



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

ISSUED: OCTOBER 20, 2003

IN REPLY PLEASE
REFER TO OUR FILE

A-110073
P-00011925

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DOCUMENT
FOLDER

Application of Green Mountain Energy Resources, LLC for approval to offer, render, furnish, electricity or electric generation services as a broker/marketer engaged in the business of supplying electricity and as an aggregator engaged in the business of supplying electricity to the public in the Commonwealth of Pennsylvania

A-110073

Petition of Green Mountain Energy Resources LLC for partial waiver of 52 Pa. Code 54.40

P-00011925

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision of Administrative Law Judge Robert P. Meehan.

An original and nine (9) copies of signed exceptions to the decision, if any, **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION, 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, a copy in the hands of the Office of Special Assistants Third Floor; and a copy in the hands of each party of record no later than October 23, 2003 by 4:30 P.M.** 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions. A certificate of service shall be attached to the filed exceptions.

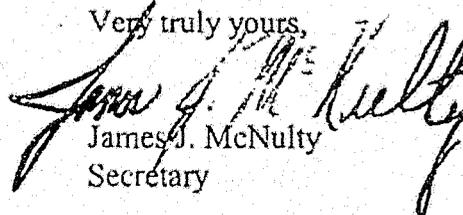
Exceptions shall obey 52 Pa. Code 5.533 and 5.535, particularly the 40-page limit for exceptions. Exceptions should be clearly labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc)".

Reply exceptions will not be accepted for filing and will not be entertained by the Commission.

Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the decision.

Parties are also requested to provide the Commission's Office of Special Assistants with a copy of exceptions/reply exceptions on a computer disk, 3 1/2" in size, in Microsoft Word 6.0 format. If Word 6.0 is not available, either Wordperfect 5.1 or ASCII format is acceptable.

Very truly yours,


James J. McNulty
Secretary

Encls.
Certified Mail
Receipt Requested
FG

See Attached Listing for Additional Parties of Record.

Non-Proprietary Union

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Green Mountain Energy Resources, : A-110073
LLC for approval to offer, render, or furnish :
electricity or electric generation services as a :
broker/marketer engaged in the business of :
supplying electricity and as an aggregator engaged :
in the business of supplying electricity to the public :
in the Commonwealth of Pennsylvania :

and :

Petition of Green Mountain Energy Resources, : P-00011925
LLC for partial waiver of 52 Pa. Code 54.40 :

RECOMMENDED DECISION
(NON-PROPRIETARY VERSION)

Before
Robert P. Meehan
Administrative Law Judge

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DOCKETED
OCT 30 2003

This decision recommends that the Commission approve the Joint Petition for Settlement which was submitted by the parties at the hearing of October 16, 2003.

HISTORY OF THE PROCEEDING

On March 24, 2003, Green Mountain Energy Resources, LLC (Green Mountain), filed a Petition for Partial Waiver of the Provisions of 52 Pa. Code §54.40(d) (relating to bonds or other security). Green Mountain requested that the Commission approve the partial waiver in order to adjust the level of Green Mountain's EGS license bond requirement to \$543,609 – a level commensurate with the unique nature of Green Mountain's scope and business operations. Duquesne Light Company, the Office of Consumer Advocate, the Energy Association of

Pennsylvania and PECO Energy Company answered, protested or opposed the Petition. These parties either urged the Commission to deny Green Mountain's request to reduce its security requirement or to defer action until the Commission's proposed rulemaking regarding Section 54.40 of Title 52 of the Pennsylvania Code is final.

On June 23, 2003, the Commission entered an order directing the petition for reduction of bonding level be assigned to the Office of Administrative Law Judge for a hearing and recommended decision in sufficient time for final Commission action no later than October 30, 2003. On July 22, 2003, Green Mountain petitioned this Commission to stay its hearing pending a resolution to the rulemaking procedure. Green Mountain proposed in its petition to maintain its current bonding level, at \$1,803,608 beyond November 4, 2003, and until such time as the rulemaking is completed.

A Prehearing Conference was held on July 24, 2003, for the purpose of setting the procedural schedule in this proceeding. Hearings were initially scheduled to be held in Harrisburg on Tuesday-Wednesday, August 27-29, 2003. A Prehearing Order was issued on July 29, 2003.

By Secretarial Letter dated August 8, 2003, the Commission granted in part Green Mountain's petition for abeyance of the hearing. The Commission held in abeyance the hearing regarding Green Mountain's Petition for Partial Waiver of its bonding requirements until such time as there was a resolution to the rulemaking proceeding at L-00020158 and P-00021938, but rejected Green Mountain's proposal that it be allowed to maintain its current bonding level of \$1.8 million until such time as the final regulations would require a different level or until such time as there would be a ruling on the Petition for Partial Waiver. The Secretarial Letter directed Green Mountain to maintain its bonding levels consistent with regulatory requirements at 52 Pa. Code §54.40 pending the outcome of the rulemaking proceeding at L-00020158 and P-00021938.

