

ORDER NO. 75608

IN THE MATTER OF THE COMMISSION'S INQUIRY
INTO THE PROVISION AND REGULATION OF
ELECTRIC SERVICE.

*
BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND
*

*
CASE NO. 8738
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By Order No. 73834,¹ issued on December 3, 1997 in the above-captioned proceeding, the Commission directed the formation of a State-wide Roundtable charged with, among other matters, investigating and proposing a process for reviewing and authorizing qualified suppliers to provide electric service in Maryland. *Id.* at 263. The Roundtable established a Supplier Authorization Working Group ("SAWG" or "Working Group") to accomplish that directive. The Roundtable and Working Group began their meetings in April 1998.

Since the Commission, as of December 1997, lacked direct authority over non-utility suppliers of electricity, it directed the Roundtable to accomplish supplier authorization through the electric utility companies' tariffs (the "tariff model"). *Id.* However, by Order No. 74561, issued on September 10, 1998 in response to rehearing requests in this proceeding, the Commission provided further direction to the Working Group. In Order No. 74561, the Commission stated that the supplier authorization process would be aided if the General Assembly were to enact legislation enabling the Commission to directly authorize suppliers. *Slip op.* at 51. The Commission directed the SAWG to prepare and present recommendations using both the tariff model and a direct licensure model. *Id.*

The Working Group held daylong meetings twice a month for a year. Its membership included representatives from utility, supplier, consumer (residential and business) and environmental groups. The SAWG filed interim reports on November 2, 1998 and March 12, 1999. The Working Group also filed a "Final Report" on May 3, 1999. In its Final Report, the Working Group references §7-507 of the Electric Customer Choice and Competition Act of 1999 ("Act") granting the Commission specific licensing authority over suppliers. As a result, the SAWG directed its efforts on direct licensing.

¹ See 88 Md. PSC 249 (1997).

In its Final Report, the SAWG provided the Commission with a recommended application for supplier licenses. According to the Final Report, the License Application requires suppliers to provide information necessary for the Commission to determine the qualifications of suppliers.

Additionally, the Working Group provided a set of recommended regulations governing the licensing process. The regulations describe the application process, Commission investigations and enforcement, and cessation of activities in the State by a supplier. Finally, the SAWG prepared a number of generic tariff/service agreement provisions that suppliers and local distribution companies could utilize to govern their relationships.

The SAWG also was pleased to report that its members were able to resolve all but two of the issues before it. The Working Group asked for one additional month to discuss those issues, which request was granted by the Commission. Having received additional time to resolve these two issues, the SAWG, in an Addendum dated June 15, 1999, advised the Commission that it had completed work on the first of those issues: defining the audit requirements and calculation of a bond for suppliers that collect prepayments and deposits from customers. The Working Group provided its recommended resolution of that issue by way of a Prepayment and Bonding Requirements Addendum, and attached it to the recommended License Application. The Working Group provided a few minor changes to the recommended regulations and application. The SAWG also modified its recommended regulations by including a section on bonding for suppliers that collect deposits and prepayments.

As to the second issue, the Working Group advised that the Mid-Atlantic Power Supply Association ("MAPSA"), one of the SAWG members, was meeting with representatives of local jurisdictions that assess local energy taxes, in the hope of developing procedures to implement the Act's provisions concerning bonding of suppliers by those local jurisdictions. The Working Group recommends that the Commission solicit comments from interested parties if MAPSA is able to reach agreements with those governing bodies. The SAWG notes that it is not necessary to resolve this second issue prior to proceeding with Commission licensing of suppliers.

In a letter order dated June 1, 1999, the Commission allowed persons interested in commenting on the Report to do so in writing on or before June 9, 1999. The Commission allowed for oral comments on the Report, Addendum, and written comments of other parties at a legislative-style hearing held at the Commission's offices on June 24, 1999. The written and oral comments unanimously supported the Final Report and Addendum.

The Commission congratulates the SAWG on achieving consensus on the many (and complex) technical and policy issues discussed by the Working Group. The Commission further appreciates the Working Group's provision of a complete draft regulation package and application.

The Commission has carefully reviewed and considered the Final Report, Addendum, and written and oral comments. The Commission accepts the Final Report and Addendum, and finds that utilizing its suggested procedures (including the role envisioned for the Commission's Technical Staff), application, and regulations will result in efficient and thorough compliance with the provisions of the Act and the Commission's responsibilities arising therefrom.

As to the SAWG's application, the Commission adopts it with a few very minor changes at this time.² These modifications are in Section 14 of the application. There, the Commission believes it appropriate and not burdensome to require applicants to provide audited financial statements. The application is attached to this Order as Attachment 1.

The Commission further finds that the draft regulations should be reviewed by its Code of Maryland Regulations Coordinator to ensure they are in a form appropriate for publication in the Maryland Register. In the meantime, since the Commission has reviewed the proposed regulations in this proceeding, and since it may be necessary for Staff to begin processing supplier applications prior to the regulations being adopted,³ the Commission finds that Staff shall use the regulations on an interim basis. The draft regulations are attached to this Order as Attachment 2.

² The Commission observes that Section 16.b. of the application requires a supplier to inform the Commission within 30 days of criminal, civil or regulatory sanctions entered against the supplier, or of voluntary or involuntary bankruptcy proceedings involving the supplier. Section 16.c. of the application requires a supplier to provide other updates of information contained in the application on an annual basis. Section .03.10 of the draft regulations requires suppliers to comply with those deadlines.

The Commission accepts these provisions, but has some concern that the provisions may result in the Commission not being notified, or being notified on an untimely basis, of an adverse situation encountered by a supplier. Accordingly, the Commission seeks changes in the application as follows.

By September 24, 1999, the Staff, after consulting the Working Group members, shall propose changes to the application that will allow the Commission to obtain information about adverse material changes to a supplier's financial condition, short of bankruptcy proceedings, within 30 days of their occurrence. The Commission recognizes the difficulties in this assignment, including how to word a workable definition of adverse changes in financial condition, but finds that to wait for a bankruptcy filing may not be sufficient to enable us to fulfill our responsibilities to protect customers and the overall reliability of the system.

