



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

Docket No. A-110073

September 3, 2002

**DOCKETED**

SEP 4 2002

GREEN MOUNTAIN ENERGY COMPANY  
3815 CAPITAL OF TEXAS HIGHWAY  
AUSTIN TX 78704-

ATTENTION: GLENDA ROSELLE.

SRB

DOCUMENT FOLDER

RE: License Bond or Other Financial Security

Dear Ms. Roselle:

Pursuant to 66 Pa. C.S. §2809(c), no electric supplier license shall remain in force unless the licensee furnishes a bond or other security approved by the Commission to ensure the financial responsibility of the electric generation supplier and the supply of electricity at retail. The Commission's records indicate that the bond or other approved security provided by Green Mountain Energy Company expires on 11/4/02.

The Commission's regulations at 52 Pa. Code §54.40(d) require "the security level for each licensee will be reviewed annually and modified primarily based upon the licensee's reported annual gross receipts information. The security level will be 10% of the licensee's reported gross receipts." The minimum security level provided may not be less than the initial security level provided when the license was granted. Unless approved by the Commission, the initial security level is \$250,000.

The Commission's regulations at 52 Pa. Code §54.39(b) require a licensee to file an annual report on or before April 30 of each year, for the previous calendar year, in order to comply with 66 Pa. C.S. §2810(c)(6). This report discloses the total amount of gross receipts from the sale of electricity and the total amount of electricity sold during the preceding calendar year. You must use this same information in calculating the appropriate security level necessary to maintain your license.

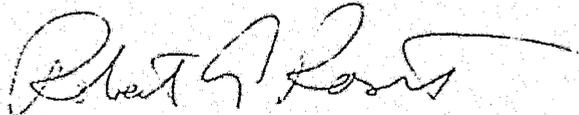
In order for your company to maintain its status as a licensed electric supplier in the Commonwealth of Pennsylvania, it must provide proof to the Commission that a bond or other approved security has been obtained.

Your response in this matter is requested within fifteen (15) days of the date of this letter. Submit your response to the Commission's Secretary. Additionally, fax a copy of your response to James Shurskis at (717) 787-4750, Bureau of Fixed Utility Services.

Failure to respond to this matter within fifteen (15) days will cause Commission staff to initiate a formal proceeding, that may lead to the following: cancellation of your company's electric supplier license, removal of your information from the Commission's website and notification to all electric distribution companies, in which your company is licensed to do business, of the cancellation of the license.

Please direct any questions to James Shurskis at (717) 787-8763 or Darren Gill at (717) 783-5244, Bureau of Fixed Utility Services.

Sincerely,



Robert A. Rosenthal  
Director, Bureau of Fixed Utility Services

cc: J. McNulty, Secretary ✓



**Green Mountain Energy**<sup>sm</sup>

Green Mountain Energy Company  
3915 Capital of Texas Highway South, Suite 100 • Austin, Texas 78704  
Phone 512 691-6100 • Fax 512 691-6151  
greenmountain.com

ORIGINAL

September 18, 2002

VIA FEDERAL EXPRESS

Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, Pennsylvania 17120  
ATTN: Mr. James J. McNulty, Secretary

RECEIVED

SEP 18 2002

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**RE: Letter of Credit No. RA08Y; Exp. Date November 4, 2002  
Electric Generation Supplier License No. A-110073**

Dear Secretary McNulty:

Pursuant to Commission regulations at 52 Pa. Code §54.40 (relating to bonds or other security) this letter serves to inform you that Green Mountain Energy Company will be extending the above-referenced financial instrument currently on file with the Pennsylvania Public Utility Commission. Extension of this financial instrument has been established with UBS PaineWebber Inc. Written documentation will be forwarded to you upon receipt from the financial institution and prior to the expiration date of the above-referenced letter of credit.

If you have any questions or need additional information, please do not hesitate to contact me directly at (512) 691-6129 or at [glenda.roselle@greenmountain.com](mailto:glenda.roselle@greenmountain.com).

Sincerely,

Glenda Roselle  
Manager, Regulatory Compliance

DOCUMENT  
FOLDER

cc: James Shurskis (via facsimile)  
Robert A. Rosenthal

SRB

DOCKETED

NOV 14 2002

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DOCUMENT FOLDER A 110073

Beneficiary:  
Pennsylvania Public Utility Commission  
212 North Office Building  
North Street & Commonwealth Avenue  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Irrevocable Standby  
Letter of Credit  
No. RA08Y1  
Date: November 25, 2002

Attn: Office of the Secretary

DOCKETED

DEC 3 2002

Re: Letter of Credit No. RA08Y1 - Green Mountain Energy Company

Ladies and Gentlemen:

We hereby confirm that our Irrevocable Standby Letter of Credit No. RA08Y1 in your favor for the account of Green Mountain Energy Company, was extended, as per the automatic renewal clause incorporated into the Original Letter of Credit to:

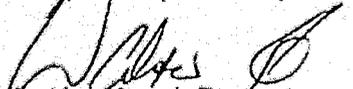
November 4, 2003

It is a condition of this Letter of Credit, that it will be automatically renewed without amendment for a one year period upon the expiration date set forth above and upon each anniversary of such date, unless at least 60 (sixty) days prior to the then expiration date, we notify you in writing by certified mail, return receipt requested, or by courier, that we elect not to so renew this Letter of Credit.

All other terms and conditions remain unchanged.

All communications to us with respect to this L/C must be addressed to our office located at 1200 Harbor Blvd., 4th Floor, Weehawken, N.J. 07086 to the attention of the Letter of Credit Dept.

Very Truly Yours,

  
Authorized Signature  
Walter Arnold

  
Authorized Signature

RECEIVED

NOV 25 2002

PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

RHOADS & SINON LLP

ROBERT H. LONG JR.  
SHERILL T. MOYER  
JAN P. PADEN  
RICHARD B. WOOD  
LAWRENCE B. ABRAMS III  
J. BRUCE WALTER  
JOHN P. MANBECK  
FRANK J. LEBER  
PAUL A. LUNDEEN  
JACK F. MURLEY, JR.  
DAVID B. DOWLING  
DAVID F. O'LEARY  
DAVID G. TWADDELL  
CHARLES J. FERRY  
STANLEY A. SMITH  
ERNEST CARLGAARD  
DRAKE D. NICHOLAS  
THOMAS A. FRENCH  
DEAN H. BUSINGER  
LUNNA M. J. CLARK  
CHARLES E. GUTSMALL  
PAUL P. WESSELL  
SHAWN D. LOCHINGER  
JAMES M. CAWLEY

DEAN F. PIERMATTEI  
KENNETH L. JUILL  
DEBRA M. KRIETE  
TODD J. SHILL  
DAVID M. BARASCH  
THOMAS J. NEMILLA  
ROBERT J. TRIBECK  
TIMOTHY J. NIEMAN  
TORI M. McFEROY  
KEVIN M. GOLD  
CARL D. JONDBLAD  
JAMES E. ELLISON  
RICHARD E. ARTELL  
PAUL J. BRUDER, JR.  
JOANNE BOOK CHRISTINE  
AMY J. MENDELSON  
MICHAEL W. WINFIELD  
KATHRYN G. SOPHY  
STEPHANIE E. DIVITORE  
KATHLEEN D. BRUDER  
CHRISTY L. PALCA  
JOHN M. COLES  
HEATHER Z. KELLY  
JAMES J. JARECKI  
JENNIFER ZIMMERMAN

ATTORNEYS AT LAW  
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ONE SOUTH MARKET SQUARE  
P.O. BOX 1146  
HARRISBURG, PA 17108-1146

TELEPHONE (717) 233-5731

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OF COUNSEL  
HENRY W. RHOADS

RETIRED  
FRANK A. SINON  
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PAUL H. RHOADS  
1907-1984

JOHN M. MUSSELMAN  
1919-1980

CLYDE R. HENDERSHOT  
1922-1980

DIRECT DIAL NO.  
(717) 237-6736

FILE NO.

5543/27

March 24, 2003

1 ALSO ADMITTED TO THE DISTRICT OF COLUMBIA BAR  
2 ALSO ADMITTED TO THE FLORIDA BAR  
3 ALSO ADMITTED TO THE MARYLAND BAR  
4 ALSO ADMITTED TO THE NEW JERSEY BAR  
5 ALSO ADMITTED TO THE NEW YORK BAR

Re Petition of Green Mountain Energy Company for Partial Waiver of the Provisions of 52 Pa. Code § 54.40 (Relating to Bonds or Other Security)

Docket No. A-1100 73

VIA HAND DELIVERY

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
400 North Street, 2<sup>nd</sup> Floor, M-West  
Harrisburg, PA 17120

DOCUMENT FOLDER

SECRETARY'S BUREAU  
MARCH 21 11 31 AM '03

Dear Secretary McNulty:

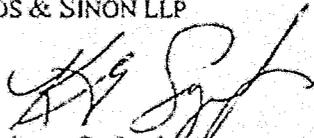
Enclosed for filing on behalf of Green Mountain Energy Company are the original and three (3) copies of its Petition for Partial Waiver of the Provisions of 52 Pa. Code § 54.40. The Petition contains a facsimile of the Verification. Upon receipt of the original Verification, I will forward for inclusion with the Petition.

Paragraph 16 of the Petition, provided separately and under seal, contains confidential financial information. We request that Paragraph 16 be treated as confidential.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,

RHOADS & SINON LLP

By:   
Kathryn G. Sophy

Enclosure

cc: Certificate of Service  
Robert Thomas, Green Mountain Energy Company

64

Before The  
Pennsylvania Public Utility Commission

Petition of Green Mountain Energy Company :  
for Partial Waiver of the Provisions of :  
52 Pa. Code § 54.40 :  
(Relating to Bonds or Other Security) :

Docket No. A-110073

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Petition of Green Mountain Energy Company for  
Partial Waiver of the Provisions of 52 Pa. Code § 54.40  
(Relating to Bonds or Other Security)

**RECEIVED**

MAR 24 2003

EXPURGATED VERSION

PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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NOW COMES Green Mountain Energy Company ("Green Mountain"), and

respectfully requests that it be granted a partial waiver of the provisions of the  
Commission's regulations at 52 Pa. Code § 54.40 (relating to bonds or other security) in  
order to adjust the level of Green Mountain's EGS license bonding requirement to  
\$543,609 - a level commensurate with the unique nature of Green Mountain's scope and  
business operations.

**DOCKETED**

**DOCUMENT  
FOLDER**

1. Green Mountain received APR 02 2003 Commission's approval to serve as an  
Electric Generation Supplier by Opinion and Order entered June 4, 1998 at Docket No.  
A-110073, after supporting its application with a \$250,000 letter of credit, and is the only  
EGS in the Commonwealth to offer continuous service to residential customers since the  
inception of the competitive market. Green Mountain subsequently replaced this letter of  
credit with a \$1,803,608 surety bond, which expired on November 4, 2001. The surety  
bond was replaced by a letter of credit for the same amount, which currently has an  
expiration date of November 4, 2003.

2. The Commission's regulation at Section 54.40(b) states that "the purpose of the security requirement is to ensure the licensee's financial responsibility, the payment of gross receipts tax as required by section 2810 of the code (relating to revenue-neutral reconciliation), and the supply of electricity at retail in accordance with contracts, agreements, and arrangement. See section 2809(c) of the code." 52 Pa. Code § 54.40(b)

3. Further, the Commission's regulation at Section 54.40(d) states that, "After the first year that the license is in effect, the security level for each license will be reviewed annually and modified primarily based on the licensee's reported gross receipts information. The security level will be 10% of the licensee's reported gross receipts. See section 2809(c)(1)(i) of the code. Maintenance of a license will be 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. 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(d).<sup>1</sup>

4. The Commission has announced its intention to revisit its licensing regulation at 52 Pa. Code § 54.40. See 33 Pa. B. 31 (January 4, 2003). Through an Advance Notice of Proposed Rulemaking, the Commission has requested comments regarding a number of issues, including the appropriate level of necessary security. Green Mountain has submitted comments on this issue. *Advance Notice of Proposed Rulemaking for Revision of Chapter 54 of the Pennsylvania Code Pertaining To Electric*

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<sup>1</sup> The Electric Association of Pennsylvania (EAP) recently filed a petition with the Commission to increase the level of bonding required for EGSS. Green Mountain intends to oppose this petition through its trade association, Mid-Atlantic Power Supply Association. Nonetheless, the EAP petition should have no bearing on whether Green Mountain should receive a waiver of current security requirements.

