to the Bankruptcy Monitor’s cash flow forecast, to support its ability to meet operational costs and customer and regulatory obligations. Based on this, the Company contends that substantial liquidity is being maintained by the Just Energy Entities to address concerns regarding its ability to pay its 2022 Commission fees. Petition at 10-11; Affidavit at 4.

Finally, the Company states that the Just Energy Entities, including the Company, expect to successfully emerge from the Bankruptcy Proceedings in 2022. Affidavit at 5. The Company contends that until it emerges from bankruptcy, it is important that it does not incur unnecessary costs. Further, the Company argues that, based upon the information in the Petition, it would be unreasonable for the Commission to exercise its discretion to set security amounts for EGSs by increasing the Company’s required security costs above what has become the usual 5% amount. Rather, it argues that the continuation of the 5% renewal filing is justified. Petition at 11-12.

Upon review, we agree with the determination in the *October 2021 Secretarial Letter* that due to the ongoing Bankruptcy Proceedings, there is considerable uncertainty regarding the Company’s ability to fulfill its future annual obligations under 66 Pa. C.S. § 2809. As a result, we shall deny the Petition.

First, the Company, and its affiliates,[[9]](#footnote-9) initiated the Bankruptcy Proceedings due to their inability to meet certain financial obligations, resulting from significant losses and liquidity challenges that arose following the winter storm in Texas in February 2021. While the Commission appreciates the Company’s stated commitment to continuing to meet its financial and regulatory obligations during the pendency of the Bankruptcy Proceedings, there is no guarantee at this time how the Bankruptcy Proceedings will ultimately be resolved and, if or when, or how the Company and its affiliates will emerge from the proceedings. It is possible that bankruptcy may significantly impact and adversely affect a business, its operations and financial conditions, and relationships with other parties such as customers, vendors and contractors of any business. In addition, the existence, and the related extension or limitation, of a stay period associated with bankruptcy proceedings may impact the timing of collection by creditors, ultimately affecting the financial condition of a business. Therefore, we conclude that, with the results of the Bankruptcy Proceedings being currently unknown, there exists considerable uncertainty regarding the Company’s ability to fulfill its future annual obligations as an EGS operating in Pennsylvania under 66 Pa. C.S. § 2809.

Furthermore, the regulatory process to implement a securitization mechanism resulting from the recently enacted HB 4492 to provide the opportunity for partial recovery of certain costs related to the winter weather event is ongoing and not yet complete. While the regulatory process to finalize the amount of costs to potentially be recovered remains pending, it is possible that the amounts the Company anticipates to recover through the mechanism authorized by HB 4492 could potentially change. Therefore, any assurance of recovery at this time remains speculative. For that reason, uncertainty regarding the Company’s ability to fulfill its security amount of 5% of its most recent twelve months of revenue continues to exist.

Next, we will address the Company’s arguments that there is no financial uncertainty regarding its GRT, Commission fees, and AEPS Act obligations. While we recognize that the Company satisfied its 2021 GRT commitment after the Bankruptcy Proceedings were initiated, we are not persuaded that this necessarily means that the Company will have the financial ability to satisfy its 2022 GRT commitment. Such a backward look on GRT payment history does not address any future risk of potentially not having the financial ability to meet the forward-looking obligations considering the pending Bankruptcy Proceedings. While the majority of the annual GRT obligation is paid in March with a subsequent reconciliation to actual cost that follows, that payment is still due three months into the twelve-month period for which the financial security at issue here is meant to cover. Moreover, we are not persuaded by the Company’s similar arguments regarding its ability to satisfy the Commission’s annual regulatory fees. Therefore, we find that the uncertainty regarding the Company’s financial ability to fulfill its going-forward GRT and Commission fee obligations under Section 2809 of the Code is not mitigated by its past payment history of prior obligations.

Further, we find that the Company’s arguments with regard to satisfying its AEPS Act obligations are speculative. As we found with the Company’s arguments regarding the GRT and Commission fees, we are not persuaded by the backward-looking argument that satisfying the 2021 AEPS Act requirements will have any bearing on the forward-looking satisfaction of the 2022 AEPS Act requirements. In addition, the final AEPS Act obligations cannot be determined until electricity sales for that period have occurred. Thus, concluding at this time that the Company has procured enough alternative energy credits to satisfy its 2022 AEPS Act requirements is speculative and premature. For this reason, uncertainty regarding the Company’s financial ability to fulfill its going-forward AEPS Act obligations remains.

Finally, while we appreciate the Company’s efforts to not incur additional costs during the pending Bankruptcy Proceedings, we do not agree that it is unreasonable to set the financial security amount for the Company at 10% of its most recent twelve months of gross receipts. As a result of the Company’s pending Bankruptcy Proceedings, there is uncertainty regarding its financial ability to fulfill its future annual obligations under 66 Pa. C.S. § 2809. By law, the Commission is tasked with, *inter alia*, ensuring the continuation of safe and reliable electric service to all consumers in the Commonwealth. 66 Pa. C.S. § 2804(1). In so doing, we believe that it is reasonable to ensure the financial responsibility of the Company and the safe and reliable supply of electricity for Pennsylvania’s retail electric customers by denying a reduced amount of financial security while uncertainty regarding the Company’s financial ability to fulfill its obligations under 66 Pa. C.S. § 2809 exists. We do not reach our decision here without prior experience of scenarios involving EGSs and bankruptcy proceedings. In prior situations, the Commission took action to protect customers and the public interest against potential risks due to financial uncertainty associated with bankruptcy and insolvency proceedings.[[10]](#footnote-10) Moreover, the Company’s Petition represents that it is in a good financial position with the existence of the $125 million debtor-in-possession financing facility and $76.6 million cash on hand. Thus, obtaining a bond at the standard level of 10% of the Company’s most recent twelve-month gross receipts should be possible.

