

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

Public Meeting held December 5, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

Astral Energy, LLC Application for the
Abandonment of Electric Generation Supplier
License and Claim Against Surety Bond

Docket Number:
A-2024-3049057

ORDER

BY THE COMMISSION:

On May 16, 2024, the Pennsylvania Public Utility Commission (Commission) accepted Astral Energy, LLC's (Astral Energy), Utility Code 1116862, Application seeking to abandon its electric generation supplier (EGS) license as a supplier. The Application was filed by Genova Burns, representing the Bankruptcy Trustee¹ for Astral Energy. The Application included a request that the Commission file a claim against

¹ Case Number: 23-17424 VFP, Astral Energy is currently the debtor in a Chapter 7 Bankruptcy Proceeding before the United States Bankruptcy Court for the District of New Jersey.

Astral Energy’s EGS license bond on behalf of the Bankruptcy Trustee, with the proceeds to be included in and distributed through the Bankruptcy Estate. Astral Energy’s Application was filed pursuant to Pennsylvania Code, Title 52, Chapter 54, Subchapter B, Section 54.41 (Transfer or abandonment of license). 52 Pa. Code § 54.41.

Due to the ongoing bankruptcy proceeding, the Commission will hold Astral Energy’s Application in abeyance and will not render a decision on the Application for EGS license abandonment at this time. With this Order, however, the Commission will address the Bankruptcy Trustee’s request that the Commission file a claim against Astral Energy’s EGS license bond on behalf of the Trustee. For the reasons expressed in this Order, the Commission denies the Bankruptcy Trustee’s request that the Commission file a claim against Astral Energy’s surety bond to be included in the Bankruptcy Estate for purposes of paying the claims of the company’s creditors in Bankruptcy Court.

Background

Astral Energy was initially licensed by Commission Order entered February 26, 2015, to operate as a supplier of EGS services to residential, small commercial (25 kW and under demand), large commercial (over 25 kW demand), industrial, and governmental customers in all Electric Distribution Company service territories throughout the Commonwealth of Pennsylvania.² On August 25, 2023, the company filed a voluntary bankruptcy petition under Title 11, Chapter 7 of the United States Code.³ 11 U.S.C. Ch. 7. Donald V. Biase was appointed as the Chapter 7 Bankruptcy Trustee on behalf of Astral Energy. Biase’s duties as Bankruptcy Trustee include, among other things, a duty to “collect and reduce to money the property of the estate for which

² At Docket No. A-2014-2439632.

³ Chapter 7 relates to a bankruptcy filing where the company’s assets are liquidated and, at the conclusion of the bankruptcy proceedings, the company ceases to exist as a going concern. Astral Energy Application at ¶¶ 2-3.

such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest.” 11 U.S.C. § 704(a)(1). Astral Energy Application at ¶¶ 1-7.

Biase, through counsel, seeks to abandon Astral Energy’s Pennsylvania EGS license and notes that the company no longer serves customers in the Commonwealth. Biase asserts that, due to the bankruptcy, Astral Energy has “failed to comply with the contractual obligations it had to its suppliers, customers, and other entities,” resulting in non-payment to the company’s creditors totaling \$1,507,997.41. Astral Energy Application at ¶¶ 9-13, Exhibit C.

Biase goes on to note that Astral Energy has provided the Commission an EGS license bond with “a set value of \$250,000.00.” Further, Biase asserts that the bond should be included in Astral Energy’s Bankruptcy Estate with proceeds from the bond to be used to compensate the company’s creditors.⁴ To support his assertion that the bond can be used to compensate Astral Energy’s bankruptcy creditors, Biase notes the bond’s term stating:

The condition of this obligation is such...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 Receipt Tax; and (III) Private Individuals.

Astral Energy Application at ¶¶ 14-20.

Biase claims that the bankruptcy creditors’ losses were caused by Astral Energy’s “failure to supply electricity at retail in accordance with contracts, agreements or arrangements.” According to Biase, under the circumstances, the

⁴ Biase cites Section 544 of the U.S. Bankruptcy Code, 11 U.S.C. § 544, and *In re Emoral, Inc.*, 740 F.3d 875, 879 (3rd Cir. 2014) as support for this assertion.

Commission should determine that the company breached the terms of its license bond and make a claim against the bond on behalf of “the Bankruptcy Trustee for inclusion and distribution through the Bankruptcy Estate.” Then, Biase asserts, Astral Energy’s Application for Abandonment should be granted. Astral Energy Application at ¶¶ 21-24.