Green Mountain then filed a petition for reconsideration, amendment or clarification of the Secretarial Letter of August 8, 2003. By Order entered September 22, 2003,

the Commission denied Green Mountain's petition for reconsideration of the Secretarial Letter. At the same time, however, the Commission gave Green Mountain the option of either complying with the bonding requirements, in accordance with the Secretarial Letter, or to maintain its current bonding level and pursue its petition for a partial waiver at an expedited hearing. As provided in that Order, Green Mountain notified the Commission that it was electing to maintain its current bonding level and to pursue its petition for a partial waiver of the bonding requirements.

The hearing on the petition was initially scheduled to be held in Pittsburgh on Tuesday and Wednesday, October 7-8, 2003. However, based on representations that a settlement of this proceeding had been achieved, those hearings were cancelled and a hearing on the petition was scheduled for Thursday, October 16, 2003. At this hearing the parties submitted a Joint Petition for Settlement (Settlement). The copy of the Settlement, attached hereto as Appendix "A", does not have the signatures of the parties. The completed signature page is to be submitted to the Secretary's Office no later than Friday, October 24, 2003.

In addition to the Settlement, Green Mountain also submitted two documents, a Verification of the payment of State Taxes (Green Mountain Statement 1), and an Affidavit of Bryan M. DeCordova (Green Mountain Statement 1-A). Both of these Statements were admitted without objection. Lastly, the parties submitted a Stipulated Protective Agreement, and requested that it be approved and a Protective Order be issued in this proceeding. A separate Order has been issued disposing of the Stipulated Protective Agreement.

Terms of the Settlement

The essential terms of the Settlement, submitted by the parties at the hearing of October 16, 2003, are set forth at Paragraphs 14-21 as follows:

14. Green Mountain be granted a waiver of the requirement in 52 Pa. Code §54.40 that the level of security be based on 10% of its gross revenues from a preceding calendar year, in this instance calendar year 2002. Rather than the amount of security based on Section 54.40, Green Mountain will provide by November 4, 2003, security to the Commission in the amount of 10% of its projected non-PECO Competitive Default

Service (CDS) gross revenues for 2004 ([PROPRIETARY BEGINS] [PROPRIETARY ENDS] security for 2004). If the Commission has not issued revised regulations at 52 Pa. Code Section 54.40 by November 4, 2004, Green Mountain shall continue to provide security to the Commission at 10% of its projected next calendar year gross revenues until the Commission's revised regulations are issued and effective.

15. The claims priority identified in 52 Pa. Code §54.40(f)(3) which must be specified in the bond or other security obtained by Green Mountain will be supplemented to include an additional priority for expenses incurred by EDCs in the event of a Green Mountain default. The priority to be included on the security interest from highest to lowest priority would be as follows: (i) the Commonwealth; (ii) EDCs for the reimbursement of gross receipts tax; (iii) Private Individuals; (iv) Payment of expenses incurred by EDCs which are identified in the EDC's EGS coordination tariff and/or OATT and any other verified out-of-pocket expenses incurred by an EDC solely as a result of any Green Mountain default under any EDC coordination tariff, OATT, or the Pennsylvania Public Utility Code. Payment to EDCs under this priority shall be prorated to each EDC based on the number of Green Mountain customers in its service area at the time of a default.

16. Green Mountain shall provide verification to the Joint Petitioners, the ALJ and the Commission that its Gross Receipts Tax (GRT) for 2003 (and all previous years) and all other state taxes for 2003 (and all previous years) have been paid in full. This settlement is explicitly contingent upon verification that all state taxes have been paid in full for 2003 and all previous years.

17. Green Mountain agrees that it will pay its 2004 estimated GRT obligation in full by March 15th of 2004 and by March 15th each year that this settlement is in effect. Green Mountain also agrees to provide verification to the Commission, counsel for Duquesne, PECO and the OCA on March 15th or the first business day thereafter that such payment has been made. If the estimated GRT is not paid by March 15th of any year the settlement is in effect, any Joint Petitioner may request that the Commission increase the level of security.

18. Green Mountain agrees that it will adhere to the billing conditions contained in the PECO MST program for residential customers in regard to the return of its PECO CDS customers at the end of the CDS program. Such conditions include the following:

(a) Green Mountain agrees to submit its final charges for every CDS customer to PECO for billing in accordance with all applicable EDI protocols;

(b) Green Mountain agrees that any of the final charges submitted to PECO for billing that represent missed or delayed billing are treated in accordance with Chapter 56;

(c) After the date for final billing by Green Mountain for CDS customers, Green Mountain agrees that it is not permitted to issue any charges to the customer for any CDS service; and

(d) Green Mountain agrees that since it did not perform the CDS billing, it is not permitted to collect or issue any collection notices to the CDS customer.