Additionally, by the same date the Staff shall propose changes to the application allowing the Commission to obtain information within 30 days about reliability or environmental problems encountered by suppliers in other states, short of the civil, criminal or regulatory sanctions referred to in Section 7 of the proposed application. The Commission is not interested in reporting of mere allegations of problems, but does desire prompt notification of official actions in these areas by state or federal regulators or groups with electric reliability responsibilities, such as independent system operators, regional transmission operators, or system transmission operators.

³ The Commission adopts the Working Group's proposal for permitting suppliers to file applications beginning in October 1999. Accordingly, the Commission intends to act swiftly on Staff's proposals to be filed pursuant to footnote 2 above.

In conclusion, the Commission expresses its appreciation to the members of the Supplier Authorization Working Group for its diligent and productive efforts. Its work will aid the development of a competitive electric supply market in the State.

IT IS, THEREFORE, this 10th day of September, in the year Nineteen Hundred and Ninety-nine, by the Public Service Commission of Maryland,

ORDERED: (1) That the Commission's Technical Staff shall utilize the procedures contained in the Supplier Authorization Working Group's Final Report and Addendum to license electricity suppliers in the State.

(2) That the application comprising Attachment 1, after amendment as provided herein, shall be utilized by suppliers in the State.

(3) That the Staff shall utilize the proposed regulations included in Attachment 2 on an interim basis, pending final adoption in the Code of Maryland Regulations.

By Direction of the Commission,

Felecia L. Greer
Executive Secretary

**Application for License to
Supply Electricity or Electric Generation Services to the Public in
the
State of Maryland**

You may use the attached form to submit your application. **(Please remove this instruction sheet prior to filing.)** If you need more space than is provided on this form or if you are attaching exhibits, attach additional pages and exhibits immediately following the page containing the item(s) being addressed. You are also required to file an electronic version of this document (excluding "confidential" information) using any version of Microsoft Word 7.0 (or lower) or Word Perfect software. One three and one half inch diskette must accompany the paper copies to be filed with the Maryland Public Service Commission.

To file an application with the Maryland Public Service Commission, **file a signed and verified original and 14 copies**, and the electronic version of your application and attachments with the Commission's Executive Secretary in Baltimore, Maryland:

**Felecia L. Greer
Executive Secretary
Maryland Public Service Commission
6 St. Paul St.
Baltimore, MD 21202**

Questions pertaining to completion of this application may be directed to the Public Service Commission Staff Licensing Division at the above address or you may call the Division at any of the following numbers: (410) 767-8000/800-735-2258. You may reach the Public Service Commission electronically at mpsc@psc.state.md.us, or www.psc.state.md.us.

If your answer to any of these items changes during the pendency of your application or if the information relative to any item herein changes while you are operating within the State of Maryland, you are under a duty to so inform the Commission. Certain information must be updated on different time schedules. Within 30 days of a change, Sections 1-3, 7, 15, 17g, 17h, must be updated. Also, provide annual updates of all items that have changed in the application. The annual update should be provided to the Commission within 120 days of the end of the supplier's fiscal year. Applicant is also required to officially notify the Commission if it plans to cease doing business in Maryland 60 days prior to ceasing operations.

Confidentiality: Sections 5d and 14 of this Application related to ownership of the Applicant's corporation (to the extent such information is not already public) and financial information, respectively, will be treated as confidential information by the Staff Licensing Division to the extent permitted by law. The remainder of the document is considered public information.

If applying for a Broker-only license, Applicant shall complete all Sections except where noted.

Applicable law: The provisions set forth in this application related to the licensing of electric suppliers and the provision of electricity supply and electricity supply services are addressed in detail in the Maryland Annotated Code, Public Utility Companies Article, § 7-501 et seq., and in the Code of Maryland Regulations, Title 20, Subtitle ____.

BEFORE THE MARYLAND PUBLIC SERVICE COMMISSION

Application of _____,
for approval to offer, render, furnish, or supply electricity
or electric generation services as a(n)
____ [as specified in item 10 below] _____
to the public in the State of Maryland.

Application Docket No.

_____.

To the Maryland Public Service Commission:

BUSINESS INFORMATION

1. **IDENTITY OF THE APPLICANT:**

Legal Name: _____

Current Mailing Address: _____

Street Address(if different): _____

Website URL(not required for Broker-only Applicants): _____

**Other States, including Maryland, in which the Applicant is now or has
been engaged in the retail sale of electricity or natural gas and the names
under which the Applicant is engaged in such business(s):-**

Name: _____

Business Address: _____

License #/State of Issuance: _____

Attach additional sheets to the application if necessary.

If additional space is required, please attach additional sheets of paper to the
application as necessary.

2. a. **CONTACT PERSON-REGULATORY CONTACT:**

Name and Title: _____

Address: _____

Telephone: () _____

Fax: () _____

E-Mail _____

b. **CONTACT PERSON-CUSTOMER SERVICE (not required for Broker-only Applicants):**

Name and Title: _____

Address: _____

Telephone: () _____

Fax: () _____

3. **RESIDENT AGENT:**

Name and Title: _____

Address: _____

Telephone: () _____

Fax: () _____

4. **PRIMARY CORPORATE OFFICERS/GENERAL PARTNERS:**

President/General Partners: Name: _____

Business Address: _____

CEO: Name: _____

Business Address: _____

Secretary: Name: _____

Business Address: _____

Treasurer: Name: _____

Business Address: _____

a. **APPLICANT'S BUSINESS FORM:** (select and complete appropriate statement)

Proprietorship

Corporation

Partnership

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Limited Partnership

Limited Liability Company

Limited Liability Partnership

Other: _____

b. **STATE OF FORMATION:** Applicant's business is formed under the laws of the State of _____.

c. **STATUS:** Provide a certificate issued by the state of formation certifying that the Applicant is in good standing and qualified to do business in the state of formation.

If formed under the laws of a state other than Maryland, provide a certificate issued by the State Department of Assessments and Taxation of Maryland certifying that the applicant is registered or qualified, in good standing, to do business in Maryland.

d. **OWNERSHIP:** Provide on a separate sheet the names and addresses of all persons and entities that directly or indirectly own ten percent (10%) or more of the ownership interests in the Applicant, or have the right to vote ten percent (10%) or more of the Applicant's voting securities, or who otherwise have the power to control the Applicant.