*Generation Supplier Licensing*, Docket Nos. P-00021938 and L-00020158 (Comments of Green Mountain Energy Company, March 5, 2003).

5. Lastly, the Commission states in its annual letter to all licensed EGSs (most recently sent to Green Mountain on September 3, 2002) that "the Commission's regulations at 52 Pa. Code § 54.39(b) require a licensee to file an annual report on or before April 30 of each year, for the previous calendar year, in order to comply with 66 Pa. C.S. §2801(c)(6). This report discloses the total amount of gross receipts from the sale of electricity and the total amount of electricity sold during the preceding calendar year. You *must* use this same information in calculating the appropriate security level necessary to maintain your license." (Emphasis added.)

6. Effectively, the Commonwealth seeks security that taxes will be collected to maintain its revenue neutrality and that no event, including supplier default, will prevent consumers from realizing the full savings guaranteed to them when they entered into contracts with an EGS. Green Mountain agrees that both goals are reasonable and, as explained below, asserts that a letter of credit in the amount requested is sufficient to fully meet these goals.

7. The scope of Green Mountain's business, and products, is unique. Green Mountain's renewable and cleaner energy products are priced at a premium to the "price to compare." While Green Mountain has offered parity, or even slightly discounted, prices in the past, as of November 1, 2001 Green Mountain Energy customers have been paying at least a slight premium to the "price to compare" for the purchase of renewable and cleaner electricity. Therefore, the potential for "lost savings" does not exist. In the unlikely event of default, Green Mountain's customers would experience no financial harm. This is because for the duration of the transition period, the Commission continues

to maintain that the EDC will remain in the POLR roll and serve at "price to compare" rates. Even in the context of the few existing CDS opportunities, the "price to compare" remains the benchmark. It is the only benchmark from which savings can be reasonably calculated.

8. Thus, in determining an appropriate amount of security required for Green Mountain, the Commission need consider only the risk that Commonwealth taxes will go unpaid.

9. Based on Commission regulation and instruction as described in paragraph 5 above, Green Mountain is required to calculate its proposed security based on gross receipts from the calendar year 2001. However, Green Mountain requests that the Commission recognize the agreements currently in place between PECO Energy and Green Mountain associated with serving Competitive Discount Service ("CDS") in the PECO territory which started in 2001, and the substantial amount of security already established to ensure the delivery of energy on behalf of Green Mountain's CDS customers.<sup>2</sup> Specifically, Green Mountain has provided security in an amount to ensure that, in the unlikely event of default, PECO can continue to provide all Green Mountain CDS customers with retail electricity services. Such security will be maintained independent of Green Mountain's EGS license for the duration of service to CDS customers. Any inclusion of the risk associated with the delivery of energy on behalf of PECO CDS customers would constitute a double counting and would create a prohibitive barrier to Green Mountain. Even though Green Mountain CDS customers are served at a discount to the price to compare, the security provided pursuant to the CDS Agreement

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<sup>2</sup> At the request of the Commission, Green Mountain will provide, under seal, a copy of the PECO/Green Mountain security agreement.

would more than adequately protect the all Green Mountain CDS customer savings in the unlikely event of default.

10. Security required to ensure the Commonwealth receives the taxes owed by Green Mountain can be reduced significantly from the general standard of 10% of reported gross receipts without placing the Commonwealth at greater risk.

11. For the upcoming calendar year beginning January 1, 2003, Green Mountain has paid the Pennsylvania Department of Revenue, in full on March 15th, the required 2003 gross receipts tax. This prospective payment ensures that after March 15th the risk of the Commonwealth not collecting Green Mountain's gross receipts tax is significantly reduced.<sup>3</sup> No material or demonstrable risk exists from March 15th through the commencement of the following calendar year. The only potential variation at this time would be caused by the estimation itself. If the estimation were high, the Commonwealth would be over-secured. If the estimation were low, the regulations provide that Green Mountain would pay any amounts owed the Department of Revenue after the 'estimated to actual' reconciliation was done, and would render any outstanding balance in conjunction with the March 15<sup>th</sup> payment of the following year.<sup>4</sup> This scenario is equally true for all subsequent calendar years. In this petition, Green Mountain addresses the potential risk associated with estimated payments, and includes in its proposed security calculation an amount to cover any potential exposure.

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<sup>3</sup> While the Department of Revenue may only require this prepayment to be based on total gross receipts tax liability from two years prior, Green Mountain has calculated the security in this proposal based on the year 2002 annual report to the Commission and has fully embedded all material growth from the current calendar year. Because of the addition of PECO CDS customers at the end of 2001, inclusion of the 2001 annual report would have artificially lowered Green Mountain's estimated gross receipts.

<sup>4</sup> To further guard against risks associated with an underestimation of gross receipts, Green Mountain is willing to provide the Commission with quarterly updates on Pennsylvania gross receipts if the Commission would find such reports useful.

12. Consequently, the only remaining risk is the need for security to ensure payment of the gross receipts tax that accrues from January 1st through March 15th. In quantifying this exposure, it is important to remember that, since this tax is based on the aggregation of daily gross receipts, the risk on January 1st is one day's worth of gross receipts. Only on March 15th is the risk of nonpayment equal to the entire 74 days. In the past, Green Mountain has argued that any bond provided to cover the risk for the January 1<sup>st</sup> through March 15<sup>th</sup> period should reflect an average value of those 74 days, in order not to drive up the amount of the bond artificially. While we continue to believe that promulgating regulations that always assume the worst case will hinder the development of a competitive market, for the purposes of this petition, Green Mountain has calculated the required security based on the maximum potential exposure for this period.

13. Based on Commission regulation and instruction as described in paragraphs 3 and 5, Green Mountain is required to calculate its updated security based on gross receipts for the calendar year 2001 as reported to the Commission.

14. Green Mountain recognizes that because the GRT payment is based on an estimate of actual liability, the Commission may require security at a higher level than the GRT payment.<sup>5</sup> Accordingly, Green Mountain has utilized its gross receipts for the calendar year 2002, rather than 2001, because of the November 2001 addition of CDS customers. Moreover, Green Mountain has inflated the GRT to a level of 6% in its calculations, rather than making the projection based on the 5.9% GRT in effect at the

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<sup>5</sup> Typically, companies conservatively calculate their estimated GRT liability because underestimates of GRT liability may result in penalties.

present time, as allowed by regulation. This inflated rate has been applied to all Green Mountain load, including CDS.<sup>6</sup>

15. Increased security, which would over-fund the risk that Commonwealth taxes will not be paid or that customers will not realize their guaranteed savings, would cause an unnecessary financial burden without additional benefit to either the Commonwealth or to Green Mountain's customers. In order to establish the necessary letter of credit, Green Mountain pays an annual fee to the bank.<sup>7</sup> In addition, the bank requires collateral to be kept in escrow. Collateral maintained by the bank does not contribute to Green Mountain's profit margin. Nevertheless, Green Mountain's investors expect to earn a reasonable return for their entire investment, which includes capital tied up as collateral. Thus, security in excess of what is necessary would tie up funds that could otherwise be allocated to activities that would produce reasonable investor returns, such as consumer education and marketing, consumer enrollment incentives, new product development, and other security for the expansion of new renewable generation facilities in Pennsylvania.

16. **[The information contained in this paragraph is proprietary in nature and submitted under seal.]**

17. With considerable concern, Green Mountain also wishes to recognize the fact that while a significant component of the security amount is derived from the calculation of GRT exposure for the January 1<sup>st</sup> through March 15<sup>th</sup> period, Green Mountain is required to post the full amount of security for the entire calendar year.

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<sup>6</sup> As stated above, because risks associated with CDS "lost savings" are secured through Green Mountain's CDS Agreement with PECO, additional security required by the Commission would be redundant.

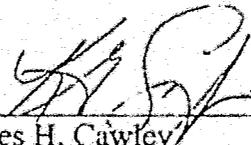
<sup>7</sup> Because there is no guarantee of a return on the investment of funds paid to a bonding company or funds held in escrow, the only way to maximize its profits is for Green Mountain to make the best deal possible.

Consequently, at all times other than the period stated above, the security outweighs the risk by a large margin. In combination with the methodology described above, this fact supports the reasonableness of Green Mountain's proposal.

18. Green Mountain has arranged for the continued effectiveness of its current level of security while the Commission considers this petition.

WHEREFORE, for the foregoing reasons, Green Mountain requests that it be granted a partial waiver of the provisions of 52 Pa. Code § 54.40 and that it be permitted to maintain its EGS license with security in the amount of \$543,609.

Respectfully submitted,



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James H. Cawley  
Kathryn G. Sophy  
RHOADS & SINON LLP  
One South Market Square  
P. O. Box 3265  
Harrisburg, PA 17108  
717.233.5731  
717.231.6600 (fax)  
[jcawley@rhoads-sinon.com](mailto:jcawley@rhoads-sinon.com)  
[ksophy@rhoads-sinon.com](mailto:ksophy@rhoads-sinon.com)

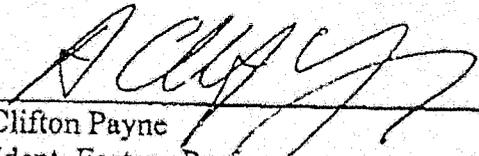
Attorneys for  
Green Mountain Energy Company

Dated: March 24, 2003

VERIFICATION

I, A. Clifton Payne, 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).

Date: 3/20/03

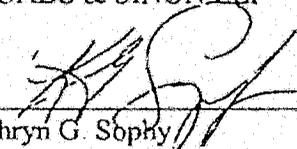
  
A. Clifton Payne  
President, Eastern Region  
Green Mountain Energy Company

Patricia Clark, Esquire  
Deputy Counsel  
West Penn Power Company  
800 Cabin Hill Drive  
Greensburg, PA 15601

Respectfully submitted,

RHOADS & SINON LLP

By:

  
\_\_\_\_\_  
Kathryn G. Sophy  
One South Market Square  
P. O. Box 1146  
Harrisburg, PA 17108-1146  
(717) 233-5731

Attorneys for Green Mountain Energy Company

Dated: March 24, 2003

DATE: April 4, 2003

SUBJECT: A-110073

TO: Bureau of Fixed Utility Services

FROM: James J. McNulty, Secretary *ddt*

DOCUMENT  
FOLDER

**Petition of Green Mountain Energy Company to Reduce  
Surety Bond Level**

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Attached please find a copy of a letter/petition of Green Mountain Energy Company for approval of the reduction of its required bonding level to \$543,609.00.

This matter is being assigned to your Bureau for appropriate action.