19. As for its non-CDS customers who are billed by their EDC, Green Mountain agrees that when returning any such customer to an EDC at the end of its service obligation to the customer, it will provide all outstanding charges to the EDC for final billing in accordance with the respective EDC's Electronic Data Exchange protocol for final bills. After the issuance of the final bill by the EDC, Green Mountain agrees that it will not issue any charges to the customer for any past service. If Green Mountain provides the billing service to any such customer, Green Mountain agrees to submit a final bill to each such customer when its service obligation ends and to not issue any further charges for past service to the customer once the final bill has been issued, but Green Mountain may pursue collection efforts to recover any properly billed charges in accordance with Chapter 56 and applicable law.

20. Green Mountain agrees to provide counsel for Duquesne, counsel for PECO, counsel for the OCA and the Commission with quarterly updates of its actual revenues as compared to its projected revenues for the effective period of this settlement. The quarterly reports will be provided to counsel for Duquesne, PECO and the OCA under the Protective Agreement and Order in this proceeding and shall be accorded proprietary treatment under the terms of that Agreement and Order. Any Joint Petitioner, including Green Mountain, can request that the Commission make an adjustment to the level of the security based on significant variations of the actual revenues from the projected revenues upon which the level of security is based. Any such request shall be served on all of the Joint Petitioners.

21. The Joint Petitioners agree that any Joint Petitioner may seek to enforce compliance with this Settlement, including making a request for penalties, before the Commission if Green Mountain fails to comply with any term contained herein.

Additionally, there are some general terms and conditions applicable to the Settlement. It will go into effect upon the Commission's entry of a final order approving it without modification. Should the Commission reject the Settlement, it shall be null and void. If the Commission should modify the Settlement, any party may withdraw from the Settlement. The Settlement is made without any admission against or prejudice to any party's factual or legal position. It does not constitute controlling precedent. *Settlement*, at ¶¶22-24.

DISCUSSION

It is the policy of the Commission to encourage parties to contested on-the-record proceedings to settle the dispute. See, 52 Pa. Code §5.231. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may include review of the Commission's decision by the appellate courts of Pennsylvania. Such savings not only benefit the individual parties, but also the Commission and all other ratepayers of the respondent utility.

It is the position of the Joint Petitioners that the Settlement is in the public interest and should be approved for the reasons set forth at Paragraphs 25-30, as follows:

25. **Increase In The Level Of Security:** The Settlement provides for an increase in the current level of Green Mountain's security from \$1.8 million to ([PROPRIETARY BEGINS] [PROPRIETARY ENDS], an amount which reflects Green Mountain's expected business activity in the Commonwealth for 2004 as Green Mountain's customer base is reduced due to the conclusion of the PECO Competitive Default Service Program.

26. **Allows Green Mountain To Serve At A More Reasonable Cost:** Green Mountain has been an active participant in the Pennsylvania retail markets since the inception of electric generation competition in the Commonwealth and has actively served customers through the PECO Competitive Default Service Program. The CDS program will conclude by regulatory design by February of 2004 resulting in a substantial reduction in Green Mountain's customer base in Pennsylvania and its gross revenues. The Settlement reflects the return of over 30,000 CDS customers and provides for a level of security that more closely reflects Green Mountain's business activity anticipated for 2004. This will enable Green Mountain to continue to serve customers in the Commonwealth at a reasonable cost and avoids imposing an unreasonable

security cost on Green Mountain due to its past participation in the PECO CDS program.

27. **Mitigates The Risks That Are To Be Secured:** The Settlement mitigates the risk that there will be a need to call on the security by obtaining verification that all state taxes have been paid and providing for further verification of the payment of tax obligations as they become due.

28. **Mitigates The Risks To Consumers:** The Settlement also mitigates the risk to PECO CDS customers and other customers by clarifying final billing procedures.

29. **Mitigates The Risks to EDCs:** The Settlement also mitigates the risks to EDCs from a Green Mountain default by supplementing the claims priority identified in 52 Pa. Code §54.40(f)(3) to include expenses incurred by EDCs in the event of any Green Mountain default. Payment to EDCs under this priority will be prorated based on the number of Green Mountain customers in the EDCs' service area in the event of any default.

30. **Consistency With The Commission Policy Of Promoting Negotiated Settlement And Avoiding Burdensome, Costly Litigation:** The Joint Petition was arrived at after conducting negotiations and exchanging information. The Settlement avoids the need for burdensome and costly litigation, provides an expeditious resolution to these matters, and is consistent with the Commission's rules and practices encouraging negotiated settlements (see 52 Pa. Code Section 5.231, 69.391, 69.401).

