



## **Filing Receipt**

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Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Marisa Lopez Wagley  
Division Director

/s/ 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 December 11, 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  
Legal Division

**FROM:** Ethan Blanchard  
Rate Regulation Division

**DATE:** December 11, 2023

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

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On July 20, 2023, Atlantic Energy Texas, LLC (Atlantic) filed an application for an Option 1 retail electric provider (REP) certificate.

### *Access to Capital*

In order to obtain a REP certificate, an applicant must demonstrate adequate access to capital. Atlantic has elected to meet the access to capital requirements under 16 TAC § 25.107(f)(1)(B), which states that a REP or its guarantor must demonstrate shareholders' equity of more than one million dollars and maintain an irrevocable letter of credit. Atlantic provided the documentation required under 16 TAC § 25.107(f)(1)(B), (f)(4)(F),<sup>1</sup> and (f)(4)(C).<sup>2</sup>

### *Protection of Customer Deposits*

A REP applying for the option of collecting deposits or advance payments from customers must demonstrate compliance with 16 TAC § 25.107(f)(2). Atlantic has elected to meet the requirements under 16 TAC § 25.107(f)(2)(A) with an irrevocable stand-by letter of credit.

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<sup>1</sup> *Letter of Credit and Letter of Credit Amendment Filings Pursuant to PUC Substantive Rule 25.107*, Project No. 37919, item no. 1111 (Aug. 25, 2023).

<sup>2</sup> *Application, Confidential material to support APPLICATION FOR A RETAIL ELECTRIC PROVIDER (REP) CERTIFICATION In accordance with 16 TAC § 25.107(c)(1) and (d)(2)(A)*, item no. 2, at bates 2 (Jul. 20, 2023).

Atlantic's filing includes documentation which meets the requirements of 16 TAC § 25.107(f)(4)(F),<sup>3</sup> demonstrating that the letter of credit is maintained at a financial institution that is supervised by the Comptroller of the Currency.

***Risk Management***

REPs are required to maintain adequate commodity risk management services either through a principal employee, a permanent employee, or a provider of commodity risk management services as required under 16 TAC § 25.107(g)(1)(E).

Atlantic's application provided a résumé for a permanent employee, Travis Andrews, and whose experience amounted to more than five years managing substantial energy portfolios.<sup>4</sup>

***Recommendation***

Atlantic provided documents to demonstrate compliance with 16 TAC § 25.107(f)(1)(B), (f)(4)(C), (f)(4)(F), and (g)(1)(E). Therefore, Commission Staff recommends that the application be approved from a financial perspective.

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<sup>3</sup> *Letter of Credit and Letter of Credit Amendment Filings Pursuant to PUC Substantive Rule 25.107*, Project No. 37919, item no. 1110 (Aug. 25, 2023).

<sup>4</sup> Application, item no. 2, at bates 21 (Jul. 20, 2023).

# *Public Utility Commission of Texas*

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## **Memorandum**

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

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

**DATE:** December 22, 2023

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

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### **Staff's Recommendation on Final Disposition**

#### **I. Application**

On July 20, 2023, Atlantic Energy TX, LLC, 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. Atlantic Energy TX, LLC filed supplemental materials on August 28, 2023, and August 29, 2023.

On August 9, 2023, Order 2 was filed by the Administrative Law Judge (ALJ), finding the application administratively incomplete and order the applicant to cure deficiencies by August 30, 2023. The applicant needed to have their QSE approved by ERCOT.

On August 21, 2023, the ALJ filed Order 3, and found the application still incomplete and deficient due to QSE. ALJ ordered the applicant to cure deficiencies by September 11, 2023.

On September 27, 2023, Commission staff filed a response to Order 3 and requested an extension until October 11, 2023, to allow the applicant additional time to receive approval from ERCOT for its QSE. On September 29, 2023, the ALJ filed Order 4 and approved the extension.

On October 12, 2023, the ALJ filed Order 5 and granted an extension until October 26, 2023.

On October 25, 2023, the applicant filed a response to Order 5 and requested an extension until December 15, 2023, to obtain its QSE approval from ERCOT. On October 30, 2023, the ALJ granted the applicant an extension until December 22, 2023.

On November 22, 2023, the applicant filed supplemental documentation confirming ERCOT has granted them its QSE.

## **II. 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***

Under 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 TX, 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 TX, 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 TX, LLC completed all required sections of the application unless 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 TX, 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 TX, 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 TX, LLC, requested five assumed names: AE Texas, Atlantas Power, Atlantex Power, AE Commercial Texas, and AE Residential Texas, 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 TX, 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)(III), a REP “shall continuously maintain an office located within Texas for the purpose of providing customer service, accepting service of process and making available in that office books and records sufficient to establish the REP’s compliance with PURA and the commission’s rules.” The REP location may not be a post office box.

Atlantic Energy TX, 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(e)-(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	Nothing to report (form D-4)
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	Confidential Attachment MI-4

**Substantive requirements:**

A new REP applicant must satisfy certain technical and managerial requirements to be certificated by the Commission. The requirements that apply to a new REP certification application are listed in 16 TAC § 25.107(d) and (e). I confirmed that the application provides evidence to satisfy the rule requirements as outlined in the following table:

<i>Rule</i>	<i>Requirement</i>	<i>Applicant’s Response</i>
16 TAC § 25.107(d)(1)(F)	ERCOT scheduling, etc.	Attachment OI-7
16 TAC § 25.107 (e)(2)(E)(iii)	ERCOT registration, etc.	Attachment OI-9
16 TAC § 25.107(e)(2)(B)	15 yrs of comp 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 OI-7
16 TAC § 25.107(e)(1)(C)(ii)	Customer point of contact	Form OI-8
16 TAC §§ 25.107(e)(1)(C) and (F)	Qualified Scheduling Entity (QSE)	Attachment OI-8

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, received approval from ERCOT to be its own QSE on November 21, 2023.

***Customer protection requirements:***

Finally, under 16 TAC § 25.107(e)(D), a REP must comply with “the commission’s customer protection and anti-discrimination rules.”

Atlantic Energy TX, LLC, provided a statement of compliance in its Confidential Attachment OI-7 to satisfy this requirement.

**III. Conclusion**

Based on my review of the application of Atlantic Energy TX, LLC, specifically demonstrated Texas office requirement, its technical and managerial resources, and the signed affidavit for an Option 1 REP certificate, I recommend that Atlantic Energy TX, LLC is qualified to be certified as a REP in Texas.