Attachment

cc: Law Bureau

ddt

DOCUMENT

APR 02 2003



A-110073

KIR

Bank One, NA  
Global Trade Services  
One Bank One Plaza  
Mail Code IL1-0236  
Chicago, IL 60670  
Tel (800) 634 1969 Fax (312) 954 0203  
SWIFT FNBCUS44  
Telex IT14330253 FNBCUI

DOCUMENT FOLDER

IRREVOCABLE STANDBY LETTER OF CREDIT NO. 00331826

DATE: APRIL 4, 2003

BENEFICIARY:  
PENNSYLVANIA PUBLIC UTILITY COMMISSION,  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET,  
HARRISBURG, PA 17120  
ATTN: SECRETARY OF THE COMMISSION

DRAFTS DRAWN MUST BE MARKED  
WITH OUR REFERENCE NO. 00331826  
OPENER'S REFERENCE NO. 00331826

DUCKETED

RECEIVED

LADIES AND GENTLEMEN:

JUN 16 2003

APR 04 2003

BY THE ORDER OF:

GREEN MOUNTAIN ENERGY COMPANY  
3815 CAPITAL OF TEXAS HWY SOUTH  
AUSTIN, TX 78704

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. 00331826 FOR THE ACCOUNT OF GREEN MOUNTAIN ENERGY COMPANY ("PRINCIPAL") FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE U.S. \$1,803,608.00 (ONE MILLION EIGHT HUNDRED THIRTE THOUSAND SIX HUNDRED EIGHT AND NO/100 U.S. DOLLARS) AVAILABLE BY YOUR DRAFTS AT SIGHT ON BANK ONE, NA, CHICAGO, IL EFFECTIVE [ISSUE DATE] AND EXPIRING AT OUR OFFICE ON NOVEMBER 4, 2003

WE ARE INFORMED OF THE FOLLOWING WHICH IS INCLUDED FOR INFORMATIONAL PURPOSES ONLY: THIS LETTER OF CREDIT IS ISSUED PURSUANT TO SECTION [ ] OF THE PUBLIC UTILITY CODE, 66 PA. C.S. 2900 ( ) (I) TO ENSURE COMPLIANCE WITH THE PROVISIONS OF THE PUBLIC UTILITY CODE, 66 [ ] ET SEQ. AND THE RULES AND REGULATIONS OF THE PENNSYLVANIA 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. 2810 AND TO ENSURE THAT THE APPLICANT HAS NOT SUPPLIED ELECTRICITY AT RETAIL IN ACCORDANCE WITH CONTRACTS, AGREEMENTS OR ARRANGEMENTS

FUNDS UNDER THIS CREDIT ARE AVAILABLE AGAINST BENEFICIARY'S DRAFT(S) BEARING THE CLAUSE "DRAWN UNDER BANK ONE, NA, CHICAGO LETTER OF CREDIT NO. 00331826 DATED APRIL 4, 2003", ACCOMPANIED BY BENEFICIARY'S DRAWING CERTIFICATE IN THE FORM OF ANNEX A WITH ALL THE BLANKS APPROPRIATELY FILLED IN, AND SIGNED BY A PERSON PURPORTING TO BE AN AUTHORIZED OFFICER OF PENNSYLVANIA PUBLIC UTILITY COMMISSION.

DEMANDS PRESENTED BY TELEFACSIMILE ("FAX") TO FAX NUMBER 312-954-0203, OR ALTERNATELY TO FAX NUMBER 312-954-6163 ARE ACCEPTABLE; PROVIDED THAT IF ANY SUCH DEMAND IS PRESENTED BY FAX, THE ORIGINAL DRAFT, STATEMENT AND LETTER OF CREDIT SHALL BE SIMULTANEOUSLY FORWARDED BY OVERNIGHT COURIER SERVICE TO OUR OFFICE AT 300 S. RIVERSIDE PLAZA, 7<sup>TH</sup> FLOOR, MAIL CODE IL1-0236, STANDBY LETTER OF CREDIT UNIT, CHICAGO, IL 60606 0236; PROVIDED FURTHER THAT THE FAILURE OF THE COURIER SERVICE TO TIMELY DELIVER SHALL NOT AFFECT THE EFFICACY OF THE DEMAND.

PARTIAL DRAWINGS ARE PERMITTED

Handwritten initials

Handwritten number 138



OUR LETTER OF CREDIT NO. 00331826

DATE: APRIL 4, 2003

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE (1) YEAR FROM THE EXPIRY DATE HEREOF OR ANY FUTURE EXPIRY DATE UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO SUCH EXPIRATION DATE WE NOTIFY BOTH YOU AND GREEN MOUNTAIN ENERGY COMPANY BY CERTIFIED MAIL OR HAND DELIVERED COURIER, THAT WE ELECT NOT TO RENEW THIS LETTER OF CREDIT FOR ANY SUCH ADDITIONAL PERIOD. IN THE EVENT YOU ARE SO NOTIFIED, YOU MAY DRAW ANY UNUSED PORTION OF THIS LETTER OF CREDIT BY PRESENTATION OF DRAFTS AND CERTIFICATE AS STATED ABOVE, ON OR BEFORE THE THEN CURRENT EXPIRATION DATE.

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING, AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED OR AMPLIFIED BY REFERENCE TO ANY DOCUMENT, INSTRUMENT OR AGREEMENT REFERRED TO HEREIN OR IN WHICH THIS LETTER OF CREDIT IS REFERRED TO OR TO WHICH THIS LETTER OF CREDIT RELATES, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT, INSTRUMENT OR AGREEMENT.

WE ENGAGE WITH YOU THAT DRAFTS DRAWN UNDER AND IN CONFORMITY WITH THE TERMS OF THIS CREDIT WILL BE DULY HONORED IN ACCORDANCE WITH YOUR INSTRUCTIONS AND AS STATED BELOW IF PRESENTED AS HEREIN ABOVE SET FORTH ON OR BEFORE THE EXPIRATION AT OUR COUNTERS AT 300 SOUTH RIVERSIDE PLAZA, 7<sup>TH</sup> FLOOR, MAIL CODE IL1-0236, ATTN: STANDBY LETTER OF CREDIT UNIT, CHICAGO, IL 60606-0236.

COMPLYING DOCUMENTS PRESENTED ON OR BEFORE NOON, CHICAGO, ILLINOIS TIME ON A BUSINESS DAY WILL BE HONORED BY THE CLOSE OF BUSINESS ON THE FIRST BUSINESS DAY FOLLOWING PRESENTATION. COMPLYING DOCUMENTS PRESENTED AFTER NOON, CHICAGO TIME ON A BUSINESS DAY WILL BY HONORED BY THE CLOSE OF BUSINESS ON THE SECOND BUSINESS DAY FOLLOWING PRESENTATION. AS USED HEREIN, THE TERM BUSINESS DAY MEANS ANY DAY OTHER THAN A SATURDAY, SUNDAY, OR A DAY ON WHICH BANKS IN THE STATE OF ILLINOIS ARE AUTHORIZED OR REQUIRED TO BE CLOSED, AND A DAY ON WHICH PAYMENTS CAN BE EFFECTED ON THE FEDWIRE SYSTEM.

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED, THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 500, AND TO THE EXTENT NOT INCONSISTENT THEREWITH, ARTICLE 5 OF THE COMMONWEALTH OF PENNSYLVANIA.

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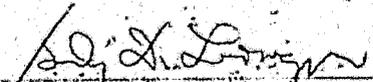


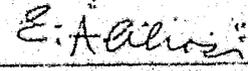
OUR LETTER OF CREDIT NO. 00331826

DATE: APRIL 4, 2003

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO THE ATTENTION OF OUR STANDBY LETTER OF CREDIT UNIT, TRADE SERVICE GROUP, MENTIONING OUR LETTER OF CREDIT NUMBER AS IT APPEARS ABOVE.

VERY TRULY YOURS,  
BANK ONE, NA

  
PREPARER/AUTHORIZED SIGNER

  
AUTHORIZED SIGNER

ANNEX A  
TO LETTER OF CREDIT NO. 00331826  
(On Beneficiary's Letterhead)

DATE:

BANK ONE, NA  
300 SOUTH RIVERSIDE PLAZA  
7<sup>TH</sup> FLOOR, MAIL CODE IL1-0236  
CHICAGO, IL 60606-0236  
ATTN: STANDBY LETTER OF CREDIT UNIT

LADIES AND GENTLEMEN:

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, COMMONWEALTH (THE "BENEFICIARY")  
HEREBY CERTIFIES TO BANK ONE, NA WITH REFERENCE TO ITS IRREVOCABLE STANDBY LETTER  
OF CREDIT NO. 00331826 (THE "LETTER OF CREDIT") (CAPITALIZED TERMS USED AND NOT  
DEFINED HEREIN HAVING THE MEANING SET FORTH IN THE LETTER OF CREDIT) THAT:

THE BENEFICIARY IS MAKING DEMAND FOR PAYMENT UNDER THE LETTER OF CREDIT IN THE  
AMOUNT OF \$ \_\_\_\_\_ TO BE USED FOR THE PAYMENT OF CLAIMS FOR THE  
COMMONWEALTH, EDC'S FOR THE REIMBURSEMENT OF GROSS RECEIPTS TAX AND/OR PRIVATE  
INDIVIDUALS.

THE PENNSYLVANIA PUBLIC UTILITY  
COMMISSION, COMMONWEALTH

BY: \_\_\_\_\_

[PRINTED NAME AND TITLE]

Kirkpatrick & Lockhart LLP

BT  
ORIGINAL

Fayne Shoemaker Building  
240 North Third Street  
Harrisburg, PA 17101-1507  
717 231 4500  
www.kl.com

April 8, 2003

DOCKETED

Daniel P. Delaney  
717 231 4516  
Fax 717 231 4501  
cdelaney@kl.com

JUN 20 2003

VIA HAND DELIVERY

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building, 2<sup>nd</sup> Floor  
400 North Street  
Harrisburg, PA 17120

DOCUMENT

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03 APR - 8 PM 3:17  
PA.P.U.C.  
SECRETARY'S BUREAU

Re: Petition of Green Mountain Energy Company for Partial Waiver of the Provisions of 52 Pa. Code § 54.40 (Relating to Bonds or Other Security)  
Docket No. A-110073

Dear Secretary McNulty:

Duquesne Light Company ("Duquesne") protests and opposes the above captioned Petition of Green Mountain Energy Company ("Green Mountain") to reduce its Electric Generation Supplier ("EGS") license security requirement from \$1,803,608 to \$543,609 – a 70% reduction. Green Mountain operates as an EGS in Duquesne's service territory under the requirements of Duquesne's Electric Generation Supplier Coordination Tariff ("EGS Tariff") and Open Access Transmission Tariff ("OATT"). Duquesne submits that the petition should be denied because it is inconsistent with the EGS license security requirements of the Public Utility Code and the Public Utility Commission's ("Commission's") regulations. Alternatively, the Commission should defer any action on the Green Mountain petition until the completion of its Advanced Notice of Proposed Rulemaking ("ANPR") on EGS licensing security at Commission Dkt. Nos. L-00020158 and P-00021938.

Green Mountain's Request Violates the Public Utility Code and the Commission's Regulations

In support of its request for a reduction in its licensing security requirement, Green Mountain alleges that in determining an appropriate amount of security required for its operations, "the Commission need only consider the risk that Commonwealth taxes will go unpaid." (Petition at ¶ 8, page 4). Section 2809(c) of the Public Utility Code, 66 Pa.

HA-131016 v1 0'21423-234

James J. McNulty, Secretary  
April 8, 2003  
Page 2

C.S. § 2809(c), however, states that the purpose of the EGS security requirements is to ensure the licensee's financial responsibility, the payment of gross receipts tax ("GRT") as required by Section 2810 of the Public Utility Code (relating to revenue-neutral reconciliation), and the supply of electricity at retail in accordance with contracts, agreements or arrangement (emphasis added). Section 54.40(b) of the Commission's regulations, 52 Pa. Code § 54.40(b), contains similar language identifying the purpose of the EGS licensing security. The emphasized language demonstrates the legislative intent that the statutorily-required EGS licensing security is designed in part to secure an Electric Distribution Company's ("EDC's") losses resulting from an EGS's failure to supply electricity in accordance with its contracts, agreements or arrangements. The Commission has previously recognized that one of the purposes of the EGS security requirement is to reimburse EDCs for expenses incurred as a result of an EGS default. See Office of Consumer Advocate, et al. v. Utility.com, Commission Dkt. No. C-00014851, et seq. (Order entered July 21, 2001) where the Commission sustained complaints filed by EDCs concerning losses incurred as a result of Utility.com's default on its obligations (ordering paragraph 4 at page 18). In that case, all of Utility.com's surety bond (\$250,000) was paid to the Pennsylvania Department of Revenue to secure payment of a portion of Utility.com's unpaid GRT liability (which amounted to \$472,178 plus \$131,204 in interest and penalties). The size of the Utility.com bond was inadequate to secure the claims of its customers and the EDCs resulting from its default as a competitive electric supplier in Pennsylvania. As a result of that default, Duquesne and Utility.com's customers in Duquesne's service area experienced a loss of nearly \$400,000. Permitting Green Mountain to reduce its security by 70% places at risk Green Mountain's customers and the EDCs in whose service territory Green Mountain operates. Although Green Mountain's petition states that its customers will not be harmed by a default and cites the substantial amount of security already established to ensure the delivery of energy on behalf of Green Mountain's Competitive Discount Service customers in PECO's service area (¶ 9, page 4), Green Mountain's petition fails to account for or acknowledge its obligations within the Duquesne Light retail choice program, or its obligations to its customers, or to any other EDC in whose service territory it operates in.