On July 19, 2024, the Commission’s Bureau of Technical Utility Services (TUS) served a data request on Biase seeking additional information on the nature of the bankruptcy creditors’ claims against the company. TUS requested additional information on the nature of each creditors’ contracts and agreements with Astral Energy in order to evaluate Biase’s claim that the debts relate to the supply of electricity at retail in Pennsylvania in accordance with contracts, agreements, or arrangements. On August 19, 2024, Biase, through Genova Burns, filed its response to TUS’s data request. In its response, Biase stated that “Astral Energy has no contracts...in place at this time” because the company is currently in Chapter 7 (liquidation) bankruptcy and no longer provides electric service to any retail customers. Biase stated that none of Astral Energy’s bankruptcy creditors “are presently covered by any explicit contracts, agreements, or arrangements, but are instead creditors pursuant to the action of the federal Bankruptcy Code, seeking recovery through the express and statutorily defined bankruptcy process.”

In addition, Biase acknowledged that Astral Energy operated as an electric supplier in Pennsylvania *and elsewhere* and asserted that the creditors’ claims were “part of Astral Energy’s business and operation.” As such, according to Biase, the bond’s proceeds “will serve to provide compensation for those creditors based upon Astral Energy’s operations in the Commonwealth.” Biase asserted that the company’s license bond, by its terms, covers all bankruptcy creditors’ claims because their losses resulted from Astral Energy’s failure to “provide the service it committed to” and “violation of the regulations, rules, or standards promulgated by the Commonwealth or *similar regulatory*

obligations from other States.” According to Biase, all bankruptcy creditors are “private individuals” who are entitled to proceeds from the bond. Biase also included the “District of New Jersey Claims Register” from the Bankruptcy Court.⁵ This form simply identifies Astral Energy’s creditors and the dollar amount claimed by each creditor. It does not identify the nature of the goods or services the creditor provided to Astral Energy, nor does it show how the claims relate to the supply of electricity at retail in Pennsylvania in accordance with contracts, agreements, or arrangements.

Because Biase’s response to TUS data request No. 1 failed to identify how the bankruptcy creditors’ claims relate to the supply of electricity at retail in Pennsylvania in accordance with contracts, agreements, or arrangements, TUS issued a second data request No. 2, on August 28, 2024. This request sought:

[A] detailed description or breakdown of each claim amount identified in the Claims Register you submitted in the responses to [TUS’s] first data requests dated July 19, 2024. This description or breakdown should, at a minimum, identify the goods and/or services each creditor provided to Astral Energy, LLC and on which each creditor’s claim is based.

On September 27, 2024, Biase, through Genova Burns, filed its response to TUS’s data request No. 2. Biase reiterated that Astral Energy is in bankruptcy and has no contracts, agreements, or arrangements in place because the company is no longer serving customers. In addition, Biase provided a list identifying the claims of 31 claimants, totaling approximately \$1.5 Million. This list summarized the Proofs of Claim each claimant filed in the bankruptcy proceeding, which Biase also included with his response to data request No. 2. Biase acknowledged that the list of Astral Energy’s creditors “includes entities both within the Commonwealth as well as other entities throughout the region.”

⁵ Biase had already included a copy of the “Claims Register” with Astral Energy’s Application to Abandon. *See* Astral Energy Application, Exhibit C. The list of creditors includes the New York State Department of Taxation and Finance and the State of New Jersey Division of Taxation, among others.

Of the 31 claimants, only four were identified as Pennsylvania residents. These four Pennsylvania claimants *appear* to be customers of Astral Energy, and their claims *appear* to be based on allegation of overbilling. However, the exact nature of these four claims is still not completely clear. The claims of the four Pennsylvania residents total \$1,928.90.⁶

Eleven of the 31 claims were from individuals or entities from New Jersey, including five claims from former Astral Energy employees for unpaid wages and a claim from the State of New Jersey Division of Taxation for unpaid state taxes. Nine of the claims came from individuals or entities from New York, including two claims from the New York Department of Taxation and Finance for unpaid corporate income taxes and sales taxes and a claim from the New York State Energy Research and Development Authority related to a zero-emission credit certificate program. Four other claims were from Texas or Oklahoma companies for unpaid natural gas transportation fees. Two claims were submitted by Massachusetts entities. And the remaining claim for \$881,457 was from the Great American Insurance Company, an Illinois company, “for surety bonds.”

Discussion

In order to obtain and maintain an EGS license, an EGS must furnish a bond or other acceptable financial security instrument to ensure: (1) “the safety and reliability of the generation of electricity *in this Commonwealth*”; (2) “the financial responsibility of the [EGS]”; and (3) “the supply of electricity at retail in accordance with contracts, agreements or arrangements.” 66 Pa.C.S. § 2809(c)(1)(i), 52 Pa. Code § 54.40(a)-(b).