In addition to the preceding terms of the Settlement, Green Mountain has filed all required returns and paid the amounts reflected in those returns for the Gross Receipts Tax, the Sales and Use Tax, the Corporate Net Income Tax, as well as the PA PUC general assessments. With the exception of an ongoing routine Sales and Use Tax audit by the Pennsylvania Department of Revenue, which had not resulted in any claims made by that Department, there are no audits pending with respect to these taxes. Green Mountain St. 1. Further, as stated by Green Mountain's Chief Financial Officer DeCordova (Green Mountain St. 1-A, at ¶¶4-9):

End of PECO Competitive Default Service Program

5. Currently, Green Mountain Energy Company serves approximately 30,000 customers under provisions of the PECO Energy Company ("PECO") Competitive Default Service ("CDS") Program

which provides customers with a percentage discount from the PECO "price to compare". Green Mountain provides PECO with \$3,040,000 in security to secure its obligations under the CDS Agreement with that company.

6 Under the terms of Green Mountain's PECO CDS Agreement, customers will be returned to PECO service effective with their January 2004 meter readings. Approximately 38% of Green Mountain's revenue for 2002 was directly attributed to customers served under the PECO CDS Program. The end of that Program will result in an approximate 35% reduction of Green Mountain's 2004 gross revenues.

Other Security Provided by Green Mountain

7. Green Mountain procures its Pennsylvania supply through a long-term relationship with one of its principal stockholders. This stockholder, a leading, global energy company, also serves as Green Mountain's scheduling coordinator and has met PJM's security requirements.

No Potential for "Lost Customer Savings"

8. With the exception of its service to PECO's CDS customers, Green Mountain's renewable and cleaner energy products are priced at a premium to the consumer's "price to compare." Therefore, the potential for "lost savings" does not exist for non-CDS customers. In the unlikely event of default, none of Green Mountain's non-CDS customers would experience financial harm related to lost savings.

The Cost and Effect of Increasing Green Mountain's Security Requirement

9. The current Letter of Credit of \$1,803,608 is issued in connection with an existing master Letter of Credit facility. Green Mountain's reimbursement obligations under this facility are secured by Letters of Credit provided by several of Green Mountain's principal stockholders. Green Mountain pays a fee to its stockholders for providing these Letters of Credit. In the proposed Joint Settlement Agreement, Green Mountain is able to increase its current level of security to ([PROPRIETARY BEGINS] [PROPRIETARY ENDS] because it has some amount of availability under this master facility. Green Mountain's real concern is the cost of providing a Letter of Credit in an amount equal to 10% of gross revenues (including PECO CDS customer revenues), which would increase the Letter of Credit amount to more than ([PROPRIETARY BEGINS] [PROPRIETARY ENDS]. Since Green Mountain has limited

availability remaining under the master Letter of Credit facility, it would have to pledge several million dollars in cash to provide a ([PROPRIETARY BEGINS] [PROPRIETARY ENDS] Letter of Credit. Green Mountain is not willing to use that much cash to over secure the risks intended to be addressed by the security required under 52 Pa. Code §54.40(d). It very likely would leave the Pennsylvania market instead.

In my opinion, the terms and conditions of the Settlement, as well as Green Mountain Statements I and 1-A, constitute an equitable resolution of this proceeding. Accordingly, the Settlement should be approved, as it is in the public interest.

ORDER

THEREFORE,

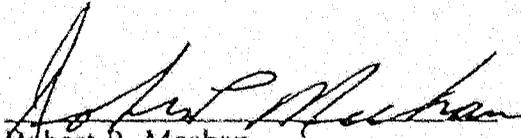
IT IS RECOMMENDED:

1. That the Joint Petition for Settlement of the petition, filed on March 24, 2003, by Green Mountain Energy Resources, LLC, for partial waiver of 52 Pa. Code §54.40, is approved.

2. That consistent with the approval of the Joint Petition for Settlement, the petition for partial waiver of 52. Pa. Code §54.40, filed on March 24, 2003, by Green Mountain Energy Resources, LLC, is granted.

3. That consistent with the approval of the Joint Petition for Settlement, Green Mountain Energy Resources, LLC, shall, on or before November 4, 2003, provide the level of security specified in the Joint Petition for Settlement, and each year thereafter while the Settlement is in effect.

4. That Green Mountain Energy Resources, LLC, shall file the updates and verifications specified in the Joint Petition for Settlement, with the Secretary of the Commission, and provide a copy thereof to the Bureau of Fixed Utility Services.


Robert P. Meehan
Administrative Law Judge

Date: October 17, 2003

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Green Mountain Energy :
Company For Partial Waiver Of The : Docket Nos. P-00011925
Provisions Of 52 Pa. Code §54.40 : A-110073
(Relating to Bonds or Other Security) :

**JOINT PETITION FOR SETTLEMENT
(NON-PROPRIETARY VERSION)**

This Joint Petition for Settlement is submitted by the following parties in the above-captioned proceeding: Green Mountain Energy Company (Green Mountain); the Office of Consumer Advocate (OCA); PECO Energy Company (PECO); Duquesne Light Company (Duquesne); and the Energy Association of Pennsylvania (EAP) (collectively, the Joint Petitioners).