A default by an EGS can result in substantial expense to an EDC. Rule 13.3 of Duquesne's EGS Tariff requires that an EGS which withdraws from retail service and fails to provide at least 90 days written notice of the withdrawal must reimburse Duquesne for the following costs associated with that withdrawal: (1) mailings by Duquesne to the EGS customers to inform them of the withdrawal and their options; (2) non-standard/manual bill calculation and the production performed by Duquesne; (3) EGS data transfer responsibilities that must be performed by Duquesne; and (4) charges or penalties imposed on Duquesne by third parties resulting from the EGS's

James J. McNulty, Secretary  
April 8, 2003  
Page 3

non-performance An EGS default can also result in unpaid expenses for energy imbalance and transmission service provided by Duquesne to the EGS pursuant to its OATT. Although Green Mountain has provided additional security to PECO to secure these types of costs, Duquesne must rely on Green Mountain's license security requirements to repay these costs in case of a default.

Duquesne is also currently at financial risk for energy deliveries in the period between an EGS's default and the time Duquesne initiates provider of last resort ("POLR") service for those EGS customers. In that period, the customers remain contractually customers of the EGS and are not yet on Duquesne's POLR service. In those circumstances, the EDC or the EDC's agent (i.e., a Regional Transmission Organization such as PJM) supplies energy to the customers of the defaulting EGS until transfer to the EDC's POLR service is accomplished. Using historic delivery data adjusted to Green Mountain's present load in Duquesne's service territory, Duquesne conservatively estimates its exposure from a Green Mountain peak period default to be \$233,771 (June), \$295,290 (July) or \$274,699 (August), respectively.<sup>1</sup> Duquesne believes that Green Mountain's current security requirement should be established at a level adequate to offset liabilities related to a possible default, including to the extent possible EDC expenses incurred as a result of that default. The substantial reduction requested by Green Mountain to its license security requirement frustrates this fundamental requirement of Section 2809(c) and Section 54.40 of the Commission's regulations.

Alternatively, the Commission Should Defer Action on Green Mountain's Petition Until Its Rulemaking on EGS License Security Requirements is Completed.

At its December 19, 2002 public meeting, the Commission adopted an ANPR in Advanced Notice of Proposed Rulemaking for Revision of Chapter 54 of the Pennsylvania Code Pertaining to Electric Generation Supplier Licensing, Commission Dkt. Nos. L-00020158, P-00021989 published at 33 Pa. Bulletin 31 (January 4, 2003). The issues identified for comments in that notice included "[w]hether the current bonding requirements cause EDCs to assume an unreasonable financial risk when EGSs default on their obligations" (Issue 5). Comments were filed in response to the ANPR by several parties on March 5, 2003 which are currently under review by the Commission. Duquesne submits that the Commission should not reduce security requirements for any EGS until it has fully considered the issues identified in the ANPR

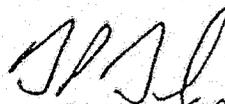
<sup>1</sup> Duquesne performed this calculation using historic on-peak and off-peak consumption data for June, July and August 2002. The consumption was adjusted to reflect Green Mountain's present load on Duquesne's system (approximately 85% of the 2002 load) and priced at a conservative average of \$25 per MW price.

James J. McNulty, Secretary  
April 8, 2003  
Page 4

and the comments filed by interested parties. Duquesne believes that the 70% reduction in the license security requirement requested by Green Mountain places at risk every EDC in whose service territory Green Mountain provides service. The Commission should not act on Green Mountain's petition until it has fully considered all of the issues addressed in the ANPR and all of the comments received. The Commission should defer any action on the petition until that rulemaking is completed.

Please add the undersigned counsel below to the official service list in this matter as counsel for Duquesne Light Company.

Respectfully submitted,



Daniel P. Delaney

Kirkpatrick & Lockhart LLP  
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Harrisburg, PA 17101-1507  
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(717) 231-4501 (Fax)  
ddelaney@kl.com

Duquesne Light Company  
411 Seventh Avenue, 9-1  
Pittsburgh, PA 15219  
(412) 393-3662  
(412) 393-5602 (Fax)  
rherkovitz@dqc.com

Richard S. Herskovitz

Counsel for Duquesne Light Company

cc: Robert Bennett, FUS  
Service List

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048

IRWIN A. POPOWSKY  
Consumer Advocate

FAX (717) 783-7152  
E-Mail: paoca@ptd.net

April 14, 2003

James J. McNulty, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
P O Box 3265  
Harrisburg, PA 17120

Re: Petition of Green Mountain Energy Company for  
Waiver of Provisions of 52 Pa. Code § 54.40  
(Relating to Bonds or Other Security)  
Docket Nos. P- and A-110073

Dear Secretary McNulty:

Enclosed for filing please find an original and three copies of the Notice of Intervention and Public Statement of the Office of Consumer Advocate in the above-referenced proceeding.

A copy of this document has been served upon all parties as evidenced by the attached Certificate of Service.

Sincerely yours,

Tanya J. McCloskey  
Senior Assistant Consumer Advocate

SECRETARY'S BUREAU

Enclosure

cc: All parties of record  
73714

03 APR 14 PM 3:50

RECEIVED

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# ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Green Mountain Energy Co. :  
For Partial Waiver of the Provisions of : Docket No. P-\_\_\_\_\_ and  
52 Pa. Code § 54.40 (Relating to Bonds : A-110073  
or Other Security) :

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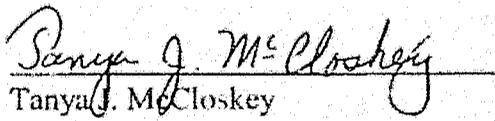
NOTICE OF INTERVENTION

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Pursuant to 52 Pa. Code Sections 5.71-74, the Office of Consumer Advocate hereby gives Notice of Intervention in the above-captioned proceeding. A copy of all correspondence and notices, documents, orders or other communications with respect to the above-captioned proceeding should be addressed to the following:

Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
Office of Attorney General  
Office of Consumer Advocate  
555 Walnut Street 5th Floor, Forum Place  
Harrisburg, PA 17101-1923

Respectfully submitted,

  
Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
Lori A. Herman  
Assistant Consumer Advocate

DATED: April 14, 2003

73609 wpd

SECRETARY'S BUREAU  
P.U.C.

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JUN 23 2003

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PUBLIC STATEMENT OF THE  
OFFICE OF CONSUMER ADVOCATE  
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 19, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission ("PUC" or "Commission"). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Notice of Intervention and to participate in the proceeding involving the Petition of Green Mountain Energy Company for partial waiver of the provisions of 52 Pa. Code § 54.40, relating to electric generation supplier licensing regulations. Petitioner requests that the Commission allow it to reduce its security requirement from the required \$1,803,608 to \$543,609.

The Petition raises important questions regarding the adequacy of Green Mountain's proposed reduction to its security obligation as required by the Commission's regulations. By intervening in this Petition, the OCA seeks to ensure that Green Mountain's customers and all other customers will be protected by the Commission's regulations as intended by the Electricity Customer Choice and Competition Act.

**DOCKETED**  
JUN 23 2003

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OFFICE OF CONSUMER ADVOCATE

555 Walnut Street 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048

IRWIN A. POPOWSKY  
Consumer Advocate

FAX (717) 783-7152  
E-Mail: paoca@ptd.net

April 14, 2003

James J. McNulty, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17120

Re: Petition of Green Mountain Energy Company for  
Waiver of Provisions of 52 Pa. Code § 54.40  
(Relating to Bonds or Other Security)  
Docket Nos. P- and A-110073

Dear Secretary McNulty:

Enclosed for filing please find an original and three copies of the Answer of the  
Office of Consumer Advocate in the above-referenced proceeding.

A copy of this document has been served upon all parties as evidenced by the  
attached Certificate of Service.

Sincerely yours,

Tanya J. McCloskey  
Senior Assistant Consumer Advocate

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Enclosure

cc: All parties of record  
73714

SECRETARY'S BUREAU

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# ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Green Mountain Energy Co. :  
For Partial Waiver of the Provisions of : Docket No. P-\_\_\_\_\_ and  
52 Pa. Code § 54.40 (Relating to Bonds : A-110073  
or Other Security) :

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ANSWER OF THE OFFICE  
OF CONSUMER ADVOCATE

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On March 24, 2003, Green Mountain Energy Company (Green Mountain) filed a Petition seeking partial waiver of the electric generation supplier licensing (EGS) regulations at 52 Pa. Code § 54.40.<sup>1</sup> In its Petition, Green Mountain requests Commission permission to allow it to maintain its EGS license with an adjusted security requirement in the amount of \$543,609, which will replace a letter of credit in the amount of \$1,803,608. The Petition is unclear as to the period for which Green Mountain is requesting an adjusted security requirement.

Green Mountain argues that a reduction in its security requirements is appropriate for several reasons. First, Green Mountain argues that in the event of default, there is no tax risk because it has paid its estimated 2003 Gross Receipts Tax (GRT) obligation in full. Petition, ¶ 11. Second, Green Mountain claims that its customers would not experience any financial harm because these customers are paying a premium to the "price to compare" and, therefore, no "lost savings" would result. Petition, ¶ 7. Finally, Green Mountain notes that it has a security agreement with

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<sup>1</sup> The Office of Consumer Advocate received an expurgated version of this Petition; therefore, the OCA's Answer does not contain a response to paragraph 16.

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JUN 23 2003

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PECO Energy, Inc. (PECO) to ensure the delivery of energy on behalf of the Competitive Discount Service (CDS) customers it serves in PECO's service territory. Petition, ¶ 9.

The Office of Consumer Advocate (OCA) submits that Green Mountain's Petition should be denied. Green Mountain's arguments are flawed for several reasons. First, Green Mountain primarily advances an argument that it made in the Commission's recent Advanced Notice of Proposed Rulemaking (ANPR) regarding the Commission's regulations on security requirements for licensees, *i.e.* that once its pre-payment of the GRT is made on March 15<sup>th</sup>, there is little risk from the default of the EGS. The prepayment of an estimate of the 2003 GRT does not reduce the need for security, however. An estimate is just that, an estimate. Changes in the level of business activity will alter the obligation. Additionally, the estimate does not account for such things as the reconciliation of the previous year's estimate of taxes to actual taxes owed or any settlement of prior tax years' obligations that may still be in dispute or not final. It also does not account for tax obligations other than GRT that may be due.<sup>2</sup> Moreover, even the GRT tax obligation will come due again for the subsequent year, necessitating the reinstatement of the letter of credit or bond. Green Mountain has argued in this regard that its obligation arises only between January 1<sup>st</sup> and March 15<sup>th</sup> so it uses an average value for that time period to calculate the bond obligation. Green Mountain's argument, however, does not accurately represent its obligation and leaves the Commonwealth undersecured.<sup>3</sup>

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<sup>2</sup> The OCA would also note that Green Mountain did not provide any verification from the Department of Revenue that the estimated tax obligation had been paid in full or that the Department agreed with Green Mountain's estimate of the tax obligation.