⁶ Although the four Pennsylvania claimants could have filed complaints before the Commission alleging that Astral Energy breached the terms of its electric supply contracts, none of them did. See 66 Pa. C.S. § 701. The Commission’s ability to order refunds in consumer complaints involving suppliers is limited. See, *Blue Pilot Energy, LLC v Pa. Pub. Util. Comm’n*, 241 A.3d 1254 (Pa. Cmwlth 2020).

All such financial security instruments, including Astral Energy's bond, include the following conditions:

[T]he 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 supply of electricity at retail in accordance with contracts, agreements or arrangement.⁷

These financial security instruments also state that the payment of any 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. Accordingly, the Commission may file a claim against an EGS's financial security on behalf of private individuals; however, that claim must be based on a breach of the bond's terms, including a failure of the EGS to supply electricity *at retail in Pennsylvania* in accordance with contracts, agreements, or arrangements. See 66 Pa.C.S. § 2809(c)(1)(i).

Here, Astral Energy's Bankruptcy Trustee, Biase, requests that the Commission file a claim against the company's bond on his behalf with the proceeds to be included in the Bankruptcy Estate and divided among *all* of Astral Energy's creditors in Bankruptcy Court. According to Biase, such a claim is appropriate and in accordance with the bond's terms because all creditors are private individuals, and their losses and corresponding claims resulted from Astral Energy's failure to supply electricity at retail in accordance with contracts, agreements, or arrangements. The Commission disagrees.

⁷ The financial security's terms also ensure the EGS's payment of Gross Receipts Tax owed to the Pennsylvania Department of Revenue, payments owed under the Alternative Energy Portfolio Standards Act, and annual fees owed to the Commission. However, we do not address these terms as they are not at issue here.

In order for the Commission to file a claim against an EGS's bond, the EGS must breach the bond's terms. Here, the term at issue is Astral Energy's alleged failure to supply electricity *at retail in Pennsylvania* in accordance with contracts. Biase, in the Application, did not show that any of the bankruptcy creditors' claims related to the retail supply of electricity in Pennsylvania in accordance with contracts. As such, Commission staff sought clarification from Biase regarding how the bankruptcy creditors' claims relate to the supply of electricity at retail in Pennsylvania in accordance with contracts. However, Biase did not adequately address the Commission's data requests. In his responses to data requests No.1 and No.2, Biase did not adequately explain how *any* of the bankruptcy creditors' claims relate to the supply of electricity at retail in Pennsylvania in accordance with contracts, agreements, or arrangement. Biase simply asserted that all creditors' claims were based on Astral Energy's failure to "provide the service it committed to" and "violation of the regulations, rules, or standards promulgated by the Commonwealth or *similar regulatory obligations from other States.*" In sum, Biase asserts that any and all creditors' claims are based on Astral Energy's failure to supply electricity at retail in accordance with contracts, agreements, or arrangements and, therefore, the bond can be used to cover those claims.

As noted, the Commission disagrees. Under the circumstances, Biase has failed to meet its burden of establishing that Astral Energy breached the statutory and bond terms at issue with respect to the creditors in Bankruptcy Court. These creditors could potentially be considered "private individuals" covered by the bond; however, only the claims of the four Pennsylvania residents could *potentially* be based on Astral Energy's failure to supply electricity at retail in Pennsylvania. Biase simply has not provided the Commission with sufficient information to establish that the four Pennsylvania claims meet the bond's criteria. Pursuant to Section 2809(c)(1)(i) of the Public Utility Code, this bond term relates only to the *retail* supply of electricity—not wholesale sales—in *Pennsylvania*—not other states. Because the Commission does not have sufficient evidence to establish that Astral Energy breached the terms of the bond with respect to

the bankruptcy creditors, the Commission denies Biase's request that the Commission file a claim against the company's bond. In addition, as previously noted, the Commission will hold Astral Energy's Application to Abandon its EGS license in abeyance pending the resolution of the ongoing bankruptcy proceedings; **THEREFORE,**

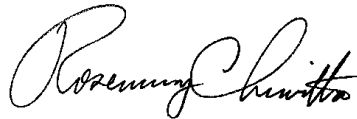
IT IS ORDERED:

1. That the Application for license abandonment filed by Astral Energy, LLC at Docket No. A-2024-3049057 be held in abeyance until a future date consistent with this Order.

2. That the Bankruptcy Trustee for Astral Energy, LLC's request that the Commission file a claim against Astral Energy, LLC's EGS license bond with proceeds to be distributed to satisfy its bankruptcy creditors' claims is hereby denied.

3. That a copy of this Order be served on the Law Firm of Genova Burns representing the Bankruptcy Trustee for Astral Energy, LLC.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 5, 2024

ORDER ENTERED: December 5, 2024