6. **AFFILIATES ENGAGED IN THE RETAIL SALE OF ELECTRICITY OR NATURAL GAS:** (select and complete appropriate statement)

The Applicant has no such Affiliate(s).

Applicant is an Affiliate of a regulated electricity or natural gas utility in West Virginia, Pennsylvania, Virginia, Delaware, or the District of Columbia.

Affiliate(s) other than a regulated electricity or natural gas utility engaged in the retail sale of electricity, or electricity supply services, or natural gas are:

Name: _____

Business Address: _____

License #/State of Issuance: _____

Location of Operations (Utility(s) Service Territory): _____

Name: _____

Business Address: _____

License #/State of Issuance: _____

Location of Operations (Utility(s) Service Territory): _____

Attach additional sheets to the application if necessary.

7. **ACTIONS AGAINST LICENSES:** Provide the following information for the Applicant and any Affiliate that engages in the sale at retail of electricity or natural gas.

Actions such as Suspensions/Revocations/Limitations/Reprimands/Fines or other similar actions have been taken against the Applicant or unregulated affiliate(s), and are described in the attached statement, including docket numbers, offense dates, and case numbers, if applicable. The license number, state of issuance, and name of licensee are identified below:

State(s): _____

Name(s): _____

License Number(s)(or other applicable identification): _____

No such action has been taken.

OPERATIONAL CAPABILITY

8. **ISO/RTO/STO AFFILIATION:** Provide evidence that the Applicant has met all applicable requirements of any ISO, RTO, and/or STO to be used by the Applicant. Indicate the evidence provided (not required by Broker-only Applicant)

Evidence of having met all applicable requirements of the PJM Interconnection, L.L.C. (Attach evidence of being a signatory to all applicable agreements)

Evidence of having met all applicable requirements of The Potomac Edison Company d/b/a Allegheny Power Control Area Operator. (Attach evidence of being a signatory to the required provisions of the Open Access Transmission Tariff)

9. **SOURCE OF SUPPLY:** (Check all that apply)

Not applicable. Applicant will not be supplying retail electricity.

Applicant owns generation.

Applicant contracts for generation.

Applicant obtains generation on the spot market.

Other. Applicant must attach a statement detailing its source of generation.

Broker only

SCOPE OF OPERATIONS

(Check all that apply)

10. **APPLICANT'S PROPOSED OPERATIONS:** The Applicant proposes to operate as a:

Electricity Supplier/Marketer of electricity.

Aggregator acting on behalf of customers to purchase electricity.

Broker acting as an agent or intermediary on behalf of customers in the sale and purchase of electricity and who does not take title to electricity.

Which electricity supply related services does the Applicant intend to offer:

Billing

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Metering

Other (Please specify the nature of such other services in an attached statement.)

11. **AREA OF OPERATION:** The Applicant must identify the Maryland Jurisdictional Utilities in whose service territories Applicant intends to offer services. If the Applicant does not intend to offer services throughout a territory, Applicant must check the applicable service territory below, and in an attached statement describe in detail the area within the Utility's service territory in which Applicant's services will be offered.

The Potomac Edison Company d/b/a Allegheny Power

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Applicant intends to offer services in only a portion of one or more of the designated service territories. Please see attached statement.

12 **CUSTOMERS:** Applicant proposes to initially provide services to:

Residential Customers

Commercial Customers

Industrial Customers

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Other (Describe in attachment)

Restrictions upon the number of end use customers. (Describe in attachment)

Applicant has no restrictions on the number of end use customers.

Restrictions upon the size of end use customers. (Describe in attachment)

Applicant has no restrictions on the size of end use customers.

Other restrictions regarding customers. (Describe in attachment)

13. **START DATE:** The Applicant proposes to begin delivering services:

Upon approval of the Application and license.

Other approximate date of commencement _____

FINANCIAL INTEGRITY

14. **REQUIRED DOCUMENTATION OF FINANCIAL INTEGRITY:** To the extent available, Applicant shall provide the most recent versions of the following document. Check each that is attached:

Balance sheet and income statement for the two most recent 12 month periods for which information is available. Balance sheets and income statements must be for the Applicant, and not a parent corporation in the event one exists. Audited financial statements must be provided.

If the applicant has not been in existence for at least two 12 month periods, it must provide balance sheets and income statements for the life of the business. Audited financial statements must be provided.

In the event that a parent or other corporation or company has undertaken to insure the financial integrity of the Applicant, applicant must submit such parent's, other corporation's or company's balance sheet and income statement together with documentation of such undertaking to insure the financial integrity of the Applicant. The Applicant must also submit its own balance sheet and, to the extent it exists, an income statement.

Evidence that the Applicant is a licensed supplier in good standing or has engaged in the retail supply of electricity or electricity supply services in any other jurisdiction.

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Credit reports or ratings prepared by established credit bureaus or agencies regarding the Applicant's payment and credit history.

A current long-term bond rating, or other senior debt rating.

Other evidence of financial integrity (Please attach additional information to application).

15. **DEPOSIT OR PREPAYMENT BOND:** A bond is required to the extent the Applicant requires prepayments and/or deposits from customers. Prepayments and/or deposits from customers whose metered demand during any month of the previous twelve month period was in excess of 1 MW are exempt from the calculation of the bond requirement.

Applicant will not accept prepayments or deposits from customers.

Applicant intends to accept prepayments and/or deposits from customers. Applicant must comply with Prepayment and Deposit Bonding Addendum governing collection of prepayments and deposits.

16. **NOTICE OF REQUIRED COMPLIANCE:** The Applicant is hereby notified that it is required to comply with the following:
- a. The Applicant may be required to submit bonds, as applicable, as described in **COMAR XXXXXXXXX**, in order to ensure financial integrity or the payment of taxes.
 - b. The Applicant must update this application with the Commission within 30 days of a change to Sections 1-3, 7, 15, 17g, 17h.
 - c. Except as set forth in paragraph (b) above, provide annual updates of all items that have changed in the application. The annual update should be provided to the Commission within 120 days of the end of the supplier's fiscal year.
 - d. Supplement this application in the event the Commission modifies the licensing requirements, or requests further information.
 - e. Agree that it will not present itself as a licensed retail supplier of electricity in Maryland, accept deposits, prepayments, or contract with any end-use customers without a license from the Commission.
 - f. Pay all fees imposed by the Commission and any State and local taxes.
 - g. Ensure that a copy of each service agreement entered into with Maryland electric companies is provided to the Commission.
 - h. Agree that the license to sell electricity and electricity supply services is not transferable.
 - i. Local licensing requirements pursuant to the Public Utility Companies Article, § 7-511(c).

