



## **Filing Receipt**

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## II. PROPOSED PROCEDURAL SCHEDULE

In accordance with Staff's deficiency recommendation, Staff proposes the following procedural schedule:

Event	Deadline
Deadline for Atlantic to file supplemental information to address deficiencies in the application	October 25, 2023
Deadline for Staff to file a supplemental recommendation on the sufficiency of the application and propose additional deadlines, if appropriate	November 8, 2023

## III. CONCLUSION

For the reasons above, Staff respectfully requests the entry of an order deeming the application deficient and adopting the proposed procedural schedule.

Date: October 10, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Marisa Lopez Wagley  
Division Director

/s/ Jena R. Abel  
Jena R. Abel  
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**DOCKET NO. 55268**

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on October 10, 2023, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

*/s/ Jena R. Abel*  
Jena R. Abel

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Jena Abel, Attorney  
Legal Division

**FROM:** Josephine Gonzalez, Licensing and Compliance Specialist  
Customer Protection Division

**DATE:** October 11, 2023

**RE:** Docket No. 55268 – *Application of Atlantic Energy, LLC for a Retail Electric Provider Certificate*

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### **Staff's Recommendation on Sufficiency Technical and Managerial Requirements**

#### **I. Application**

On July 20, 2023, Atlantic Energy, LLC (Atlantic Energy, LLC, or the Applicant) filed an application with the Public Utility Commission of Texas (Commission) for certification as an Option 1 retail electric provider (REP) in the entire state of Texas pursuant to Public Utility Regulatory Act § 39.352 and 16 Texas Administrative Code (TAC) § 25.107.

On July 24, 2023, Order 1 was filed, that stated by August 9, 2023, Commission Staff needed to file a recommendation on sufficiency. On August 8, 2023, staff filed responses that addressed deficiencies in financial requirements and QSE. On August 9, 2023, Order 2 was filed and ordered that by September 13, 2023, Commission Staff must file a supplemental recommendation on the sufficiency of the application. On August 21, 2023, Order 3 was filed, and ordered Commission Staff to file a supplemental recommendation by September 27, 2023. On September 27, 2023, staff filed a request for an extension to allow applicant additional time to finalize approval from ERCOT for QSE. On, September 29, 2023, Order 4 was filed granting the extension until October 11, 2023.

## **II. Technical and Managerial Sufficiency Analysis**

The applicability, general, certification, basic, and content requirements applicable to a new REP certification application are listed in 16 TAC § 25.107(a), (c), (d), (e), (f) and (g) respectively.

### ***Applicability requirements***

16 TAC § 25.107(a)(1)(B), [a] REP that outsources retail electric service functions is responsible for those functions in accordance with all applicable laws and commission rules for all activities conducted on its behalf by any third-party provider. To hold a REP accountable for the actions of third parties acting on its behalf, the Commission must know the identities of those third parties and how to contact them. The application form provides Attachment D-7 (Third Party Entities or Consultants) for this purpose. Atlantic Energy, LLC filed Confidential Attachment D-7 to satisfy this requirement.

### ***General requirements***

Under 16 TAC §25.107(d)(2)(A), an application for REP certification “shall be made on a form approved by the commission, specify whether the applicant seeks to obtain or amend a REP certificate, and be accompanied by a signed, notarized affidavit attesting that all material provided in the application is true, correct, and complete. The affidavit must be signed by an executive officer of the applicant.”

I confirmed that Atlantic Energy, LLC submitted its application on a Commission-approved form, that it was verified by oath or affirmation, and that it was signed by an executive officer of the company. Atlantic Energy, LLC completed all required sections of the application except as indicated below.

### ***Certification requirements***

Under 16 TAC § 25.107(d)(2)(H), an applicant must designate in its initial REP certification application whether it wishes to provide service as an Option 1 (geographic service area) or Option 2 (designated customers) REP. Further, if an applicant selects Option 1, it must designate its geographic service area as: (i) the geographic area of the entire state of Texas; (ii) a specific geographic area (including applicable zip codes); (iii) the service area of specific TDUs or specific municipal utilities or electric cooperatives in which competition is offered; or (iv) the

geographic-ERCOT service area (or other independent organization to the extent it is within Texas).

Atlantic Energy, LLC made its designation in section B-1 of its application as an Option 1 REP in the entire state of Texas.

### ***Basic requirements***

Under 16 TAC § 25.107(d)(1)(C), an applicant must maintain an active business registration with the Texas Secretary of State. I verified that the requested certificate name of Atlantic Energy, LLC Energy Texas, LLC is registered with the Office of the Secretary of State in (File No. 0804177997).