Accordingly, we conclude that due to the ongoing Bankruptcy Proceedings, there is considerable uncertainty regarding the Company’s ability to fulfill its future annual obligations under 66 Pa. C.S. § 2809. Therefore, we agree with the determination in the *October 2021 Secretarial Letter* that the Company’s request to maintain its reduced EGS financial security level of 5% of its most recent twelve months of revenue should be denied. To the extent the Company emerges from bankruptcy in 2022 as it anticipates in the Petition, and it is interested in requesting a reduced amount of its financial security in the future, the Company can submit a request for modification of its financial security level in accordance with the Commission’s Regulations at 52 Pa. Code § 54.40 and the Commission’s Orders at Docket Nos. M-2013-2393141 and P-2017-2608078.[[11]](#footnote-11)

1. **Conclusion**

For the reasons set forth above, we shall deny the Petition for Reconsideration from Staff Action regarding Hudson Energy Service LLC, consistent with this Opinion and Order; **THEREFORE**,

**IT IS ORDERED:**

1. That the Petition for Reconsideration from Staff Action regarding Hudson Energy Services LLC, filed on October 21, 2021, is denied, consistent with this Opinion and Order.
2. That this proceeding at Docket No. A-2010-2192137 be marked closed.

**A picture containing letter

Description automatically generatedBY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: November 18, 2021

ORDER ENTERED: November 18, 2021

1. On November 9, 2021, the Company submitted a letter to the Commission requesting expedited resolution of the Petition at least ten days prior to its security renewal date of December 9, 2021, to allow for sufficient time to prepare and submit its security instrument. [↑](#footnote-ref-1)
2. 2 Just Energy Pennsylvania Corp and Just Energy Solutions Inc., affiliates of Hudson, filed similar requests for renewal of their reduced security requirement of 5% with the Commission at Docket Nos. A-2009-2097544 and A-110117, respectively. [↑](#footnote-ref-2)
3. The *October 2021 Secretarial Letter* noted that the Company filed notice with the Commission on March 9, 2021, of its voluntary petition under Chapter 15 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (Bankruptcy Proceeding). Chapter 15 was added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to provide effective mechanisms for dealing with insolvency cases involving debtors, assets, claimants, and other parties of interest involving more than one country. 11 U.S.C. § 1501. We note that the Petition also references a Creditors Arrangement Act filing in Canada (CAA) made by the Company and its affiliates. The Bankruptcy Proceeding and the CAA (collectively, Bankruptcy Proceedings) in this Order. [↑](#footnote-ref-3)
4. 66 Pa. C.S. Section 2809(c)(1)(i). [↑](#footnote-ref-4)
5. On February 11, 2011, the Company received its initial license, at Docket No. A-2010-2192137, to operate as an EGS and provide electric generation supplier services to residential, small commercial, large commercial, industrial and governmental customers in Pennsylvania. [↑](#footnote-ref-5)
6. Alternative compliance payments may be imposed by the Commission if an EGS fails to comply with the requirements in the AEPS Act for electric energy sold to be comprised of prescribed percentages from certain types of alternative energy sources. 73 P.S. § 1648.3. [↑](#footnote-ref-6)
7. 7  In a Secretarial Letter issued on April 8, 2016, the Bureau of Technical Utility Services provided guidance on the process to renew the reduced security level, noting that a reduction in an EGS’ security level to 5% is effective only for one year and subject to annual renewal by the Commission. [↑](#footnote-ref-7)
8. The Company states that such forecasts are based on reasonable assumptions regarding future events, although actual variations in results may occur. Petition at 7. [↑](#footnote-ref-8)
9. Just Energy Group, Inc. is a large company providing electric and gas operations and serving customers in several states within the United States and territories in Canada. The expanse of its service territories and operations may make the need to satisfy and balance the various operational and regulatory requirements and obligations across those jurisdictions more challenging and uncertain during the pendency of the Bankruptcy Proceedings. [↑](#footnote-ref-9)
10. 10 *See* *Commodore Gas and Electric, Inc. Petition for Waiver of 52 Pa. Code § 54.40 Bonding Requirement; Petition for Waiver of Notice Requirements for Abandonment of Electric Generation Supplier License*, Docket No. A-110080 (Order entered May 4, 2001) (cancellation of EGS license due to the expiration of financial security and EGS’s inability to renew bond due to bankruptcy action); *Office of Consumer Advocate, et al. v. Utility.Com, Inc.*, Docket No. C-00014851, et al. (Order entered July 12, 2001) (addressing claims against financial security bond for liabilities of EGS that defaulted on financial obligations and subject to out-of-state insolvency process). [↑](#footnote-ref-10)
11. *Public Utility Commission Bonding/Security Requirements for Electric Generation Suppliers; Acceptable Security Instruments*, Docket No. M-2013-2393141 (Order entered July 24, 2014) *Petition of the Retail Energy Supply Association to Simplify the Financial Security 5% Renewal Process*, Docket No. P-2017-2608078 (Order entered September 20, 2018). [↑](#footnote-ref-11)