

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held June 15, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
Stephen M. DeFrank, Vice Chairman  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Application of Clark Energy Management LLC for  
Approval to Offer, Render, Furnish, or Supply  
Electricity or Electric Generation Services as a  
Broker/Marketer

Docket Number:  
A-2023-3038872

**ORDER**

**BY THE COMMISSION:**

On March 8, 2023, the Pennsylvania Public Utility Commission (Commission) accepted Clark Energy Management LLC's (Clark Energy Management), Utility Code 1126025, application to provide electric generation supplier (EGS) services as a broker/marketer in the electric distribution company service territories of Duquesne Light Company and Pennsylvania Power Company within 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. For the reasons expressed in this Order, the Commission approves the application consistent with this Order.

## **Legal Standard**

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.

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.

## **Applicant**

Clark Energy Management is a domestic limited liability company, formed in the Commonwealth of Pennsylvania as of November 12, 2022. Clark Energy Management 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. Clark Energy Management 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, Clark Energy Management has submitted three consecutive months of bank statements. Clark Energy Management has also supplied a business plan, previous experience in the electric and natural gas industries, and résumé data for its chief officer. Additionally, Clark Energy Management was previously licensed by the Commission to operate as a Natural Gas Supplier on May 18, 2023, at Docket No. A-2023-3039175. We find that sufficient information has been provided by Clark Energy Management 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.

### **Financial Security Requirements**

Clark Energy Management did not provide a \$250,000 bond as required; 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, Clark Energy Management 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 finds that the reasoning on which Clark Energy Management 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 finds that Clark Energy Management 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, Clark Energy Management's bonding level is contingent upon the company's business model as described in this Order. If Clark Energy Management 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 Clark Energy Management to notify the Commission 45 days prior to a change in its business model, whereby Clark Energy Management 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 Clark Energy Management's approved bonding level prior to Clark Energy Management implementing those changes.

It should be noted that, the licensee must comply with the Commission's regulations at 52 Pa. Code § 54.40(a) stating that an EGS license will not be issued or remain in force until the licensee furnishes a bond or other security approved by the Commission. In addition, 52 Pa. Code §54.40(d) states that the maintenance of an EGS license is contingent on the licensee providing proof to the Commission that a bond or other approved security in the amount directed by the Commission has been obtained.

Furthermore, each EGS must file an original bond, letter of credit, continuation certificate, amendment, or other approved financial instrument with Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA, 17120, at least 30-days prior to the EGS's current financial security expiration date. Each financial instrument must be an original document that displays a "wet" signature or digital

signature, preferably in blue ink, and displays a “raised seal” or original notary stamp. The name of the principal on the original financial instrument must match exactly with the name that appears on the EGS’s license issued by the Commission.

We take this opportunity to remind the licensee that failure to file an approved financial instrument at least 30-days before the current financial security’s expiration date may cause Commission staff to initiate a formal proceeding that may lead to the following: cancellation of each company’s electric supplier license, removal of each company’s information from the Commission’s website, and notification to all electric distribution companies, in which each company is licensed to do business, of the cancellation of the license.

### **Disposition**

Clark Energy Management has provided proofs of publication in the Pennsylvania newspapers and proofs of service to the interested parties as required by the Commission. As of June 6, 2023, 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.
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.

### **Regulatory Requirements**

As an electric generation supplier, Clark Energy Management, is required to comply with all applicable provisions of the Public Utility Code, Commission regulations and Commission Orders. *See* 66 Pa. C.S. § 2809(e). We will not address or list all such provisions in this Order, but will, however, highlight a few of them in this section.

Since Clark Energy Management will be serving residential customers, it is important to note that a licensee must 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 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 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 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. 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.

Furthermore, should Clark Energy Management employ any independent consultants to arrange for the sale of its energy products to end-users, it must inform such independent consultants that they will be required to be licensed as an EGS if they arrange for the sale of

energy products to end-users from another supplier or suppliers in addition to Clark Energy Management.