The terms and conditions set forth in this Joint Petition represent a comprehensive settlement of the Petition filed by Green Mountain. The Joint Petitioners aver that this comprehensive Settlement is in the public interest and should be approved by the Commission without modification. Therefore, the Joint Petitioners request that the Commission (1) approve without modification the proposed Settlement as set forth herein; (2) due to the change in the nature and scope of Green Mountain's business activity in the Commonwealth, grant Green Mountain a limited waiver of the provision of 52 Pa. Code §54.40 that requires a level of security based on a preceding calendar year's gross receipts; (3) require that Green Mountain provide the level of security agreed to in this Settlement by November 4, 2003 as specified in the settlement and each year thereafter while this settlement

is in effect; (4) require that Green Mountain supplement, as provided in the settlement, the claims priority identified in 52 Pa. Code §54.40(f)(3) on the security instrument; and (5) identify the Commission Bureau for the receipt of the various verifications and reports called for by the Settlement.

In support of their request, the Joint Petitioners state as follows:

I. BACKGROUND

1. Green Mountain is a licensed electric generation supplier in the Commonwealth of Pennsylvania having been granted a permanent license on January 14, 1999. As part of the application process, Green Mountain posted a letter of credit in the amount of \$250,000 as required by 66 Pa. C.S. § 2809(c) and 52 Pa. Code § 54.40(a) and (c).

2. On October 3, 2000, Green Mountain petitioned for a waiver of 52 Pa. Code § 54.40 requesting that it be allowed to maintain the initial minimum license security requirement of \$250,000. Said petition was denied by Commission Order entered October 25, 2000, at Docket No. P-00001845. A Petition for Reconsideration was also denied on December 20, 2000, at Docket No. P-00001845. Since November 5, 2000, Green Mountain has maintained a letter of credit in the amount of \$1,803,608. By letter dated September 17, 2003, Green Mountain notified the Commission that it had extended the effective date of its letter of credit in that amount to November 4, 2004.

3. On October 19, 2001, Green Mountain again filed a Petition for Partial Waiver of the provisions of 52 Pa. Code § 54.40 at Docket No. P-00011925 requesting an adjustment

in its bonding level based on its revenues for the year 2000. The Commission did not rule on that petition.

4. On March 24, 2003, Green Mountain again filed with the Commission a Petition For Partial Waiver of the Provisions of the Commission's Regulations at 52 Pa. Code § 54.40 (Relating To Bonds Or Other Security) asking the Commission to lower its bonding level to \$543,609.

5. Duquesne Light Company ("Duquesne"), the Office of Consumer Advocate ("OCA"), the Energy Association of Pennsylvania ("EAP") and PECO Energy Company ("PECO") answered, protested, or opposed the petition. Each of these parties urged 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 54.40 of Title 52 of the Pennsylvania Code is final. *Advance Notice of Proposed Rulemaking for Revision of Chapter 54 of the Pennsylvania Code Pertaining To Electric Generation Supplier Licensing*, Docket Nos. P-00021938 and L-00020158.

6. As a result of a motion by Chairman Fitzpatrick, on June 23, 2003, the Commission by Order directed that Green Mountain's Petition for Partial Waiver be the subject of evidentiary hearings in order to permit a final Commission order no later than October 30, 2003.

7. Not wanting the hearings on its petition to be a surrogate proceeding for the rulemaking, Green Mountain on July 22, 2003, filed a Petition for Abeyance asking the Commission to hold the scheduled evidentiary proceeding in abeyance until completion of the rulemaking, and to allow Green Mountain to maintain its current bonding level until such time as the final regulations required a different level of security.

8. On August 8, 2003, the Commission's Secretary issued a Secretarial Letter which stated in its entirety:

Upon due consideration of Green Mountain Energy Company's Petition for Abeyance filed on July 22, 2003, in the above-referenced proceeding, there being no objection filed against said Petition, it is hereby directed said Petition is granted in part. The Commission does not agree with Green Mountain's proposal in paragraph 14 of its Petition that it maintain its current bonding level of \$1.8 million until such time as the final regulations require a different level. Therefore, Green Mountain is directed to maintain its bonding levels consistent with regulatory requirements at 52 Pa. Code §54.40 pending the outcome of the rulemaking proceeding at I-00020158 and P-00021938.

9. On August 25, 2003, Green Mountain filed a Petition for Reconsideration, Amendment, or Clarification of the Commission's Secretarial Letter. By letter dated September 12, 2003, EAP urged denial of the petition.