<sup>3</sup> Green Mountain's assertion that its tax obligation is based on an aggregation of gross receipts for a 74 day period between January 1<sup>st</sup> and March 15<sup>th</sup> is not accurate. Petition, ¶12. The  
(continued...)

Second, Green Mountain's Petition does not fully recognize the other important purposes of the security requirements. The Electricity Generation Customer Choice and Competition Act (the Act), Section 2809(c)(1), sets forth the purpose of the security as follows:

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 complies with the following:

(i) Furnishes a bond or other security approved by the commission in form and amount to 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)(emphasis added). As can be seen, the intent of the Act is to ensure the financial responsibility of the EGS for more than just the payment of an estimate of one-year's GRT. The security is to serve an important consumer protection purpose to ensure that the EGS meets its obligations under its contracts, agreements and arrangements to consumers.

Green Mountain argues, however, that since it serves customers generally at rates in excess of the price to compare, there will be no consumer losses if it defaults on its contract obligations and thus no consumer protection is needed. Petition, ¶¶7 and 8. The customer contracts, agreements and arrangements, however, involve more than lost savings. Customers are at risk in a supplier default for direct financial losses of such things as deposits, prepayments, or credits on budget billing plans. Additionally, customers are at risk for unresolved billing errors, and even for

---

<sup>3</sup>(...continued)

obligation, if the EGS intends to be in business for the full tax year, is based on the estimated annual gross receipts. That obligation arises, in full, on January 1<sup>st</sup>, and the risk to the Commonwealth is 100% of that obligation every day. The use of an average of aggregate gross receipts for a 74 day period would leave the Commonwealth inadequately secured. Additionally, the obligation for the actual tax, prior year's reconciliation of estimated taxes to actual taxes owed, and prior year's taxes that have not been finally settled remains throughout the year

payments made on incorrect bills. Allowing Green Mountain to reduce its level of bonding below the amount called for in the regulations would thwart these important consumer protection purposes. This is particularly problematic as Green Mountain serves as the CDS provider for over 30,000 of PECO's customers. As the Commission is aware, the bankruptcy of PECO's other large CDS provider resulted in consumer losses that have not yet been repaid to consumers.

The fact that Green Mountain has posted security to PECO under the CDS program does not alter the importance of the Commission's security. The security posted for PECO's benefit is to secure Green Mountain's obligations to PECO for the delivery of energy. It is the cost to PECO of such things as replacement energy that is secured by the PECO bond, not any of Green Mountain's obligations to its CDS customers or to the Commonwealth. The Commission's security requirement must secure all of Green Mountain's other obligations to the Commonwealth and to customers.<sup>4</sup>

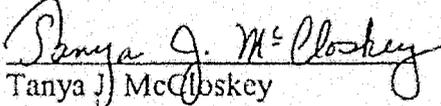
Finally, the OCA would note that the Commission has issued an Advanced Notice of Proposed Rulemaking to consider revisions to the regulations regarding security. In its Petition, Green Mountain advances the same arguments that it did in the Rulemaking. The OCA, and other parties, have filed comments and reply comments in the Rulemaking. The OCA submits that security should not be reduced until the issues identified by the Commission in the Rulemaking can be fully considered.

---

<sup>4</sup> The OCA would also note that Green Mountain serves customers in service territories other than PECO's and may have obligations to other EDCs.

WHEREFORE, for the reasons set forth above, the OCA submits that the Petition of Green Mountain should be denied.

Respectfully submitted,

  
Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
Lori A. Herman  
Assistant Consumer Advocate

Counsel for:  
Irwin A. Popowsky  
Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street 5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048

Dated: April 14, 2003  
73647

ORIGINAL



An Exelon Company

Delia W. Stroud  
Lead Counsel

Telephone 215 841-1234  
Fax 215 841-6112  
www.exeloncorp.com

delia.stroud@pecoenergy.com

PECO Energy Company  
2301 Market Street, 526-2  
PO Box 8699  
Philadelphia, PA 19101-8699

KJR

DOCUMENT  
FOLDER

April 16, 2003

VIA HAND DELIVERY

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building, 2<sup>nd</sup> Floor  
400 North Street  
Harrisburg, PA 17120

DOCKETED

JUL 22 2003

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PA PUC  
SECRETARY'S BUREAU

Re: **Petition of Green Mountain Energy Company for Partial Waiver of the Provisions of 52 Pa. Code § 54.40 (Relating to Bonds or Other Security) - Docket No. A-110073**

Dear Secretary McNulty:

PECO Energy Company ("PECO") protests and opposes the above-captioned Petition of Green Mountain Energy Company ("Green Mountain") to reduce its Electric Generation Supplier ("EGS") license security requirement from \$1,803,008 to \$543,609. Green Mountain operates as an EGS and as a Competitive Default Service ("CDS") Provider in PECO's service territory.

PECO submits that the petition should be denied as the requested reduction does not comply with the Public Utility Code and Pennsylvania Public Utility Commission ("PA PUC" or "Commission") regulations regarding EGS license security requirements. In the alternative, PECO submits that the PA PUC should defer action on Green Mountain's Petition and should not reduce security requirements for it until the Commission has fully considered the issues being addressed in the *Advanced Notice of Proposed Rulemaking for Revision of Chapter 54 of the Pennsylvania Code Pertaining to Electric Generation Supplier Licensing*, ("ANPR") Commission Dkt. Nos. L-00020158, P-00021989 published at 33 *Pa. Bulletin* 31 (January 4, 2003).

Contrary to Green Mountain's assertion that "the Commission need only consider the risk Commonwealth taxes will go unpaid" (Petition at ¶ 8, pg. 4) in establishing the appropriate level of required security, Section 2809(c) of the Public Utility Code, 66 Pa. C.S. § 2809 (c) includes an additional purpose. It states explicitly that the security is designed not only to ensure the EGS' "payment of gross receipts tax . . .", but also "the

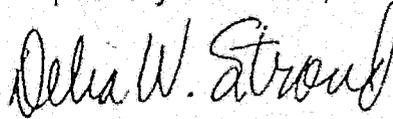
supply of electricity at retail in accordance with contracts, agreements, or arrangements." Similarly, Section 54.40 (b) of the Commission's regulations, 52 Pa. Code § 54.40 (b) highlights that the required security is designed as well to secure electric distribution companies' ("EDCs") claims for losses incurred as a result of an EGS' failure to supply electricity pursuant to its contracts, agreements or arrangements. The Utility.com default provided clear examples of the substantial losses EDCs suffer in such instances. As noted in Comments filed by The Energy Association of Pennsylvania in the ANPR, "Utility.com's departure caused EDCs to incur: (1) data transfer and other costs to switch Utility.com's customers to POLR service outside of standard procedures, (2) administrative costs to calculate non-standard bills and then field the resulting customer inquiries, (3) power pool penalties, (4) notification costs to advise Utility.com customers of what happened and what was being done about it, (5) purchase costs for generation to serve the switched customers, (6) administrative costs to compile data for the Office of Consumer Advocate . . . ." (EAP Comments, pgs. 2-3) Accordingly, Green Mountain's bond must be maintained in an amount sufficient to ensure payment not only of gross receipts tax but also of liabilities associated with its failure to supply electricity at retail in compliance with contracts, agreements, or arrangements. In short, the security should also be designed to cover EDC expenses resulting from any such default.

Moreover, as for the PECO CDS customers Green Mountain serves, Green Mountain's statements concerning the purpose of CDS security are also erroneous. In particular, its statement that the security "would more than adequately protect the [sic] all Green Mountain CDS customer savings in the unlikely event of default . . . ." (Petition at ¶ 9, pg. 5) does not comport with the terms of the Commission-approved CDS Agreement. Under the terms of that Agreement, the CDS security covers "any . . . damages or losses . . . suffered by [PECO] as a result of . . . default by the CDS Provider." (CDS Agreement, Section 18, pgs. 14 – 19) The security does not cover any lost savings of Green Mountain's CDS customers. Therefore, Green Mountain cannot rely on the existence of its CDS security as a basis for seeking reduction of its statutorily required security.

Finally, under any circumstances, as stated previously, the Commission should not act on Green Mountain's petition until the above-referenced ANPR is complete and all of the issues addressed in that rulemaking have been fully considered. Most notably, the Commission identified for comment the issue of "[w]hether the current bonding requirements cause EDCs to assume an unreasonable financial risk when EGSs default on their obligations." (Issue 5)

Green Mountain's petition, however, fails entirely to address this critical issue.

Respectfully submitted,

A handwritten signature in cursive script that reads "Delia W. Stroud". The signature is written in black ink and is positioned above the printed name and title.

Delia W. Stroud  
Counsel for PECO Energy Company

Cc: Robert Bennett, FUS  
Service List



**ORIGINAL**

KJR

800 North Third Street, Suite 301, Harrisburg, Pennsylvania 17102  
Telephone (717) 901-0600 • Fax (717) 901-0611 • www.energypa.org

RECEIVED  
03 APR 16 PM 4:14  
PA.P.U.C.  
SECRETARY'S BUREAU

April 16, 2003

Mr. James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Docket No. A-110073: Petition of Green Mountain Energy Company  
for Partial Waiver of the Provisions of 52 Pa. Code § 54.40  
(Relating to Bonds or Other Security)

Dear Mr. McNulty:

Per Rule 5.61(a) of the Commission's Administrative Rules of Practice  
and Procedure, the Energy Association of Pennsylvania encloses the  
original and three copies of its answer in the above-referenced  
proceeding.

Please add the undersigned counsel to the official service list in  
this matter as a participant.

Respectfully submitted,

DOCUMENT  
FOLDER

Dan Regan  
Vice President & General Counsel

enc.

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED  
03 APR 16 PM 4:14  
P.A.P.U.C.  
SECRETARY'S BUREAU  
Docket No. A-110073

Petition of Green Mountain Energy )  
Company for Partial Waiver of the )  
Provisions of 52 Pa. Code § 54.40 )  
(Relating to Bonds or Other Security) )

ANSWER OF THE ENERGY ASSOCIATION OF PENNSYLVANIA

Pursuant to Section 5.61(a) of the Commission's Rules of Administrative Practice and Procedure,<sup>1</sup> the Energy Association of Pennsylvania (the "Energy Association") answers the petition filed by Green Mountain Energy Company ("Green Mountain") on March 24, 2003 (the "Petition")<sup>2</sup> and states as follows:

DOCUMENT  
FOLDER

ANSWER

The Energy Association opposes the Petition, which seeks a 70% reduction in the bond underlying Green Mountain's electric generation supplier ("EGS") license. For reasons presented below, the Petition should be denied. In the alternative, and at a minimum, the Commission should defer consideration of the Petition until the Commission rules on the issues raised through the Advance Notice of Proposed Rulemaking on security for EGS performance<sup>3</sup> (hereafter, "Docket No. L-00020158").

**DOCKETED**

JUL 17 2003

<sup>1</sup> 52 Pa. Code § 5.61(a).

<sup>2</sup> The caption of the Petition indicates it would be filed in a to-be-assigned "P" docket. It is the Energy Association's understanding that the Petition was instead filed in Docket No. A-110073. If this understanding is incorrect, the Energy Association respectfully requests this answer be filed in whatever docket the Petition resides.

<sup>3</sup> *Advance Notice of Proposed Rulemaking for Revision of Chapter 54 of the Pennsylvania Code Pertaining to Electric Generation Supplier Licensing*, 33 Pa.B. 31 (2003).

Green Mountain claims Docket No. L-00020158 "should have no bearing on whether Green Mountain should receive a waiver of current security requirements."<sup>4</sup> To the contrary, Docket No. L-00020158 has a direct effect on the security that Green Mountain should be required to post.

Performance security concerns three types of financial exposure: payment of gross receipts taxes, compensation to consumers for "lost savings" and a series of "Supplier Default Costs" that are borne by electric distribution companies ("EDCs") in the wake of an EGS default.<sup>5</sup> Through Docket No. L-00020158 — which has already generated a series of initial and reply comments, including those filed by Green Mountain — the Commission is assessing the size of these exposures, the adequacy of current security measures, and various avenues of procedural and substantive reform.