17. **AFFIDAVITS REQUIRED:** The Applicant must supply Affidavits of Tax Compliance and General Compliance to the Commission with the completed Application. The affidavits are included with this Application packet and must be executed by the Applicant or representative with authority to bind the Applicant in compliance with Maryland law. The Affidavits contain the following statements on behalf of the Applicant:
- a. Agreement to comply with all terms and conditions of applicable electric company tariffs and agreements with electric companies.
 - b. Agreement to comply with all applicable federal and state consumer protection and environmental laws and regulations, and Maryland PSC regulations and requirements.
 - c. Agreement to comply with all applicable State and local tax and surcharge requirements.
 - d. Statement that the applicant has obtained all the licenses and permits required to operate the proposed business in the State of Maryland.
 - e. Agreement to comply with power pool, control area, regional reliability council, and/or ISO standards and requirements. (Not required for Broker-only Applicant)
 - f. Agreement of Non-Disclosure and No Reselling of customer data provided to the applicant by any Maryland electric company.
 - g. Statement that the Applicant, including the Company and any of its affiliates engaged in the sale of electricity or related services, the general partners, corporate officers or directors, or limited liability company managers or officers of the Company or such affiliates:
 1. Has had no civil, criminal or regulatory sanctions or penalties imposed against it within the previous ten years pursuant to any state or Federal consumer protection law or regulation; and has not ever been convicted of a felony; or, alternatively
 2. Has disclosed by attachment all such sanctions, penalties or convictions.
 - h. State that the Applicant:
 1. Is not under involuntary bankruptcy/insolvency proceedings including but not limited to, the appointment of a receiver, liquidator, or trustee of the supplier, or a decree by such court adjudging the supplier bankrupt or insolvent or sequestering any substantial part of its property or a petition to declare bankruptcy as to reorganize the supplier; and

- 2. Has not filed a voluntary petition in bankruptcy under any provision of any Federal or state bankruptcy law, or its consent to the filing of any bankruptcy or reorganization petition against it under any similar law; or without limiting the generality of the foregoing, a supplier admits in writing its inability to pay its debts generally as they become due to consents to the appointment of a receiver, trustee or liquidator of it or of all or any part of its property.
 - i. Statement that the information, statements and documents submitted in connection with the Application are true and correct.
18. **FEE:** The Applicant has enclosed the required initial licensing fee of \$400.

Applicant: _____

By: _____

Title: _____

AFFIDAVIT OF TAX COMPLIANCE

State of _____ :
County of _____ : ss.

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

That he/she is the _____ (office of Affiant) of _____
(Name of Applicant);

That he/she is authorized to and does make this affidavit for said Applicant;

That _____, the Applicant herein, certifies to the Commission that it is subject to, will pay, and in the past has paid, the full amount of taxes imposed by **[STATUTE]**. In addition, the Applicant certifies that it will pay the full amount of all taxes and/or surcharges imposed by any local jurisdiction within the State of Maryland upon the services provided by the Applicant on a timely basis. The Applicant acknowledges that failure to pay such taxes or otherwise comply with the taxation requirements of Maryland or any local jurisdiction within Maryland, shall be cause for the Commission to revoke the license of the Applicant. [The Applicant acknowledges that it shall provide to the Commission its jurisdictional Gross Receipts and power sales for ultimate consumption, for the previous year or as otherwise required by the Commission.]

That _____, the Applicant herein, further certifies that the failure to pay the full amount of all taxes to the State of Maryland and any local jurisdiction within Maryland in a timely fashion may result in the forfeiture by the Applicant of all or a part of any bond required by the Commission or local jurisdiction to ensure the payment of such obligations.

As provided by **[STATUTE]** Applicant, by filing of this application waives confidentiality with respect to its state tax information in the possession of the Comptroller of the State of Maryland, regardless of the source of the information, and shall consent to the Comptroller of the State of Maryland providing that information to the Maryland Public Service Commission. The Commission shall retain such information confidentially. This does not constitute a waiver of the confidentiality of such information with respect to any party other than the Maryland Public Service Commission.

That the facts above set forth are true and correct to the best of his/her knowledge, information, and belief and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this _____ day of _____, ____.

Signature of official administering oath

My commission expires _____.

AFFIDAVIT OF GENERAL COMPLIANCE

State of _____ :
County of _____ : ss.
_____ :

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

He/she is the _____ (Officer/Affiant) of _____
(Name of Applicant);

That he/she is authorized to and does make this affidavit for said Applicant.

That the Applicant herein certifies to the Commission that:

The Applicant agrees to comply with the terms and conditions of all applicable electric company tariffs and agreements with electric companies.

The Applicant agrees to comply with all applicable Federal and state consumer protection and environmental laws and regulations, and Maryland PSC regulations, fees, assessment, and requirements.

The applicant has obtained all the licenses and permits required to operate the proposed business in the State of Maryland.

The Applicant agrees to comply with power pool, control area, regional or system transmission operator, and/or ISO standards and requirements, as applicable.

The Applicant agrees that it shall neither disclose nor resell customer data provided to the Applicant by any Maryland electric company.

The Applicant, including any of its affiliates engaged in the sale of electricity or related services, the general partners, corporate officers or directors, or limited liability company managers or officers of the Applicant or its affiliates:

1. Has had no civil, criminal or regulatory sanctions or penalties imposed against it within the previous ten years pursuant to any state or federal consumer protection law or regulation; and has not ever been convicted of a felony; or, alternatively
2. Has disclosed by attachment all such sanctions, penalties or convictions.