10. At its Public Meeting of September 18, 2003, the Commission voted to deny the petition. By Order entered September 23, 2003, the Commission left in effect the Secretarial Letter and gave Green Mountain the option of either (a) submitting to the Commission by October 30, 2003, a security instrument in an amount equal to ten percent of Green Mountain's reported annual gross receipts for the year 2002 to be effective immediately or, in the alternative, (b) maintaining its current bonding level while pursuing its petition for partial waiver of the bonding requirements in an expedited hearing before an Administrative Law Judge. Should Green Mountain choose alternative (b), the Office of Administrative Law Judge was to conduct an expedited hearing in order to afford the Commission time to rule upon the matter by its Public Meeting of October 30, 2003. Green Mountain was given three days from the date of entry of the Order to notify the Commission of its intended course of action. By letter dated September 19, 2003, Green Mountain notified

the Commission that it would pursue its petition for partial waiver in an expedited hearing proceeding.

11. Meanwhile, Green Mountain on March 15, 2003, prepaid in full its required 2003 Gross Receipts Tax. In mid-March 2004, Green Mountain will again prepay its Gross Receipts Tax for its anticipated 2004 gross revenues. Green Mountain has, since the receipt of its EGS license, fully and timely paid all taxes due the Commonwealth.

12. After Green Mountain notified the Commission that it would pursue its petition for partial waiver, the parties entered into a Stipulated Protective Agreement, exchanged information, and extensively negotiated terms of agreement and the provisions of this petition.

13. On October 16, 2003, a hearing was held before Administrative Law Judge Robert P. Meehan. The parties entered this Joint Petition for Settlement into the record, and Green Mountain entered into the record the Affidavit of Bryan M. DeCordova and the Verification required by Paragraph 17 herein regarding Green Mountain's payment of Pennsylvania taxes and the general assessments of this Commission. The Affidavit of Mr. DeCordova (who is Green Mountain's Chief Financial Officer) stated as follows:

(a) **Pennsylvania Taxes Have Been Paid.** On March 7, 2003, Green Mountain estimated and prepaid its required 2003 Gross Receipts Tax. In mid-March 2004, Green Mountain intends to again estimate and prepay its Gross Receipts Tax. In addition, Mr. DeCordova was not aware of any instance, since beginning to do business in Pennsylvania in 1998, that Green Mountain has failed to timely pay all taxes due and owing the Commonwealth of Pennsylvania.

(b) **End of PECO Competitive Default Service Program.** Currently, Green Mountain Energy Company serves approximately 30,000 customers under provisions of PECO's Competitive Default Service ("CDS") Program which provides customers with a percentage discount from the PECO "price to compare". Green Mountain provides PECO with \$3,040,000 in security to secure its obligations under the CDS Agreement with that company.

(c) Under the terms of Green Mountain's PECO CDS Agreement, customers will be returned to PECO service effective with their January 2004 meter readings. Approximately 38% of Green Mountain's revenue for 2002 was directly attributed to customers served under the PECO CDS Program. The end of that Program will result in an approximate 35% reduction of Green Mountain's 2004 gross revenues.

(d) **Other Security Provided by Green Mountain.** Green Mountain procures its Pennsylvania supply through a long-term relationship with one of its principal stockholders. This stockholder, a leading, global energy company, also serves as Green Mountain's scheduling coordinator and has met PJM's security requirements.

(e) **No Potential for "Lost Customer Savings".** With the exception of its service to PECO's CDS customers, Green Mountain's renewable and cleaner energy products are priced at a premium to the consumer's "price to compare." Therefore, the potential for "lost savings" does not exist for non-CDS customers. In the unlikely event of default, none of Green Mountain's non-CDS customers would experience financial harm related to lost savings.

(f) **The Cost and Effect of Increasing Green Mountain's Security Requirement.** The current Letter of Credit of \$1,803,608 is issued in connection with an

existing master Letter of Credit facility. Green Mountain's reimbursement obligations under this facility are secured by Letters of Credit provided by several of Green Mountain's principal stockholders. Green Mountain pays a fee to its stockholders for providing these Letters of Credit. In the proposed Joint Settlement Agreement, Green Mountain is able to increase its current level of security to \$2,175,000 because it has some amount of availability under this master facility. Green Mountain's real concern is the cost of providing a Letter of Credit in an amount equal to 10% of gross revenues (including PECO CDS customer revenues), which would increase the Letter of Credit amount to more than \$5,000,000. Since Green Mountain has limited availability remaining under the master Letter of Credit facility, it would have to pledge several million dollars in cash to provide a \$5,000,000 Letter of Credit. Green Mountain is not willing use that much cash to over secure the risks intended to be addressed by the security required under 52 Pa. Code § 54.40(d). It very likely would leave the Pennsylvania market instead.

(g) Thus, a security equivalent of 10% of Green Mountain's 2002 gross receipts, reflecting the height of its PECO CDS customer level, would cause an unnecessary financial burden in 2004 when these customers have been returned to PECO. Such a security requirement, divorced from the reality of Green Mountain's customer level and revenues, would needlessly tie up funds that could otherwise be allocated to building Green Mountain's business.

