



Control Number: 38681



Item Number: 5

Addendum StartPage: 0

OPEN MEETING COVER SHEET

10/10/09

MEETING DATE: October 14, 2010

DATE DELIVERED: October 7, 2010

AGENDA ITEM NO.: 13

CAPTION: Docket No. 38681; SOAH Docket No. 473-11-0314 - Petition of Commission Staff to Revoke the Retail Electric Provider Certification of GTC Energy, Inc.

ACTION REQUESTED: Discussion and possible action with respect to Draft Preliminary Order

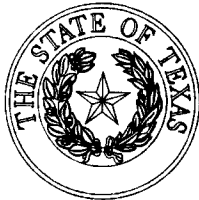
- Distribution List:
- Commissioners' Office (6)
 - Central Records
 - Featherston, David (2)
 - Flores, Leticia
 - Haney, Casey
 - Hunter, Tom (3)
 - Journey, Stephen
 - Lengieza-Gross, Katherine
 - Mueller, Paula
 - Renfro, Mike
 - Tietjen, Darryl (2)
 - Totten, Jess (3)
 - Whittington, Pam (3)

Barry T. Smitherman
Chairman

Donna L. Nelson
Commissioner

Kenneth W. Anderson, Jr.
Commissioner

W. Lane Lanford
Executive Director



Public Utility Commission of Texas

10
11/10/09

TO: Chairman Barry T. Smitherman
Commissioner Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.

All Parties of Record

FROM: Katherine Lengieza Gross, Commission Advising *KAG*

RE: Draft Preliminary Order, Docket No. 38681, SOAH Docket No. 473-11-0314
Petition of Commission Staff to Revoke the Retail Electric Provider Certification of GTC Energy, Inc.

DATE: October 7, 2010

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the October 14, 2010 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the October 14, 2010 open meeting.

Q:\CADM\ORDERS\PRELIM\38000\38680 dpo memo.docx

**SOAH DOCKET NO. 473-11-0314
PUC DOCKET NO. 38681**

PETITION OF COMMISSION STAFF TO	§	PUBLIC UTILITY COMMISSION
REVOKE THE RETAIL ELECTRIC	§	
PROVIDER CERTIFICATION OF GTC	§	OF TEXAS
ENERGY, INC.	§	

DRAFT PRELIMINARY ORDER

On September 15, 2010, Commission Staff filed a petition to revoke the retail electric provider (REP) certificate of GTC Energy, Inc. Commission Staff alleges that GTC is not in compliance with P.U.C. SUBST. R. 25.107 relating to the REP financial requirements, the REP technical and managerial requirements, and the phase-in provisions of the rule.

The current version of P.U.C. SUBST. R. 25.107 became effective on May 21, 2009. Pursuant to the phase-in provisions of the rule, REPs that obtained certification before the effective date that did not meet all of the requirements of the rule were permitted to continue to operate as a REP for not more than 12 months after the effective date of the rule. Commission Staff alleges that GTC has failed to demonstrate its compliance with the new rule requirements.

This docket was referred to the State Office of Administrative Hearings (SOAH) on September 21, 2010. On September 29, 2010, Commission Staff timely filed a list of issues.

II. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to the State Office of Administrative Hearings (SOAH).¹ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

¹ TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 2000).

1. Is GTC in compliance with P.U.C. SUBST. R. 25.107(f)(1) and P.U.C. SUBST. R. 25.107(f)(2) relating to the financial requirements of an REP?
2. Is GTC in compliance with P.U.C. SUBST. R. 25.107(g)(1)(D) and P.U.C. SUBST. R. 25.107(g)(1)(E) relating to the technical and managerial requirements of an REP ?
3. Is GTC in compliance with P.U.C. SUBST. R. 25.107(k) relating to the phase-in provisions of the rule?
4. If it is found that GTC is not in compliance with one or more of the sections of P.U.C. SUBST. R. 25.107 listed above, is such a violation a significant violation for purposes of P.U.C. SUBST. R. 25.107(j)?
5. If the violation is a significant violation, should GTC's REP certificate be amended, suspended, or revoked pursuant to P.U.C. SUBST. R. 25.107(j)?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by this Order, by the ALJ, or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under TEX. GOV'T CODE ANN. § 2003.049(e).

II. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the _____ day of October, 2010

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER

q:\cadm\orders\prelim\38000\38681 dpo.docx