The Applicant further certifies that it:

1. Is not under involuntary bankruptcy/insolvency proceedings including but not limited to, the appointment of a receiver, liquidator, or trustee of the supplier, or a decree by such court adjudging the supplier bankrupt or insolvent or sequestering any substantial part of its property or a petition to declare bankruptcy as to reorganize the supplier; and
2. Has not filed a voluntary petition in bankruptcy under any provision of any Federal or state bankruptcy law, or its consent to the filing of any bankruptcy or reorganization petition against it under any similar law; or without limiting the generality of the foregoing, a supplier admits in writing its inability to pay its debts generally as they become due to consents to the appointment of a receiver, trustee or liquidator of it or of all or any part of its property.

That the facts above set forth are true and correct to the best of his/her knowledge, information, and belief and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this _____ day of _____, _____.

Signature of official administering oath

My commission expires _____.

VERIFICATION

State of _____ :
County of _____ : ss.

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

He/she is the _____ (Officer/ Affiant) of _____ (Name of Applicant);

That he/she is authorized to and does make this affidavit for said corporation;

The Applicant understands that the making of false statement(s) herein may be grounds for denying the Application or, if later discovered, for revoking any authority granted pursuant to the Application. This Application is subject to **XXXXXXXXXX** relating to perjury and falsification in official matters.

That the Applicant will supplement this Application in the event the Commission modifies the licensing requirements, or requests further information.

That the Applicant agrees that it will not present itself as a licensed retail supplier of electricity in Maryland, accept deposits, prepayments, or contract with any end-use customers without a license from the Commission.

That the Applicant agrees that a license issued pursuant to this Application may not be transferred.

That the Applicant agree to update information contained in this Application in accordance with the schedule set forth in the Application.

That the facts above set forth are true and correct to the best of his/her knowledge, information, and belief and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this _____ day of _____, 19____.

Signature of official administering

oath

My commission expires _____.

**APPLICANT'S GENERAL AUTHORIZATION FOR
VERIFICATION OF FINANCIAL INFORMATION, ETC.**

TO WHOM IT MAY CONCERN:

I/We have applied to the Maryland Public Service Commission ("the Commission") for a license to be an Electricity Supplier, or to provide certain Electricity Supply related services, and authorize you to release to the Staff of the Commission and its authorized representatives and agents any information or copies of records requested concerning:

MY/OUR COMPANY OR BUSINESS AND ITS HISTORY, PERFORMANCE, OPERATIONS, CUSTOMER RELATIONS, FINANCIAL CONDITION, INCLUDING BANK ACCOUNT TRANSACTIONS AND BALANCES, PAYMENT HISTORY WITH SUPPLIERS AND OTHER CREDITORS, VERIFICATION OF NET WORTH AND OTHER INFORMATION AND RECORDS WHICH THE STAFF REQUIRES TO VERIFY OR MAKE INQUIRY CONCERNING MY/OUR FINANCIAL INTEGRITY AND THE INFORMATION CONTAINED IN MY/OUR LICENSE APPLICATION OR OTHER INFORMATION PROVIDED BY ME/US TO THE COMMISSION OR, STAFF OF THE COMMISSION OR ITS REPRESENTATIVES OR AGENTS.

This Authorization is continuing in nature and includes release of information following issuance of a license, for reverification, quality assurance, internal review, etc. The information is for the confidential use of the Commission and the Staff of the Commission in determining my/our financial integrity for being a licensee or to confirm information I/We have supplied and may not be released except by order of the Commission or by order of a court of competent jurisdiction.

A photographic or fax copy of this authorization may be deemed to be the equivalent of the original and may be used as a duplicate original. The original signed form is maintained by the Staff of the Commission.

APPLICANT'S AUTHORIZATION TO RELEASE INFORMATION:

APPLICANT (Please print)

APPLICANT'S SIGNATURE

DATE

TITLE

**PREPAYMENT AND DEPOSIT BONDING REQUIREMENTS
ADDENDUM**

1. DEFINITION AND EXCLUSION

- a. Any electricity supplier who charges or collects deposits or prepayments shall maintain a bond in an amount at least equal to the total amount of such deposits and prepayments as specified in this section. Prepayments and/or deposits from customers whose metered demand during any month of the previous twelve month period was in excess of 1 MW are exempt from the calculation of the bond requirement.
- b. "Deposits" include all payments made by a consumer to an electricity supplier to secure the electricity supplier against the consumer's nonpayment or default.
- c. "Prepayments" include all payments made by a consumer to an electricity supplier for services that have not been rendered at the time of payment.

(1) Where an electricity supplier charges for services based on a quantity of electricity, such as a price per kilowatt/hour, then prepayments include any payments for any quantity that has not been delivered to the consumer at the time of payment.

(2) Where an electricity supplier charges for services based on a period of time, such as charging a membership fee, initiation fee or other fee for services for a time period, then prepayments include the amount of the total charges collected by the electricity supplier for the period of time less the prorated value of the period of time for which services have been rendered.

(3) Where an electricity supplier charges for services based on a measure other than quantity of electricity delivered or a period of time, the PSC shall determine, on a case by case basis, whether the charges involve a prepayment and the appropriate method of calculating the required bond.

(4) Prepayments do not include any funds received in advance of the services being rendered as a result of the consumer's voluntary participation in a budget billing or level billing plan by which the consumer's anticipated electrical costs are averaged over a period of time.

2. WHO MUST POST BOND

Any electricity supplier who states on its license application or annual renewal that they intend to charge deposits or prepayments, or who do in fact charge a deposit or prepayment, must post the bond. Any electricity supplier who states on its license application or renewal that they do not intend to charge deposits or

prepayments will not be required to post a bond or provide the audited CPA/PSC Accounting Division certification described below. Any ES who actually charges a deposit or prepayment without notifying the PSC and posting the required bond may be subject to suspension, revocation, or other action against its license, as well as for restitution to any consumers who paid such deposits or prepayments.