Finally, in order to assist in compliance with the regulatory requirements, we bring to your attention the Commission's Office of Competitive Market Oversight (OCMO) that serves to informally assist suppliers in participating in the retail market. OCMO is responsible for responding to questions from stakeholders, such as EGSs, regarding the competitive retail market. Additional responsibilities include monitoring issues hindering the development of a competitive retail market and facilitating informal dispute resolution between default service providers and suppliers. We advise you to contact OCMO and provide an email address to be included in their distribution list that is used to alert suppliers and utilities of important matters impacting the competitive retail market. OCMO can be reached at [ra-OCMO@pa.gov](mailto:ra-OCMO@pa.gov).

### **Required Reports and Fees**

As an electric generation supplier, Clark Energy Management, is required to provide various reports and remit fees to the Commission on a periodic basis. We will not address or list all such reports or fees in this Order, but will, however, highlight a few of them in this section.

Electric generation suppliers are required to file with the Commission quarterly reports due by the thirtieth day after the end of each calendar quarter. In addition, EGSs are required to file with the Commission an annual report on or before April 30 each year. These reports identify the EGS's gross Pennsylvania intrastate operating revenues from the prior calendar quarter for quarterly reports and the prior calendar year for the annual reports,<sup>1</sup> among other information. These quarterly and annual reports are to be

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<sup>1</sup> See 52 Pa. Code § 54.39(a) and (b)

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

Electric generation suppliers are also required to remit to the Commission applicable annual fees authorized by Act 155 of 2014.<sup>2</sup> These fees were established by order of the Commission<sup>3</sup> as a flat annual fee of \$350 to be paid by all licensed suppliers and brokers regardless of reported gross intrastate operating revenues due to the Commission by July 1 of each year. The fees are to be sent to Pennsylvania Public Utility Commission, Bureau of Administrative Services Fiscal Office, 400 North Street, Harrisburg, PA, 17120. Make checks payable to “Commonwealth of Pennsylvania.”

## **Conclusion**

We find that Clark Energy Management LLC is fit, willing, and able to properly perform the functions of an electric generation supplier, has agreed to abide by all Commission regulations, procedures, and orders, and has proposed to provide such service consistent with the public interest and the policies 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 Clark Energy Management LLC is hereby approved, consistent with this Order.

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<sup>2</sup> See 66 Pa. C.S. § 2209(g).

<sup>3</sup> *Final Implementation Order on Implementation of Act 155 of 2014*, at pgs. 3-8, Docket No. M-2014-2448825 (Order entered April 24, 2015) (*Final Implementation Order*).

2. That Clark Energy Management 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 Clark Energy Management LLC as long as Clark Energy Management 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.

4. That Clark Energy Management LLC must file an original bond, letter of credit, continuation certificate, amendment, or other approved financial instrument with Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA, 17120, at least 30-days prior to the EGS's current financial security expiration date.

5. That a license be issued authorizing Clark Energy Management LLC the right 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 the electric distribution company service territories of Duquesne Light Company and Pennsylvania Power Company in the Commonwealth of Pennsylvania.

6. That Clark Energy Management LLC shall file a quarterly report with the Pennsylvania Public Utility Commission by the thirtieth day after the end of each calendar quarter as required by 52 Pa. Code § 54.39(a).

7. That Clark Energy Management LLC shall file an annual report with the Pennsylvania Public Utility Commission by April 30 of each year as required by 52 Pa. Code § 54.39(b).

8. That Clark Energy Management LLC shall remit all applicable annual fees to the Pennsylvania Public Utility Commission by July 1 of each year as required by 66 Pa. C.S. § 2209(g).

9. That if Clark Energy Management 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 Clark Energy Management LLC's bonding level and adjust as appropriate, prior to Clark Energy Management LLC implementing the proposed changes to its business model.

10. That if Clark Energy Management LLC changes its business model without providing to the Commission the notice and information required in Ordering Paragraph No. 9, 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.

11. That this proceeding at Docket No. A-2023-3038872 be closed.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: June 15, 2023

ORDER ENTERED: June 15, 2023