II. TERMS AND CONDITIONS

The Joint Petitioners, intending to be legally bound, agree that based on the changed nature and scope of Green Mountain's business activity in the Commonwealth in 2004 due to

the return of the PECO CDS customers, the facts established on the record and included in Paragraph 13 herein, the Petition for Partial Waiver of 52 Pa. Code §54.40 should be resolved in accordance with the following terms and conditions:

14. Green Mountain be granted a waiver of the requirement in 52 Pa. Code §54.40 that the level of security be based on 10% of its gross revenues from a preceding calendar year, in this instance calendar year 2002. Rather than the amount of security based on Section 54.40, Green Mountain will provide by November 4, 2003, security to the Commission in the amount of 10% of its projected non-PECO Competitive Default Service (CDS) gross revenues for 2004 ([PROPRIETARY BEGINS] [PROPRIETARY ENDS] security for 2004). If the Commission has not issued revised regulations at 52 Pa. Code Section 54.40 by November 4, 2004, Green Mountain shall continue to provide security to the Commission at 10% of its projected next calendar year gross revenues until the Commission's revised regulations are issued and effective.

15. The claims priority identified in 52 Pa. Code §54.40(f)(3) which must be specified in the bond or other security obtained by Green Mountain will be supplemented to include an additional priority for expenses incurred by EDCs in the event of a Green Mountain default. The priority to be included on the security interest from highest to lowest priority would be as follows: (i) the Commonwealth; (ii) EDCs for the reimbursement of gross receipts tax; (iii) Private Individuals; (iv) Payment of expenses incurred by EDCs which are identified in the EDC's EGS coordination tariff and/or OATT and any other verified out-of-pocket expenses incurred by an EDC solely as a result of any Green Mountain default under any EDC coordination tariff, OATT, or the Pennsylvania Public Utility Code. Payment

to EDCs under this priority shall be prorated to each EDC based on the number of Green Mountain customers in its service area at the time of a default.

16. Green Mountain shall provide verification to the Joint Petitioners, the ALJ and the Commission that its Gross Receipts Tax (GRT) for 2003 (and all previous years) and all other state taxes for 2003 (and all previous years) have been paid in full. This settlement is explicitly contingent upon verification that all state taxes have been paid in full for 2003 and all previous years.

17. Green Mountain agrees that it will pay its 2004 estimated GRT obligation in full by March 15th of 2004 and by March 15th each year that this settlement is in effect. Green Mountain also agrees to provide verification to the Commission, counsel for Duquesne, PECO and the OCA on March 15th or the first business day thereafter that such payment has been made. If the estimated GRT is not paid by March 15th of any year the settlement is in effect, any Joint Petitioner may request that the Commission increase the level of security.

18. Green Mountain agrees that it will adhere to the billing conditions contained in the PECO MST program for residential customers in regard to the return of its PECO CDS customers at the end of the CDS program. Such conditions include the following:

(a) Green Mountain agrees to submit its final charges for every CDS customer to PECO for billing in accordance with all applicable EDI protocols;

(b) Green Mountain agrees that any of the final charges submitted to PECO for billing that represent missed or delayed billing are treated in accordance with Chapter 56;

(c) After the date for final billing by Green Mountain for CDS customers, Green Mountain agrees that it is not permitted to issue any charges to the customer for any CDS service; and

(d) Green Mountain agrees that since it did not perform the CDS billing, it is not permitted to collect or issue any collection notices to the CDS customer.

19. As for its non-CDS customers who are billed by their EDC, Green Mountain agrees that when returning any such customer to an EDC at the end of its service obligation to the customer, it will provide all outstanding charges to the EDC for final billing in accordance with the respective EDC's Electronic Data Exchange protocol for final bills. After the issuance of the final bill by the EDC, Green Mountain agrees that it will not issue any charges to the customer for any past service. If Green Mountain provides the billing service to any such customer, Green Mountain agrees to submit a final bill to each such customer when its service obligation ends and to not issue any further charges for past service to the customer once the final bill has been issued, but Green Mountain may pursue collection efforts to recover any properly billed charges in accordance with Chapter 56 and applicable law.

20. Green Mountain agrees to provide counsel for Duquesne, counsel for PECO, counsel for the OCA and the Commission with quarterly updates of its actual revenues as compared to its projected revenues for the effective period of this settlement. The quarterly reports will be provided to counsel for Duquesne, PECO and the OCA under the Protective Agreement and Order in this proceeding and shall be accorded proprietary treatment under the terms of that Agreement and Order. Any Joint Petitioner, including Green Mountain, can request that the Commission make an adjustment to the level of the security based on

significant variations of the actual revenues from the projected revenues upon which the level of security is based. Any such request shall be served on all of the Joint Petitioners.

21. The Joint Petitioners agree that any Joint Petitioner may seek to enforce compliance with this Settlement, including making a request for penalties, before the Commission if Green Mountain fails to comply with any term contained herein.