3. **PROCEDURE FOR DETERMINING AMOUNT OF BOND**
 - a. **INITIAL BOND:** Before accepting any deposits or prepayments, an ES must (1) notify the PSC on its license application, within 30 days of the change for an existing license holder, or by separate communication that it intends to begin charging deposits or prepayments, and (2) post an initial bond of \$50,000.
 - b. **SIX MONTH CERTIFICATION:** Within six months after the initial bond is posted, (1) the ES shall provide to the PSC, an audited certification conducted by either an independent certified accountant ("CPA") or the PSC Accounting Division (see below) of the amount of the deposits and prepayments and (2) a bond in the amount certified by the CPA/PSC Accounting Division.
 - c. **ANNUAL CERTIFICATION:** Annually thereafter, coinciding with the annual update requirements of the PSC license application, the ES shall provide to the PSC (1) a statement of the amount of the deposits and prepayments conducted by either an independent CPA or the PSC Accounting Division and (2) a bond in that amount.
 - d. **QUARTERLY UPDATES:** Following submittal of the first annual update, the ES must provide to the PSC (1) a quarterly management report stating the amount of deposits and prepayments collected and (2) an adjustment to the bond in that amount.
4. **CPA/PSC ACCOUNTING DIVISION AUDIT REPORT.** The electricity supplier shall provide appropriate certification at the intervals discussed in the above paragraphs, on funds collected by a Supplier for prepayments or deposits. The Supplier will have the option of certifying funds through an audit conducted by independent certified accountant or by the PSC Accounting Division. The audit will verify collections and balances of prepayments and deposits as of a specific date and whether the Supplier has appropriate bond coverage.
5. **BOND FORM: BENEFICIARY, CLAIMS, DISTRIBUTION.** The ES shall provide a bond on the form required by the PSC.
6. **COMPLIANCE INVESTIGATIONS.** The PSC has the right to initiate appropriate investigations if it determines a Supplier is collecting prepayments and/or deposits from customers without appropriate bond coverage. The PSC will utilize appropriate legal remedies both to investigate and/or enforce actions necessary to ensure suppliers have appropriate bonds.

Attachment 2

PROPOSED OUTLINE OF LICENSING REGULATIONS TITLE 20 PUBLIC SERVICE COMMISSION

Subtitle __: Licensing Requirements for Electricity Suppliers

.01 General Provisions

.01 Authorization of Regulations

.02 Application of Regulations (or Scope of Rule)

A. Application. These regulations apply to a person who engages in the business of an electricity supplier in the State. Electricity suppliers include marketers, brokers, aggregators, any entities selling electricity at retail, and any entities selling competitive billing services. Electricity suppliers do not include electric companies providing standard offer service under Section 7-510(C) of the Public Utility Companies Article or a municipal electric utility serving customers solely in its distribution territory.

B. Purpose. The regulations in this subtitle provide uniform requirements for obtaining an electricity supplier license in Maryland, describe the administrative procedures available to the applicants and licensees, and outline the grounds for Commission action regarding a licensee, and the sanctions that may be imposed by the Commission.

C. Restrictions. As a condition of filing a license application, no person shall present itself as a licensed retail electricity supplier, accept deposits or prepayments from retail customers, or contract with retail customers for any of the services described in COMAR 20.00.01.03B(9), prior to receipt of a license from the Commission.

.03 Definitions

A. In this subtitle the following terms have the meanings indicated.

B. Terms Defined (non-exhaustive list)

(1) Affiliate. For purposes of this subtitle, “affiliate” means a person that directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with, or has, directly or indirectly, a ten percent (10%) or more ownership interest in another person.

(2) Aggregator. “Aggregator” means an entity or an individual that acts on behalf of a customer to purchase electricity. It does not include: (a) an entity or

individual that purchases electricity for its own use or for the use of its subsidiaries or affiliates; (b) a municipal electric utility serving only in its distribution territory; or (c) a combination of governmental units that purchases electricity for use by the governmental units.

(3) Applicant. “Applicant” means the person or entity that applies for an electricity supply license required by the Public Utility Companies Article.

(4) Application. “Application” means the written request by a person or entity for an electricity supply license in a form specified by the Commission.

(5) Broker. “Broker” means an entity or individual that acts as an agent or intermediary in the sale and purchase of electricity but does not take title to electricity.

(6) Commission. “Commission” means the Public Service Commission of the State of Maryland.

(7) Competitive Billing Service. “Competitive Billing Service” is a service that provides for (1) the production of an invoice or the rendering of an invoice for electricity supply or electricity supply services to a retail customer and (2) the processing of payment for those services.

(8) Electric Company. “Electric company” means a person who physically transmits or distributes electricity in the state to a retail electric customer. It does not include (a) the following persons who supply electricity and electricity supply services solely to occupants of a building for use by the occupants: (1) an owner/operator who holds ownership in and manages the internal distribution system serving the building; or (2) a lessee/operator who holds a leasehold interest in and manages the internal distribution system serving the building; (b) any person who generates on-site generated electricity; or (c) a person who transmits or distributes electricity within a site owned by the person or the person’s affiliate that is incidental to a primarily landlord-tenant relationship.

(9) Electricity Supplier. “Electricity supplier” means a person (a) who sells (1) electricity; (2) electricity supply services; (3) competitive billing services; or (4) competitive metering services; or (b) who purchases, brokers, arranges, or markets electricity or electricity supply services for sale to a retail electric customer. The term includes an electric company, an aggregator, a broker, and a marketer of electricity, but does not include (a) the following persons who supply electricity and electricity supply services solely to occupants of a building for use by the occupants: (1) an owner/operator who holds ownership in and manages the internal distribution system serving the building; or (2) a lessee/operator who holds a leasehold interest in and manages the internal distribution system serving the building; or (b) a person who generates on-site generated electricity.

(10) Electricity Supply Services. “Electricity supply services” means services used by a retail electric customer in the procurement of competitive retail electricity supply, including electricity supplier selection, metering, billing, meter data management services, and other services traditionally provided by an electric company that are determined to be competitive through the appropriate regulatory or legislative proceeding.

(11) **Independent System Operator or “ISO”.** “Independent System Operator” means an entity authorized by the Federal Energy Regulatory Commission to control a regional transmission grid.

(12) **License.** “License” means the authority granted by the Commission to a person to do business as an electricity supplier in this State.

(13) **Marketer.** “Marketer” means a person who purchases and takes title to electricity as an intermediary for sale to a customer.

(14) **Person.** “Person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation or other entity.

(15) **Regional Transmission Operator or “RTO”.** “Regional Transmission Operator” means a person who performs the same transmission system coordination functions as an Independent System Operator.