The Petition fails to address Supplier Default Costs except for some references to agreements Green Mountain has with PECO Energy Company ("PECO") incident to Green Mountain providing Competitive Default Service in PECO's territory.<sup>6</sup> Yet, as illustrated in Duquesne Light Company's April 8, 2003 protest to the Petition, the Supplier Default Costs stemming from a Green Mountain default are substantial, and for this reason alone Green Mountain's bond should not be reduced until the Commission determines how Supplier Default Costs should be handled.

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<sup>4</sup> Petition at p.2, n.1.

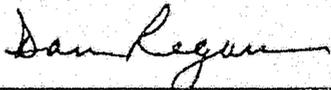
<sup>5</sup> "Comments of the Energy Association of Pennsylvania," Docket No. L-00020158 (Mar 5, 2003) at 2-3, n.6. A copy of the body of these comments is appended hereto as "Attachment A" for inclusion in the record in this docket.

<sup>6</sup> Petition, ¶ 9.

Separately, the Commission opened Docket No. L-00020158, a generic proceeding, because the issues in that docket had repercussions throughout Pennsylvania. These issues should not be prejudged through action on a single EGS's petition to reduce its bond.

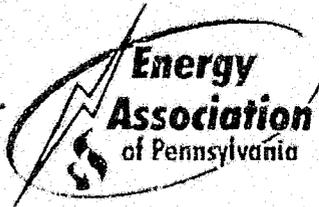
WHEREFORE, the Energy Association of Pennsylvania urges the Commission to deny Green Mountain's March 24, 2003 petition in this docket; or, in the alternative, to hold this petition in abeyance pending resolution of the issues raised in Docket No. L-00020158.

Respectfully submitted,  
ENERGY ASSOCIATION OF  
PENNSYLVANIA

By:   
\_\_\_\_\_  
DAN REGAN  
Vice President & General Counsel

DATED: April 16, 2003

**ATTACHMENT "A"**



800 North Third Street, Suite 301, Harrisburg, Pennsylvania 17102  
Telephone (717) 901-0600 • Fax (717) 901-0611 • www.energypa.org

March 5, 2003

Mr. James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

RECEIVED  
MAR -5 AM 10:43  
PA P.U.C. BUREAU  
SECRETARY'S BUREAU

Re: Docket No. L-00020158: Advance Notice of Proposed Rulemaking for Revision of Chapter 54 of the Pennsylvania Code Pertaining to Electric Generation Supplier Licensing

Dear Mr. McNulty:

Per the notice appearing in the January 4, 2003 issue of the *Pennsylvania Bulletin*, 33 Pa B. 31, the Energy Association of Pennsylvania encloses the original and 15 copies of its initial comments in the above-referenced proceeding. Concurrent with this filing, the Energy Association is mailing copies of its comments to the Office of Consumer Advocate, the Office of Small Business Advocate and each of the five Commissioners.

Please advise if you have any questions concerning this filing.

Respectfully submitted,

A handwritten signature in cursive script that reads "Dan Regan".

Dan Regan  
Vice President and General Counsel

enc

cc: Hon. Glen R. Thomas, Chairman (VIA FIRST CLASS MAIL— w/enc.)  
Hon. Robert K. Bloom, Vice Chairman (VIA FIRST CLASS MAIL — w/enc.)  
Hon. Terrance J. Fitzpatrick (VIA FIRST CLASS MAIL — w/enc.)  
Hon. Kim Pizzingrilli (VIA FIRST CLASS MAIL — w/enc.)  
Hon. Aaron Wilson, Jr. (VIA FIRST CLASS MAIL — w/enc.)  
Office of Consumer Advocate (VIA FIRST CLASS MAIL — w/enc.)  
Office of Small Business Advocate (VIA FIRST CLASS MAIL — w/enc.)

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Advance Notice of Proposed Rulemaking )  
For Revision of Chapter 54 of the )  
Pennsylvania Code Pertaining to Electric )  
Generation Supplier Licensing )

Docket No. L-00020158

COMMENTS OF THE ENERGY ASSOCIATION OF PENNSYLVANIA

Pursuant to the Advance Notice of Proposed Rulemaking Order ("Advance NOPR") adopted by the Commission on December 19, 2002 and published in the January 4, 2003 issue of the *Pennsylvania Bulletin*,<sup>1</sup> the Energy Association of Pennsylvania (the "Energy Association"), acting on behalf of its electric distribution company ("EDC")<sup>2</sup> members, provides the following general comments as well as responses to the Advance NOPR's 12 specific questions:

**GENERAL COMMENTS**

As noted in the Advance NOPR, this docket traces its roots to a petition the Energy Association filed in January 2002.<sup>3</sup> That petition was motivated by a series of instances where Commission-imposed bonds proved inadequate to cover the expenses incurred

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<sup>1</sup> 33 Pa.B. 31 (2003).

<sup>2</sup> As defined in the Electricity Generation Customer Choice and Competition Act [hereinafter "the Electric Choice Act"], see 66 Pa.C.S. § 2803.

<sup>3</sup> "Petition of the Energy Association of Pennsylvania for Amendment of 52 Pa. Code § 54.40 (Electric Generation Customer Choice: Electricity Generation Supplier Licensing: Bonds or Other Security)" Docket No. P-00021938 (filed Jan. 16, 2002) [hereinafter "the Energy Association's Bonding Petition"]. A copy of the Energy Association's Bonding Petition is appended hereto as "Attachment A" for inclusion in the record in this docket.

and losses suffered when electric generation suppliers ("EGSs") abruptly ceased providing retail electric service. Consistent with reacting to a series of specific individual events, our January 2002 petition urged a relatively specific set of reforms ranging from increasing the size of the security requirement to permitting alternative forms of security to reforming the process for adjusting the amount of security an EGS must post. The January 2002 petition also called for the Commission to recognize the right of EDCs to implement their own performance security requirements through provisions in their tariffs.

With the benefit of having 14 months to reflect on performance security, it has become clear that the central question is to decide which obligations are appropriately secured through Commission regulations, and which are best secured through Commission-approved provisions in EDCs' tariffs. At least three arguments can be made in favor of securing virtually all EGS performance through tariff provisions.

First, since EDCs suffer most of the losses arising from EGS non-performance, EDCs are in the best position to identify and quantify them. In its Bonding Petition, the Energy Association identified a number of these losses in the context of the *Utility.com* case:

Nevertheless, one need only look at the sudden departure of Utility.com, Inc. ("Utility.com") to see that a \$250,000 bond is insufficient to cover the significant costs that must be incurred to return an EGS's customers to Provider of Last Resort ("POLR") service in the wake of a departure outside the Commission's regulations. As the Commission knows all too well, Utility.com became insolvent and abruptly withdrew from the retail electric market in violation of Pennsylvania law and the EDCs' tariffs. Utility.com's improper exit triggered a gross receipts tax ("GRT") deficiency of at least \$472,178, which was, by itself, well in excess of Utility.com's \$250,000 bond. *In addition, Utility.com's departure caused EDCs to incur (1) data transfer and other costs to switch Utility.com's customers to POLR service outside of standard procedures, (2) administrative costs to calculate non-standard bills and then field the*

*resulting customer inquiries, (3) power pool penalties, (4) notification costs to advise Utility.com customers of what happened and what was being done about it, (5) purchase costs for generation to serve the switched customers, (6) administrative costs to compile data for the Office of Consumer Advocate, and (7) expenses to compensate customers, as appropriate, for damages suffered as a result of Utility.com's failure to comply with its supply contracts and Commission regulations.<sup>4</sup>*

Even as to the one exposure clearly identified in the current regulations — the payment of gross receipts taxes — one could argue that performance should be secured through tariff provisions because the Electric Choice Act specifically provides that EDCs are ultimately liable for any deficiency.<sup>5</sup>

Second, EDCs have extensive familiarity with the ever-evolving array of instruments used in today's markets to secure performance, e.g., bonds, letters of credit, cash collateral and corporate guarantees. Through direct experience, EDCs are also aware of the subtleties of these arrangements, particularly with regard to defining events of loss and pursuing claims. As the parties exposed to losses resulting from EGS non-performance, EDCs are amply motivated to identify advances in security instruments and appropriately reflect them in the administration of their tariffs.<sup>6</sup>

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<sup>4</sup> *Id.* ¶ 2 (emphasis added, footnotes omitted).

<sup>5</sup> 66 Pa.C.S. § 2809(c)(2).

<sup>6</sup> The converse is also true. To the extent an EGS's non-performance results in losses that are borne by other parties, security against such losses should not be established through EDC tariffs. Consider a claim for the "lost savings" a customer shoulders when the customer's low-cost EGS fails to perform and the customer is transferred to higher-priced "provider of last resort" service from an EDC. This loss is borne by the retail customer, not the EDC; the loss is defined by the EGS-customer contract, which the EDC is not party to; and an assessment of a lost savings claim would require the EGS to disclose retail prices, marketing strategy and other commercially sensitive information. Because of these distinctions, the EDC's tariff is not the appropriate vehicle for establishing security against lost savings. The Electric Choice Act does not obligate the Commission to require security against these losses either, but if the Commission elects to do so it would need to proceed through regulations.

Finally, the prudent administration of a security instrument often requires ongoing oversight of the day-to-day financial condition of the company providing the security, as well as counter-parties or guarantors. EDCs have been the subject of such oversight, and they are qualified to specify and observe appropriate monitoring levels for EGSs.

The main argument favoring continued reliance on regulation centers on concern that EDCs will use their tariffs to unduly burden EGSs, erect barriers to entry, and otherwise stymie the development of a retail market for electric generation. This argument completely overlooks the tariff approval process, which affords the Commission a full opportunity to examine proposed tariff language and allows consumer advocates and EGSs an opportunity to raise objections. In addition, this argument overlooks the Commission's formal complaint and mediation processes, which provide a forum for addressing any disputes over the application of tariffed security requirements. For natural gas retail choice, the Commission has allowed supplier security to be determined principally through tariffs, with the Commission establishing broad standards and natural gas distribution companies given flexibility to set specifics within them.<sup>7</sup> Serious thought should be given to adopting that approach for electric choice as well.<sup>8</sup>

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<sup>7</sup> See 52 Pa. Code § 62.111, *implementing* 66 Pa.C.S. § 2207(c). Although Section 2207(c) and the corresponding provision in the Electric Choice Act, 66 Pa.C.S. §2809(c)(i), have slightly different wordings, the electric provision is broad enough to permit the Commission to implement security requirements through its authority to approve tariffs and oversee their implementation.

<sup>8</sup> Handling performance security through EDCs tariffs would not require the Commission to articulate extensive prescriptive standards. Instead, the Commission could adopt a relativistic approach, e.g., a presumption that an EDC's standards are fair if its requirements are no more burdensome than the requirements the EDC must meet for its own purchases of wholesale power.

## SPECIFIC QUESTIONS

With the foregoing General Comments in mind, we turn to answering the 12 questions posed in the ANOPR.

1. *Whether § 54.40 should be amended to establish an initial bonding requirement equal to either a specified percentage (now 10%) of the EGS's forecasted gross receipts for the first consecutive 12 months, or \$250,000, whichever is greater. Comments are requested regarding: (1) whether the existing bonding level of 10% should be increased; and (2) whether the default level of \$250,000 should be changed. For a start-up company, what criteria should be used to forecast gross receipts for the first 12 months?*

As with many of the specific questions, the answer turns on whether the Commission agrees to permit performance security to be established through EDC tariffs rather than regulation. If the Commission decides to permit all of the risks borne by EDCs — including the risk of non-payment of gross receipts taxes — to be handled through tariff provisions, there would be correspondingly few risks handled through regulation and the initial security level would have to be determined in that context.