Under 16 TAC § 25.107(d)(1)(B), the Commission may not authorize more than five assumed names for a REP at one time. Atlantic Energy, LLC requested five assumed names: AE Texas; Atlantas Power; Atlantex Power; AE Texas Commercial; and AE Texas Residential, so this condition is satisfied.

Under 16 TAC § 25.107(d)(2)(B)(i), a REP business name “shall not be deceptive, misleading, vague, otherwise contrary to §25.272 (relating to Code of Conduct for Electric Utilities and Their Affiliates), or duplicative of a name previously approved for use by a REP certificate holder.” I verified that the requested certificated company name of Atlantic Energy, LLC does not duplicate any existing REP names and is not deceptive, misleading, vague, or otherwise contrary to § 25.272.

Under 16 TAC § 25.107(d)(1)(E)(i), a REP shall maintain current and accurate office information, including an office that has a street address located within Texas that is open during normal business hours for the purpose of providing customer service and making available to commission staff books and records sufficient to establish the REP's compliance with PURA and commission rules. The REP's location may not be a post office box.

Atlantic Energy, LLC listed its required Texas office address in Section OI-4 of the application, and it is not a post office box.

### ***Content requirements***

Under 16 TAC § 25.107(d)-(f), as applicable, applicants must include certain technical and managerial information in the REP's initial certification application. I confirmed that the application includes the required information as noted in the table below:

<i>Rule</i>	<i>Requirement</i>	<i>Application Form</i>
16 TAC § 25.107(e)(1)(A)	Competitive retail experience	Confidential Attachment D-2
16 TAC § 25.107(e)(2)(D)	Complaint history	Confidential Attachment D-5
16 TAC § 25.107(f)(4)	Insolvency, bankruptcy, etc.	Nothing to report (Form C-4)
16 TAC § 25.107(e)(2)(E)(i)	Investigation of principals	Nothing to report (Form D-5)
16 TAC § 25.107(e)(2)(E)(ii)	Fraud by principals	Nothing to report (Form D-6)
16 TAC § 25.107(e)(2)(E)(iii)	ERCOT registration affidavit	Affidavit provided OI-9
16 TAC § 25.107(e)(2)(E)(iv)	Principals involved in POLR	Affidavit provided Attachment MI-4

<i>Rule</i>	<i>Requirement</i>	<i>Applicant's Response</i>
16 TAC § 25.107(d)(1)(F)	ERCOT scheduling, etc.	Confidential Attachment
16 TAC § 25.107(d)(1)(G)	ERCOT registration, etc.	25.107(g)(2)(F) Affidavit
16 TAC § 25.107(e)(2)(B)	15 years of competitive experience	Confidential Attachment D-2
16 TAC § 25.107(e)(1)(B)	Risk management	Confidential Attachment D-3
16 TAC § 25.107(d)(1)(H)	Adequate staffing	Confidential Attachment D-6
16 TAC § 25.107(e)(1)(C)(ii)	Customer point of contact	Confidential Attach OI-8
16 TAC § 25.107(e)(1)(D)	Customer service plan	Confidential Attach OI-8

***Form requirements***

A new REP applicant must provide certain technical and managerial information in accordance with the Application Form. The Technical and Managerial requirements that apply to a new REP certification application are listed in the Application Form, Section D (Technical and Managerial Requirements), parts D-1 (Customer Service) through D-7. I confirmed that the Applicant failed to provide evidence to satisfy the form requirements as outlined below:

<i>Form</i>	<i>Requirement</i>	<i>Applicant's Response</i>
Attachment OI-8	Qualified Scheduling Entity (QSE)	<b>Response not sufficient</b>



Section OI-8(a) of the application form requires the Applicant to provide certain information about its Qualified Scheduling Entity (QSE). Atlantic Energy Texas, LLC, stated that it will be its own QSE and will be working to file its application with ERCOT.

**Atlantic Energy Texas, LLC must provide the information set forth in 22 TAC §§ 25.107(e)(1)(C) and (F) and (i)(3)(G) about its QSE.**

**As of October 9, 2023, the applicant still has not received approval from ERCOT to be its QSE, so application cannot be considered sufficient for further review at this time.**

Section OI-7 of the application form states: “Provide as Attachment OI-7 evidence to demonstrate how the Applicant will satisfy the requirements of: (1) §25.107(e)(1)(C), misc. ERCOT requirements; (2)§25.107(e)(C)(ii), POC and outages; (4) §25.107(e)(D), customer service plan; and (5)§25.107(h), Customer Protection Requirements.”

Atlantic Energy, LLC did provide Confidential Exhibit OI-7 which it titled, “Attachment Related to OI-7.”

### **III. Conclusion**

I recommend that the application of Atlantic Energy, LLC be considered **deficient** for further review, from a technical and managerial perspective. My recommendation does not address the merits of the application nor the financial and risk management qualifications of the Applicant.