(16) **Retail Electric Customer.** “Retail electric customer” means a purchaser of electricity for end use in the State, but excludes (a) an occupant of a building in which the owner/operator or lessee/operator manages the internal distribution system serving the building and supplies electricity and electricity supply services solely to occupants of the building for use by the occupants; and (b) a person who generates on-site generated electricity, to the extent the on-site generated electricity is consumed by that person or its tenants.

(17) **System Transmission Operator or “STO”.** “System Transmission Operator” also known as a Control Area Operator, means a person who performs the same transmission system coordination functions as an Independent System Operator.

.02 Licensing Requirements

.01 Persons Subject to Licensing Requirements.

Any person who engages in the business of an electricity supplier in the State must hold a license issued by the Commission.

.02 Application Filing Requirements for Electricity Suppliers

An application for an electricity supply license shall include the following information, in a manner and form specified by the Commission:

- A. Proof of technical and managerial competence;
- B. Proof of compliance with all applicable requirements of the Federal Energy Regulatory Commission, and any Independent System Operator or regional or system transmission operator to be used by the licensee;

- C. A Certification of compliance with applicable federal and state environmental laws and regulations that relate to the generation of electricity;
- D. Proof of financial integrity;
- E. Proof that the applicant is in good standing and qualified to do business in its state of formation, and if formed under the laws of a state other than Maryland, proof that the applicant is registered or qualified, in good standing, to do business in Maryland.
- F. Agreement to be subject to all applicable taxes; and;
- G. Any other information that the Commission requires.

.03 Bonds

A. Bond to Insure Financial Integrity. The Commission may require a licensee to post a bond or other similar instrument, if, in the Commission's judgment, the bond or similar instrument is necessary to insure the financial integrity of an electricity supplier.

B. Bond for Deposits and Prepayments. The licensee shall post a bond or other similar instrument, as ordered by the Commission, if the licensee collects deposits or prepayments from its customers.

C. Local Jurisdiction Bond Requirements. The licensee shall certify that it will comply with any competitive billing services license and bond requirements of any local jurisdiction in which the licensee does business.

D. Exculpatory Clause in lieu of Bond Requirement. Any service agreement between an electricity supplier and electric company shall set forth their reciprocal responsibilities for collection and ownership of receivables. In the event that competitive billing services are being provided to a customer, the non-biller of the service charges shall not take collection or service termination action against a customer for failure to receive payment for those charges, if a biller has billed a customer for non-biller charges and the customer has paid the biller for those non-biller charges, as long as the customer provides the non-biller with evidence of such payment to the biller.

.03 Licensing Procedures

.01 Scope. These procedures apply to the application for an electricity supplier license before the Commission.

.02 Form. An application for a license must be made on the applicable form provided by the Commission, verified by oath or affirmation, and signed by an Applicant owner or partner, or an officer of the Applicant. License applications may be obtained from the Commission website or from the Commission offices during normal business hours.

.03 Number of Copies; Service. Each Applicant must file an original application, with the number of copies and in such format as specified by the Commission. A copy of the completed application with the supporting documentation must be served on the Office of People's Counsel.

.04 Material Change in Application Information. The Applicant shall inform the Commission of any material change in the information provided in the application during the pendency of the application process.

.05 Fees. At the time of the initial application, each license applicant shall pay a non-refundable filing fee, as specified by the Commission.

.06 Notice of Application. The Commission shall place notice of (a) pending applications and (b) approved applications on its Internet website.

.07 Notice of Incomplete Application. The Commission Staff shall review the submitted application for completeness within ten (10) business days of receipt of an application. The Commission Staff shall make reasonable attempts, at its discretion, to remedy minor omissions in the application through informal communications with the applicant. If these attempts are unsuccessful, within fifteen (15) business days of receipt of an incomplete application, the Commission Staff shall notify the applicant in writing of the deficiencies in the application and shall return the incomplete application to the Applicant.

.08 Review of a Complete Application. The Commission Staff shall notify the Applicant in writing as soon as practicable, but in no event later than ten (10) business days after the receipt of a complete application, of the Commission's receipt of the complete application for a electricity supplier license. The Commission Staff shall conduct an appropriate investigation of the information provided by the applicant in the complete application. The Commission Staff shall conclude its investigation, and make a recommendation to the Commission for the approval or denial of the license within twenty (20) business days of providing notice to the Applicant of the receipt of the complete application. In the event that the Commission Staff recommends denial of a license to an applicant, the Commission Staff shall state in writing its reasons for such denial, and provide a copy of its determination to the Commission and the Applicant immediately upon conclusion of the investigation. A copy of the Staff determination shall also be served on the Office of People's Counsel.

.09 Decision on License Application. All applications shall be considered at an Administrative Meeting, or as part of any other proceeding, including an evidentiary hearing, as required by the Commission.

.10 Licensee's Updated Information. The licensed electricity supplier shall comply with any information update requirements or supplemental information requirements established by the Commission. The licensee shall provide annual updates of all information specified by the Commission within 120 days of the end of the electricity supplier's fiscal year.

.12 Term of License. Licenses are valid until revoked by the Commission or surrendered by the licensed electricity supplier.

.13 Transfer of License. A license is not transferable.

.14 Cessation of Business in Maryland, in an Electric Company Service Area or to a Customer Class. A licensee is required to provide to the Commission at least sixty (60) days prior written notice of the licensee's intention to cease providing services (a) in Maryland; (b) to all customers in a specified electric company service area, or (c) all customers within a specified customer class. Upon receipt of such notice, the Commission may order the licensee to provide such further notice to the public that it deems necessary, and/or take other appropriate actions.

.15 Accuracy of Information. Any applicant who knowingly submits misleading, incomplete or inaccurate information may be penalized in accordance with applicable law and the provisions of these regulations.

.16 Copies of [Name of Specific Service Agreement] with Maryland Electric Companies. The applicant or licensee shall file a copy of each [name of specific service agreement] entered into with Maryland electric companies with the Commission within ten (10) business days of execution of such agreement.

.17 Proprietary and Confidential Information. In its application, the applicant may designate answers or documents that it believes to contain proprietary or confidential information. The Commission may enter an appropriate Protective Order after consideration of the applicant's request for confidential treatment.