Although security against a gross receipts tax deficiency can and should be handled through EDC tariffs,<sup>9</sup> we understand the Commission may desire to continue in this role. If the Commission continues to rely on regulations rather than tariff provisions to establish performance security against gross receipt tax non-payment, experience has proven that the 10% standard is too low.<sup>10</sup> The Energy Association advocates

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<sup>9</sup> See p.3, *infra*

<sup>10</sup> See Energy Association Bonding Petition ¶ 2.

setting the initial bonding requirement at 15% of forecasted gross receipts or \$250,000, whichever is greater.<sup>11</sup>

For a start-up EGS,<sup>12</sup> the initial security requirement should be determined on the basis of a business plan which would be submitted by the EGS and which would show projected revenues for the next 12 months. The initial level should then be subject to quarterly adjustment. For at least the first year of operation, the start-up EGS should be required to file quarterly updates of its business plan showing changes between projected and actual revenues for the preceding quarter(s) and projected revenues for the next 12 months.<sup>13</sup> Independent of the quarterly filing requirement, EGSs should also be required to increase their security levels between filings if their actual gross receipts reach a level that causes their filed security to fall below the 15% level.

2. *If an EGS does not have a business history in the Commonwealth, whether it should be required to update its gross receipts revenue forecast quarterly for the initial consecutive twelve-month period. How would this be done for a start-up company? Normally, the gross receipts tax is based upon two-year old data. What is the impact of this?*

By our definition, an EGS that does not have a business history in the Commonwealth is a "start-up EGS." It would be required to submit an initial business plan and quarterly updates as specified above.<sup>14</sup>

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<sup>11</sup> See, *id.* ¶ 4. If the Commission elected to require EGSs to post security against lost savings, the 15% threshold would have to be adjusted accordingly.

<sup>12</sup> We define "start-up EGS" as any EGS that has not collected revenues in each of the preceding four quarters.

<sup>13</sup> See Energy Association Bonding Petition ¶ 4.

<sup>14</sup> *Id.*

The use of data that is two years old is inadequate given the dynamics of the retail electric business and the resulting substantial risk that security based on old data will prove inadequate when a default occurs. One need only consider Utility.com, where the \$250,000 initial security was not even adequate to cover unpaid gross receipts taxes (totaling over \$400,000) let alone all the other costs resulting from Utility.com's default.

3. *Whether on December 1 of each year, every EGS should be required to provide the Commission with a gross receipts revenue forecast for the next calendar year, if only to ensure the EGS' financial security is sufficient to satisfy its GRT obligation. How would this requirement work for start-up companies?*

Start-up EGSs should file updated business plans quarterly, as noted above, and all other EGSs should be required to file annual revenue forecasts. Regulations should further provide that even if an EGS no longer qualifies as a start-up EGS, the Commission can still require the filing of quarterly business plans if past plans show a pattern of projected revenues falling substantially below corresponding actual revenues. In these cases, the deviation between projected and actual revenues creates a significant risk that existing security will be inadequate.<sup>15</sup> The Commission can protect against this inadequacy by capping the revenue an EGS can collect or the number of customers EGS can serve under its license, but quarterly business plan filings and quarterly adjustments in the security level are easier to administer and more in keeping with fostering a competitive electric retail market.

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<sup>15</sup> If the Commission also placed EGSs under an affirmative duty to increase their security levels between filings in the face of increased revenues, see, Answer to Specific Question 1, *infra*, significant deviations between projected and actual revenues would indicate regulatory evasion.

4. ***Whether § 54.40 should specify what "other security approved by the Commission" is and whether letters of credit and corporate guarantees should be listed as approved types of security.***

As noted above, the types of acceptable instruments can be defined more flexibly if performance security were handled through Commission-approved tariffs. If the Commission instead persists in its current system of establishing security standards through regulation, the list should be confined to surety bonds that include an appropriate endorsement to make the Surety pay on a claim within 10 days,<sup>16</sup> letters of credit<sup>17</sup> and, perhaps, corporate guarantees.<sup>18</sup> The Commission should also consider requiring the guarantor to provide the type of information listed for EGSs in the response to Question 12 below.

5. ***Whether the current bonding requirements cause EDCs to assume an unreasonable financial risk when EGSs default on their obligations.***

Yes. This was the thrust of the Energy Association's Bonding Petition, and what was said in January 2002 remains true today.

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<sup>16</sup> See Energy Association Bonding Petition ¶ 6, n. 20.

<sup>17</sup> See Energy Association Bonding Petition ¶ 7 ("[T]he Energy Association recommends amending Section 54.40 to recognize unconditional, irrevocable standby letters of credit for the full value of the financial assurance, issued through a bank with a minimum corporate debt rating of "A" by Standard & Poor, or "A2" by Moody, or equivalent short-term debt rating by one of these agencies.")

<sup>18</sup> If the Commission is going to accept corporate guarantees, it should at a minimum require that the guarantor provide evidence quarterly to verify its creditworthiness and demonstrate that it meets or exceeds minimum credit ratings. See Energy Association Bonding Petition ¶ 8 ("Section 54.40 should recognize corporate guarantees from affiliated credit support providers with investment grade ratings . . .").

6. ***Whether EDCs should be permitted to establish and enforce company-specific financial assurances provisions which EGSs would be required to meet as a condition of each EDC's Electric Generation Supplier Coordination Tariff.***

Yes. As discussed at length in the General Comments above, the Energy Association believes that since the EDCs bear the costs of default — even as to unpaid gross receipts taxes — the EDCs should be the primary source for determining which security instruments are acceptable and in what amounts. Within Commission-imposed standards, EDCs should have flexibility to establish and administer company-specific financial assurance provisions through appropriate credit vehicles and in amounts at the EDCs' reasonable discretion.

7. ***What is the likelihood of a Utility.com situation reoccurring?***

Marketplace instability continues to dominate the economic climate of the energy industry. These factors suggest that the likelihood of another Utility.com has, if anything, increased, thus adding even greater urgency to reforming current security requirements.

8. ***Whether the Commission should continue its role as a bond obligee.***

9. ***Whether the process should change through which claims are made on bonds.***

10. ***Whether the entities listed in the prioritization of claims should be assigned different positions and whether there should be additions or deletions to the list.***

These three questions focus on different aspects of security administration, and in each case the answer depends heavily on whether the Commission agrees that

performance security should be handled primarily through EDC tariffs. To the extent the Commission takes the tariff approach, the EDC, not the Commission, would be the party with rights against the security (whether as a bond obligee or otherwise). Also, the tariffs would determine the claims process and the prioritization of claims.

If the Commission persists in handling performance security through regulation, a few points are in order. First, to the extent the Commission administers bonds for EGS financial security purposes, it should continue as bond obligee so that it can provide a forum for resolving competing claims

Second, the collection of unpaid gross receipts taxes has a priority over other claims. Since the Energy Choice Act already obligates EDCs to cover this arrearage,<sup>19</sup> there is no need for there to be a priority claim on the bond as well. Unpaid gross receipts taxes should have equal priority with claims springing from the procurement of replacement physical supplies.<sup>20</sup>

**11. *What are the financial impacts of amending § 54.40 on EDCs, EGSs, the consumers, PUC, Department of Revenue?***

Raising performance security to an adequate level improves market stability and increases stakeholder confidence, two conditions favorable to the expansion of the retail market for electricity. Enhanced assurances more properly assign costs and risks to those responsible for them. The only EGSs that might suffer are those which have chronically operated with less security than their operations warranted.

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<sup>19</sup> See n.6 *infra*.

<sup>20</sup> These claims should share an equal, superior priority *vis-à-vis* lost savings claims, consistent with current Commission regulations. 52 Pa. Code § 54.40(f)(3).

To the extent performance security is handled through tariffs instead of regulation, the Commission's expenses for security administration — establishing initial security levels, monitoring performance, updating security levels, managing claims, determining priorities, etc. — will be significantly reduced. The Department of Revenue should not be affected since gross receipts tax revenues are already guaranteed.

12. *Whether the regulations should provide for PJM Board default letters to be provided to the PUC by the supplier in default within 15 days of the date of the letters. These letters are referenced in PJM Interconnection, L.L.C., First Revised Rate Schedule FERC No. 24, Section 15.2 (relating to enforcement of obligations)*

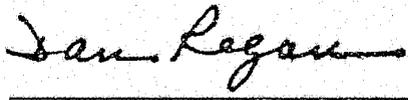
Fifteen days is too late: A PJM Board default letter should be provided immediately upon receipt. Moreover, there is other information that has such an immediate impact on future EGS performance that the EGS should report it to the Commission immediately. The Commission should develop a list of such financial indicators, which would include:

- ✓ A downgrade of an EGS's or an EGS affiliate's long or short term debt rating by a major rating agency in any jurisdiction.
- ✓ An EGS or EGS affiliate being placed on credit watch with negative implications by a major rating agency in any jurisdiction.
- ✓ A bankruptcy filing of an EGS or an EGS affiliate in any jurisdiction.
- ✓ Any action requiring filing of a Form 8-K by an EGS or an EGS affiliate in any jurisdiction.
- ✓ Insolvency of an EGS or an EGS affiliate in any jurisdiction.
- ✓ A report of a significant quarterly loss or decline in earnings by an EGS or an EGS's affiliate in any jurisdiction.

- ✓ The resignation of key officer(s) or the filing of a lawsuit that could materially adversely impact current or future financial results by an EGS or an EGS affiliate in any jurisdiction.
- ✓ Notification on the first business day to the Commission by an EGS when an EGS's Total Net Obligation to PJM approaches the EGS's established working credit limit ("WCL") and the EGS is notified by PJM that they are approaching the WCL or when an EGS exceeds its WCL or the equivalent in any future PJM credit policies. [See Attachment A – PJM Credit Policy, version 2.0 (issued Sep. 1, 2002 – Current Section II f(1) and f(2).]

The Energy Association appreciates this opportunity to comment and we urge the Commission to take into consideration the points and authorities provided above as it continues its deliberations in this matter.

Respectfully submitted,  
ENERGY ASSOCIATION OF  
PENNSYLVANIA

By:   
DAN REGAN  
Vice President & General Counsel

DATED: March 5, 2003

RHOADS & SINON LLP

ORIGINAL

ROBERT M. LONG, JR.<sup>1</sup>  
SHERILL T. MOYER  
JAN P. PAOEN  
RICHARD B. WOOD  
LAWRENCE B. ADAMS III<sup>2</sup>  
J. BRUCE WALTER  
JOHN P. MANBECK  
FRANK J. EBERA  
PAUL A. LUNDEEN  
JACK F. HURLEY, JR.  
DAVID B. DOWLING  
DAVID F. O'LEARY  
DAVID C. TWADDELL  
CHARLES J. FERRY  
STANLEY A. SMITH  
JENS H. DAMGAARD<sup>3</sup>  
GRARE D. NICHOLAS  
THOMAS A. FRENCH  
FEAN H. GUSINBERFF  
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JOANNE BOCK CHRISTINE  
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April 28, 2003

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FILE NO.  
5894/10

<sup>1</sup> ALSO ADMITTED TO THE DISTRICT OF COLUMBIA BAR  
<sup>2</sup> ALSO ADMITTED TO THE FLORIDA BAR  
<sup>3</sup> ALSO ADMITTED TO THE MARYLAND BAR  
<sup>4</sup> ALSO ADMITTED TO THE NEW JERSEY BAR  
<sup>5</sup> ALSO ADMITTED TO THE NEW YORK BAR

Re: Petition of Green Mountain Energy Company for Partial Waiver of the Provisions of 52 Pa. Code § 54 40 (Relating to Bonds or Other Security)  
Docket No. A-110073

VIA HAND DELIVERY

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
400 North Street, 2<sup>nd</sup> Floor, M-West  
Harrisburg, PA 17120

Dear Secretary McNulty:

On behalf of Green Mountain Energy Company, enclosed is the original Verification to be included with Green Mountain's answers to the Bond Reduction Data Requests of the Bureau of Fixed Utility Services. The answers, which were filed April 25, 2003, contained a facsimile of the Verification. Please replace the facsimile with the original verification.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,

RHOADS & SINON LLP

By:

Kathryn G. Sophy

Enclosure

BTL

SECRETARY'S BUREAU

03 APR 28 PM 3:49

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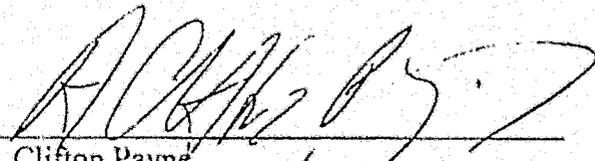
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ORIGINAL

VERIFICATION

I, A. Clifton Payne, 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).

