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DOCKET NO. 55268

APPLICATION OF ATLANTIC ENERGY TEXAS LLC FOR A RETAIL ELECTRIC PROVIDER CERTIFICATE § **PUBLIC UTILITY COMMISSION OF TEXAS**

COMMISSION STAFF’S REVISED FILING REGARDING ADMINISTRATIVE COMPLETENESS OF THE APPLICATION

On July 20, 2023, Atlantic Energy Texas LLC (Atlantic) filed an application with the Public Utility Commission of Texas (Commission) for an option 1 retail electric provider (REP) certificate in accordance with Public Utility Regulatory Act (PURA)¹ § 39.352 and 16 Texas Administrative Code (TAC) § 25.107.

On July 24, 2023, the administrative law judge (ALJ) filed Order No. 1, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation on the application sufficiency by August 9, 2023. On August 8, 2023, Staff filed its original recommendation on administrative completeness of the application. On August 9, 2023, the ALJ issued Order No. 2 finding the application incomplete and establishing an opportunity for the applicant to cure.

The parties have discussed this matter and based on errors contained in the originally filed memorandum, Staff now files the attached *revised* memorandum of Josephine Gonzalez of the Customer Protection Division into the record in this matter in support of Staff’s recommendation that the application be found deficient. The revised memorandum will better allow the applicant to understand the noted deficiencies. The originally filed memorandum of Ethan Blanchard of the Rate Regulation Division supports Staff’s continuing recommendation that the application be found deficient and is also attached to this filing for reference. Staff continues to recommend that the application be found deficient and that Atlantic be ordered to address the deficiencies outlined in both memorandum.

For the reasons above, Staff respectfully requests the entry of an order deeming the application deficient and adopting a revised procedural schedule permitting additional time for the applicant to cure.

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016

Date: August 17, 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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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document will be provided to all parties of record via electronic mail on August 17, 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

Memorandum

TO: Jena Abel, Attorney
Legal Division

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

DATE: August 30, 2023

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

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.

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) | Response not sufficient |

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 in order for Staff to recommend that the application be considered sufficient for further review.

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 **insufficient** 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.

Public Utility Commission of Texas

Memorandum

TO: Jena Abel
Legal Division

FROM: Ethan Blanchard
Rate Regulation Division

DATE: August 3, 2023

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

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

Based on my review of the application, I recommend that it be deemed insufficient for filing at this time. I recommend that the applicant do the following to resolve the deficiencies:

1. Segregated cash account: Provide the documentation required per 16 TAC § 25.107(f)(4)(D).
2. Letter of credit: Provide the documentation required per 16 TAC § 25.107(f)(4)(F) which must be filed in Docket No. 37919.