.04 Bond Requirements For Collection Of Prepayments and Deposits

A. Definitions

(1) **Deposit.** “Deposits” include all payments made by a consumer to an electricity supplier to secure the electricity supplier against the consumer’s nonpayment or default. Deposits from customers whose metered demand during any month of the previous twelve month period was in excess of 1 MW are excluded from this definition.

(2) **Prepayments.** “Prepayments” include all payments made by a consumer to an electricity supplier for services that have not been rendered at the time of payment. Prepayments from customers whose metered demand during any month of the previous twelve month period was in excess of 1 MW are excluded from this definition.

(a) Where an electricity supplier charges for services based on a quantity of electricity, such as a price per kilowatt/hour, then prepayments include any payments for any quantity that has not been delivered to the consumer at the time of payment.

(b) Where an electricity supplier charges for services based on a period of time, such as charging a membership fee, initiation fee or other fee for services for a time period, then prepayments include the amount of the total charges collected by the electricity supplier for the period of time less the prorated value of the period of time for which services have been rendered.

(c) Where an electricity supplier charges for services based on a measure other than quantity of electricity delivered or a period of time, the Commission shall determine, on a case by case basis, whether the charges involve a prepayment and the appropriate method of calculating the required bond.

(d) Prepayments do not include any funds received in advance of the services being rendered as a result of the consumer’s voluntary participation in a budget billing or level billing plan by which the consumer’s anticipated electrical costs are averaged over a period of time.

B. Persons Responsible For Posting And Maintenance Of A Bond

(1) Any electricity supplier who charges or collects deposits or prepayments shall maintain a bond in an amount at least equal to the total amount of such deposits and prepayments as specified in this section.

(2) Any electricity supplier who states on his license application or annual license renewal that he intends to charge deposits or prepayments, or who does in fact charge a deposit or prepayment, must post a bond.

(3) Any electricity supplier who states on his license application or annual license renewal that he does not intend to charge deposits or prepayments will not be required to post a bond or comply with the bond procedures and audit requirements established by the Commission pursuant to COMAR __.02.04(C).

(4) Any electricity supplier who actually charges a deposit or prepayment without (1) providing the required notice to the Commission and (2) posting the required bond may be subject to Commission action in accordance with COMAR __.02.05. and __.02.06.

C. Procedures For Determining The Amount Of The Bond

(1) An electricity supplier who charges or collects deposits or prepayments shall post and maintain a bond in accordance with the requirements of this section. With the exception of the initial bond, the bond amount shall be equal to the total amount of such deposits and prepayments collected by the supplier.

(2) An initial bond of \$50,000 must be posted by an electricity supplier prior to his acceptance of any deposits or prepayments.

(3) The amount of the bond shall be reviewed and modified, if necessary, within six months of the posting of the initial bond, and on an ongoing basis thereafter, in accordance with written procedures established by the Commission.

D. Form Of The Bond

The electricity supplier shall provide a bond in a form required by the Commission. At a minimum, this form shall:

(1) designate the State of Maryland, or the Public Service Commission, as the sole beneficiary of the bond;

(2) be continuous and subject to nonrenewal only upon at least 60 days notice to the Commission;

(3) cover payment of all present and future obligations, as identified by the Commission under these regulations, of the electricity supplier that occurred while the bond was in force; and

(4) state that the proceeds of the bond shall be paid or disbursed as directed by the Public Service Commission of Maryland.

.05 Commission Action Regarding a Licensee

.01 Commission Investigation. The Commission may initiate an investigation of the licensee upon its own motion or upon the complaint of the Office of People's Counsel, the Office of the Attorney General or an affected party. The Commission shall provide written

notice of the investigation to the licensee, and shall provide the licensee an opportunity for hearing in accordance with Commission law and regulations.

.02 Grounds for Commission Action. The Commission may take action regarding a licensee for just cause as determined by the Commission. “Just cause” includes, but is not limited to, the following:

- A. Intentionally providing false information to the Commission;
- B. Switching, or causing to be switched, the electricity supply for a customer without first obtaining the customer’s permission;
- C. Failing to provide electricity for its customers;
- D. Committing fraud or engaging in deceptive practices;
- E. Failing to maintain financial integrity;
- F. Violating a Commission regulation or order;
- G. Failing to pay, collect, remit or calculate accurately applicable state or local taxes;
- H. Violating an applicable provision of the Public Utility Companies Article or any other applicable consumer protection law of the State;
- I. Conviction of a felony by the licensee or principal of the licensee or any crime involving fraud, theft or deceit; and
- J. Suspension or revocation of a license by any state or federal authority.

.06 Sanctions and Enforcement

.01 Sanctions. Electricity suppliers are subject to sanctions for violations of the Public Utility Companies article, and applicable Commission regulations and orders. The following sanctions may be imposed by the Commission:

- A. Civil Penalty.** The Commission may impose a civil penalty of not more than \$10,000 for each violation. Each day a violation continues shall be considered a separate violation for purposes of this penalty. The Commission shall determine the amount of a civil penalty after consideration of the following:

1. the number of previous violations of any provision of Commission law or regulations;
2. the gravity of the current violation; and
3. the good faith of the electricity supplier or person charged in attempting to achieve compliance after the Commission provides notice of the violation.

B. Customer Refund or Credit. The Commission may order a licensee to issue a refund or credit to a customer.

C. Cease and Desist Order. The Commission may order the licensee to (1) cease adding or soliciting additional customers; (2) cease serving customers in the State; and (3) cease any action found to be in violation of Commission law, or Commission rules and regulations.

D. Suspension of License; and

E. Revocation of License.

.02 Commission Access to Records. As part of any Commission investigation, the Commission shall have access to any accounts, books, papers, and documents of the licensee that the Commission considers necessary in order to resolve the matter under investigation.

.03 Emergency Action by the Commission. The Commission may issue a temporary restraining order in accordance with the rules applicable to courts under Maryland Rules of Procedure Title 15, Other Special Proceedings, Chapter 500, Injunctions.

.07 PSC Assessment and Fees

A. The licensee shall pay any assessment for the costs and expenses of the Commission and the Office of People's Counsel as required by the Public Utility Companies Article.

B. The licensee shall pay any additional fees imposed by the Commission.