III. GENERAL SETTLEMENT PROVISIONS

22. The Settlement will go into effect upon the Commission's issuance of a final order approving the Settlement without modification. If the Commission rejects the Settlement, the Settlement automatically will terminate and be null and void. If the Commission, in approving the Settlement, should modify any terms or conditions of the Settlement, any Joint Petitioner may elect to withdraw from the Settlement by filing a notice of withdrawal with the Commission's Secretary and serving a copy thereof upon all Joint Petitioners by facsimile, electronic mail or overnight delivery service within five days of the entry of the Commission's Order. In addition, the provision of the verification regarding the payment of all state taxes for 2003 and all previous years contained in Paragraph 15 constitutes a condition precedent to the Settlement.

23. The Settlement resolves Green Mountain's request for a Partial Waiver of 52 Pa. Code §54 40. This Settlement is made without admission against or prejudice to any factual or legal positions which any of the Joint Petitioners may assert in (a) a subsequent litigation of this proceeding in the event that the Commission does not issue a final, non-appealable Order approving the Settlement without modification; (b) in any other proceeding

involving Green Mountain or any other electric generation service provider or utility; (c) in any proceeding involving a proposed rulemaking, proposed policy statement, proposed guidelines; or the like or (d) any other proceeding.

24. It is expressly understood and agreed that the Settlement constitutes a negotiated resolution solely of the request of Green Mountain for a partial waiver of 52 Pa. Code §54.40 due to the changing nature and scope of Green Mountain's business activity in the Commonwealth as the PECO Competitive Default Service Program ends for Green Mountain. The Joint Petitioners agree that this Settlement does not constitute controlling precedent in any other proceeding.

IV. PUBLIC INTEREST CONSIDERATIONS

The Joint Petitioners submit that this Settlement is in the public interest and should be approved for the following reasons:

25. **Increase In The Level Of Security:** The Settlement provides for an increase in the current level of Green Mountain's security from \$1.8 million to [PROPRIETARY BEGINS] [PROPRIETARY ENDS], an amount which reflects Green Mountain's expected business activity in the Commonwealth for 2004 as Green Mountain's customer base is reduced due to the conclusion of the PECO Competitive Default Service Program.

26. **Allows Green Mountain To Serve At A More Reasonable Cost:** Green Mountain has been an active participant in the Pennsylvania retail markets since the inception of electric generation competition in the Commonwealth and has actively served customers through the PECO Competitive Default Service Program. The CDS program will conclude by regulatory design by February of 2004 resulting in a substantial reduction in Green

Mountain's customer base in Pennsylvania and its gross revenues. The Settlement reflects the return of over 30,000 CDS customers and provides for a level of security that more closely reflects Green Mountain's business activity anticipated for 2004. This will enable Green Mountain to continue to serve customers in the Commonwealth at a reasonable cost and avoids imposing an unreasonable security cost on Green Mountain due to its past participation in the PECO CDS program.

27. **Mitigates The Risks That Are To Be Secured:** The Settlement mitigates the risk that there will be a need to call on the security by obtaining verification that all state taxes have been paid and providing for further verification of the payment of tax obligations as they become due.

28. **Mitigates The Risks To Consumers:** The Settlement also mitigates the risk to PECO CDS customers and other customers by clarifying final billing procedures.

29. **Mitigates The Risks to EDCs:** The Settlement also mitigates the risks to EDCs from a Green Mountain default by supplementing the claims priority identified in 52 Pa. Code § 54 40(f)(3) to include expenses incurred by EDCs in the event of any Green Mountain default. Payment to EDCs under this priority will be prorated based on the number of Green Mountain customers in the EDCs' service area in the event of any default.

30. **Consistency With The Commission Policy Of Promoting Negotiated Settlement And Avoiding Burdensome, Costly Litigation:** The Joint Petition was arrived at after conducting negotiations and exchanging information. The Settlement avoids the need for burdensome and costly litigation, provides an expeditious resolution to these matters, and is consistent with the Commission's rules and practices encouraging negotiated settlements (see 52 Pa. Code Section 5.231, 69.391, 69.401).

V. CONCLUSION

WHEREFORE, the Joint Petitioners, intending to be legally bound, request that the Commission (1) approve without modification the proposed Settlement as set forth herein; (2) due to the change in the nature and scope of Green Mountain's business activity in the Commonwealth, grant Green Mountain a limited waiver of the provision of 52 Pa. Code Section 54.40 that requires a level of security based on a preceding calendar year's gross receipts; (3) require that Green Mountain provide the level of security agreed to in this Settlement by November 4, 2003 as specified in the settlement and each year thereafter while this settlement is in effect; (4) require that Green Mountain supplement the claims priority identified in 52 Pa. Code Section 54.40(f)(3) on the security instrument; and (5) identify the Commission Bureau for the receipt of the various verifications and reports called for by the Settlement.

Respectfully submitted,

Green Mountain Energy Company

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