Date: 4/25/03

  
\_\_\_\_\_  
A. Clifton Payne  
President, Eastern Region  
Green Mountain Energy Company

03 APR 28 PM 3:49  
SECRETARY'S BUREAU

**DOCKETED**  
JUN 22 2003

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May 8, 2003

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Re: Petition of Green Mountain Energy Company for Partial Waiver of the Provisions of 52 Pa. Code § 54.40 (Relating to Bonds or Other Security)  
Docket No. A-110073

VIA HAND DELIVERY

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
400 North Street, 2<sup>nd</sup> Floor, M-West  
Harrisburg, PA 17120

Dear Secretary McNulty:

Enclosed for filing on behalf of Green Mountain Energy Company are the original and three (3) copies of its Reply to Answers, Protests and Oppositions to its Petition for Partial Waiver of Bonding Requirements. A copy of this document has been served on all parties, as evidenced by the attached Certificate of Service.

Please contact me if you have any questions.

Sincerely,

RHOADS & SINON LLP

By:

Kathryn G. Sophy

PA.P.U.C.  
SECRETARY'S BUREAU

03 MAY - 8 PM 3:38

RECEIVED

Enclosure

cc Certificate of Service  
Robert Thomas, Green Mountain Energy Company

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FOLDER

61

ORIGINAL

Before The  
Pennsylvania Public Utility Commission

Petition of Green Mountain Energy Company :  
for Partial Waiver of the Provisions of :  
52 Pa. Code § 54.40 :  
(Relating to Bonds or Other Security) :

Docket No. A-110073

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Green Mountain Energy Company's  
Reply to Answers, Protests and Oppositions to its  
Petition for Partial Waiver of Bonding Requirements

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NOW COMES Green Mountain Energy Company ("Green Mountain"), and replies to the answers, protests and oppositions to its partial waiver of the provisions of the Pennsylvania Public Utility Commission's ("Commission") regulations at 52 Pa. Code § 54.40 (relating to bonds or other security).

1. On March 24, 2003, Green Mountain filed with the Commission its Petition For Partial Waiver Of The Provisions Of The Commission's Regulations At 52 Pa. Code § 54.40 (Relating To Bonds Or Other Security).

2. Green Mountain has received answers, protests and oppositions from Duquesne Light Company ("Duquesne"), the Office of Consumer Advocate ("OCA"), the Energy Association of Pennsylvania ("EAP") and PECO Energy Company ("PECO").

3. Each of the parties urge the Commission to either deny Green Mountain's request to reduce its security requirement or to defer action until the Commission's proposed rulemaking regarding Section 54.50 of Title 52 of the Pennsylvania Code is final. *Advance Notice of Proposed Rulemaking for Revision of Chapter 54 of the*

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*Pennsylvania Code Pertaining To Electric Generation Supplier Licensing*, Docket Nos. P-00021938 and L-00020158.

4 Duquesne argues that the security required of electric generation suppliers ("EGSs") also protects electric distribution companies ("EDCs"). Duquesne argues that the default of Utility.com resulted in financial loss for Duquesne and Utility.com customers. Duquesne argues that EGSs should be required to provide sufficient security to cover all potential expenses an EDC might incur if an EGS defaults.

5. The OCA argues that the security required of EGSs also protects the consumers it serves. The OCA notes that EGS consumers could be at risk to lose deposits, prepayments, credits or refunds due to unresolved billing errors.<sup>1</sup> The OCA also argues that the higher security is required because 100% of the Gross Receipts Tax ("GRT") estimated obligation is owed as of January 1 of each year.<sup>2</sup>

6. Similar to Duquesne, PECO argues that the Commission-required security also guarantees EDC losses. Specifically, PECO claims that the requirement covers EDC "claims for losses." PECO also raises the Utility.com situation, arguing that EDCs suffered financial harm when that EGS defaulted. PECO also argues that the security it demands for the CDS program does not cover consumer lost savings.<sup>3</sup>

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<sup>1</sup> Green Mountain does not require deposits or prepayments of any of its customers.

<sup>2</sup> The fact remains that the estimated tax is just an estimate. Despite the penalties that the Pennsylvania Department of Revenue may assess for underestimates of GRT, an EGS's ultimate responsibility is to pay the *actual* tax owed. The actual tax owed is based on revenues collected in that calendar year. Thus, the tax owed on January 1<sup>st</sup> is based on the company's revenues billed on January 1<sup>st</sup>. In order to assure the Commission that Green Mountain's estimated taxes do not fall below actual taxes due, Green Mountain has offered to provide quarterly updates of its Pennsylvania gross receipts.

<sup>3</sup> The security provided to PECO under the CDS program is sufficient to cover reasonable costs and liabilities, which could include savings to customers. PECO's assertion that it would not be required to pass along the customer savings would mean the CDS program is gross over-secured. Requiring security for non-existent risks is akin to charging entrance fees and should not be supported by this Commission.

7. The EAP reiterates the arguments of Duquesne and PECO, alleging the costs to EDCs require the higher security level.

8. The Commission should reject the arguments in opposition. The Commission can grant Green Mountain a partial waiver of its bonding requirement, decrease the amount necessary to maintain its EGS license and provide reasonable protection of the Commonwealth's interests. Thus, the Commission can uphold its statutory charge while allowing business to operate with minimal encumbrances.

9. When an EGS defaults, there are costs incurred by the industry and possibly consumers and the Commonwealth. How much of those costs should be protected by a Commission-imposed security requirement?

10. Contrary to the impression given by the EDCs and EAP, should a Utility.com-type default occur again, EDCs will not bear all the related costs. Based on the security changes required by PJM Interconnection, the costs will be spread across the industry. Thus, EGSs, *including Green Mountain*, bear the risks associated with a default and will incur costs. Yet, EGSs have no expectation that the Commission's security requirements would provide them any recompense.

11. Further, some of the costs are recovered from the customers returning to provider of last resort ("POLR") service. In fact, the longer the customers remain with the EDC, the greater the EDC's overall recovery. Moreover, the acquisition of the customers itself has a definite value to a business – a value that is not factored into the EDC's claims of default costs.

12. In moving to a competitive environment, the EDCs were compensated through the Competitive Transition Charge for their assumption of risk that they may incur generation-related expenses that may not be readily recovered.

13. Consumers also were compensated for their risks in moving toward a competitive environment. Most consumers will enjoy generation price caps for more than a decade.

14. In a competitive environment, it is unreasonable and unwise to require vendors to provide security sufficient to cover every conceivable risk to any business or customer it encounters. Not only is such security excessive, but also unnecessary.

15. No other business enterprise must provide such security.

16. Even in this industry, the EDCs provide no similar security, even though their default also would affect the industry, consumers and the Commonwealth and to a far greater degree.

17. The Commission's regulation at Section 54.40(b) states that "the purpose of the security requirement is to ensure the licensee's financial responsibility, the payment of gross receipts tax as required by section 2810 of the code (relating to revenue-neutral reconciliation), and the supply of electricity at retail in accordance with contracts, agreements, and arrangement. See section 2809(c) of the code." 52 Pa. Code § 54.40(b).

18. Requiring security be kept at an increased level, such as 10% of gross receipts, actually inhibits the licensee's ability to ensure the supply of electricity at retail in accordance with contracts, agreements, and arrangement. In this instance, a greater bonding level does not result in greater security of performance, but thwarts the intention of the statute.

19. To illustrate this point, Duquesne suggests a security level high enough to cover Duquesne's risk exposure for a default during peak period. Requiring year-round, 24-hour protection for the relatively few hours of peak supply would constrain

operational financing throughout the year for risks that do not exist. In addition, protecting Duquesne in such an expansive manner ignores the compensation Duquesne has already received for bearing that risk.

20. Funds diverted from the business of supplying power to sit in escrow do nothing to build or maintain the fiscal or operational health of the business. Rather than offering greater security, it undermines the basic character of competitive businesses.

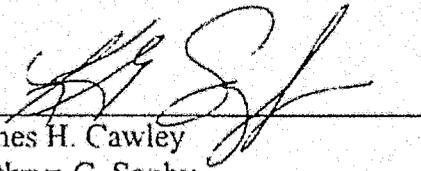
21. Lastly, the Commission's security requirement is not intended to replace the civil justice system. Individuals and entities that suffer financial harm as a result of an EGS's default may pursue their claims within the civil justice system. Just as an individual may take legal action against a shopkeeper over a credit that was not refunded, so too may consumers, EDCs and other suppliers take legal action against a defaulting EGS that withholds refunds or penalty payments.

22. This Commission has been charged with balancing the risks of moving toward a competitive market. The Commission has provided sufficient protections to the EDCs and the consumers. The legislature intended to protect Commonwealth interests through the GRT and the Commission has the added responsibility to ensure EGSs meet their GRT responsibility. By setting the security level at the minimum amount that will provide reasonable assurance that the GRT will be paid, the Commission will allow competitive businesses to provide better service to their customers.

WHEREFORE, because the EDCs have been compensated for the risks they bear, because the consumers enjoy long-term rate caps as a means of mitigating their risks and because an excessive security level would impede the ability to conduct business in a competent manner, the Commission need focus only on the risk that Commonwealth taxes will go unpaid in the event of a default. For the foregoing reasons, Green Mountain

requests that the Commission reject the oppositions filed by Duquesne Light Company, the Office of Consumer Advocate, PECO Energy Company and the Energy Association of Pennsylvania and grant Green Mountain a partial waiver of the provisions of 52 Pa. Code § 54.40, allowing it to maintain its EGS license with security in the amount of \$543,609.

Respectfully submitted,



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Attorneys for  
Green Mountain Energy Company

Dated: May 8, 2003

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Re: Petition of Green Mountain Energy Company for Partial  
Waiver of the Provisions of 52 Pa. Code § 54.40 (Relating to  
Bonds or Other Security)  
Docket No. A-110073

VIA FAX and HAND DELIVERY

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
400 North Street, 2<sup>nd</sup> Floor, M-West  
Harrisburg, PA 17120

Dear Secretary McNulty:

As per our telephone conversation, Green Mountain Energy Company ("Green Mountain") requests a one-week extension in which to reply to answers, protests and oppositions filed in the above captioned matter.

On March 24, 2003, Green Mountain filed its Petition for Partial Waiver of Bonding Requirements. Green Mountain has received answers, protests and oppositions from various parties and spanning from April 8 through April 16, 2003. Green Mountain intends to file one reply to these oppositions. Commission regulations would require a response to the first opposition by today, May 1, 2003. Because Green Mountain intends to respond to all opposition in a single reply, we request a one-week extension to May 8, 2003.

All parties have been served, as evidenced by the enclosed Certificate of Service.

SECRETARY'S BUREAU

03 MAY 1 11:43 AM '03

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JUN 17 2003

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RHOADS & SINON LLP

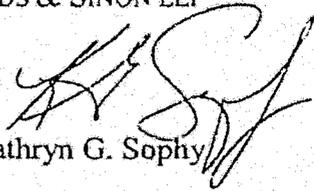
May 1, 2003  
Page 2

Please contact me if you have any questions.

Sincerely,

RHOADS & SINON LLP

By:

  
Kathryn G. Sophy

Enclosure

cc: Certificate of Service  
Robert Thomas