FILED
OCT 19 2023
EXECUTIVE SECRETARY
G.P.S.C.

DOCKET# 8044
DOCUMENT# 216092

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DOCKET NO. 8044-U
FINAL ORDER ADOPTING AMENDMENTS TO RULE
MARKETERS' CERTIFICATE OF AUTHORITY
Amendments to Georgia Public Service Commission Utility Rules Chapter 515-7-3

TO:
(a) Legislative Counsel—State of Georgia
(b) All Parties of Record—Docket No. 8044-U
(c) All Certificated Natural Gas Marketers
(d) Local Gas Companies
(e) Affected Commission Staff
(f) All Parties on Rulemaking List

FROM: Georgia Public Service Commission
244 Washington Street
Atlanta, GA 30334

IN RE: Docket No. 8044 First Revised Notice of Proposed Rulemaking to Revise Existing Commission Utility Rule 515-7-3 (Marketers' Certificate of Authority)

All interested parties are hereby notified pursuant to Official Code of Georgia Annotated ("O.C.G.A.") § 50-13-4 that the Georgia Public Service Commission ("Commission") has considered and adopted amendments to its rules regarding Commission Utility Rule 515-7-3-.03 which would require additional background information in marketer applications for certificates of authority to market natural gas. The amended rule shall become effective as provided by law, twenty (20) days after adoption at the Commission's regularly scheduled Administrative Session on October 17, 2023, and subsequent filing with the Secretary of State.

BY THE COMMISSION

Whereas, during the Administrative Session on October 17, 2023, the Commission approved amendments to Commission Utility Rule 515-7-3-.03;

Whereas, copies of written notices of the proposed rules previously were mailed to all utilities subject to the jurisdiction of this Commission, and to all interested persons on the mailing list of the Commission pursuant to O.C.G.A. § 50-13-4(a)(1);

Whereas, a copy of said notice was furnished to the Legislative Counsel of the State of Georgia, pursuant to said O.C.G.A. § 50-13-4(e); and

Whereas, the Commission provided parties with the opportunity to provide written comments and to request a hearing to present oral arguments on the proposed rule;

WHEREFORE, IT IS ORDERED, that Commission Utility Rule 515-7-3-.03 is hereby approved and adopted as follows:

RULES OF GEORGIA PUBLIC SERVICE COMMISSION
515-7 GAS UTILITIES
CHAPTER 515-7-3
MARKETERS' CERTIFICATE OF AUTHORITY

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515-7-3-.03 Application for a Certificate of Authority

Rule 515-7-3-.03 Application for a Certificate of Authority

(1) Any person seeking to sell or offer to sell natural gas on a firm basis pursuant to O.C.G.A. § 46-4-153 is required to file an application with the Commission on a form approved for a certificate of authority. No person other than a gas company or a regulated provider shall sell or offer to sell natural gas to any person who primarily receives firm service in any delivery group(s) in Georgia unless and until such time as a certificate of authority has been issued by the Commission.

(2) Applications shall contain the following:

(a) the legal name of the Applicant and the name under which it proposes to do business in Georgia, as well as its mailing and business address(es), telephone number(s), facsimile number(s), and Internet e-mail address, if any;

(b) the name(s) and current business address(es) of the Applicant's principal corporate officers;

(c) the name(s) and current business address(es) of the Applicant's principal and corporate officer(s) in Georgia, if different from those identified in subparagraph (b) above;

(d) the name, title, address, and telephone number(s), facsimile number(s), and Internet e-mail address of employee designated to receive and respond to Commission requests and who will notify the Commission of any changes to the information provided in this application while pending;

(e) If the Applicant is a non-resident of Georgia, give name, address, and telephone number(s), facsimile number(s), and internet e-mail address of an agent or attorney in fact in this state upon whom process may be served in any suit against Applicant;

(f) a description of the Applicant's business, ownership structure, affiliates, date of formation, tax identification number, Georgia Secretary of State's charter or identification number and Georgia revenue sales tax number;

(g) Attach a list of principal officers, whether the Applicant is a corporation or other legal entity; if a corporation, a copy of the charter articles of incorporation, articles of organization or certificate, as applicable marked as **Exhibit A**; a list of all directors, managers, members, and limited partners and principal stockholders with the number of shares held by each, or percentage of ownership interest as applicable marked as **Exhibit B**, and the name and addresses of the president, vice president, treasurer, and secretary;

(h) State and date of incorporation for corporate entities and formation for non-corporate entities, and attach an organizational chart marked as **Exhibit C**;

(i) If applicable, provide the name(s) and business address(es) of the Applicant's principle and corporate officers in Georgia, if different from those above;

(j) If Applicant is a partnership or cooperative, give names and addresses of partners, officers and/or members;

(k) the financial capability information shall include, but is not limited to:

1. a demonstration that the Applicant's capital base or other financial resources are sufficient to withstand the business risk, financial risk and absorb losses that might be incurred in providing primarily firm gas service to retail customers. Such demonstration should include lines of credit, letters of credit, or other financial instruments, as well as loans from financial institutions, a parent corporation or affiliate, a subsidiary, or other entity. In the event that start-up costs and expected losses projected during the initial period of operations may require working capital, detailed and comprehensive documentation of the sources of such anticipated working capital shall be provided in hard copy and electronic format (Excel format with all formulas unlocked). Any and all documentation required by an Applicant's lender, line of credit or surety provider shall be included as part of the application;

    i. Applicant's credit rating and/or bond rating made by a national rating agency.

    ii. Credit facilities/Credit Agreements that include the total credit facility dollar amount of the facility and the dollar amount available for use.

iii. Loans/Loan Agreements that include a breakdown of the dollar amount(s) of each loan, the name of the lender, and provide the terms of the loan(s).

iv. Parental Guarantees / Terms of Guarantees that include any parental guarantee as a separate attachment with a dollar amount, if any, and any written terms. A **sworn statement** must be signed by a corporate officer of the parent company affirming the parental guarantee.

v. The Applicant shall provide Bank Statements generated by the Applicant's bank that are no more than 30 days old prior to the filing date of the application.

vi. Other Liquid Assets / List of Assets

2. a sworn statement that the Applicant has met or has the ability to meet the creditworthiness standards of the interstate pipelines serving the State of Georgia and the Commission-approved creditworthiness standards, and the EDC's credit-worthiness standards, and the Applicant has been or is currently participating in discussions with the EDC and/or interstate pipeline regarding the Applicant's creditworthiness;

3. An explanation of how the Applicant's financial backing, plans and resources provide the requisite support for the implementation of the business/marketing plans for providing primarily firm gas service to retail customers, including a 36-month breakeven analysis in electronic Excel format with all formulas unlocked demonstrating projected customer growth, gas volumes in therms, revenues, costs, expenses, and net income. Any and all documentation required by the Applicant's lender, line of credit or surety provider shall be included. The breakeven analysis must include monthly projections for customers and gas load in therms.

4. the audited financial statements (balance sheets, income statements, and cash flow statements) of the Applicant for the last three (3) years; if audited financial statements are unavailable, then unaudited financial statements supported by the sworn certification of an officer, general partner, or managing agent will be accepted. If a parent corporation, Applicant affiliate or other entity will support the Applicant, the parent corporation, affiliate or other entity's audited financial statements for the last three (3) years should be provided;

5. the most recent annual reports filed with the stockholders and the Securities and Exchange Commission (Form 10K/Form 10Q) if Applicant and/or parent corporation is a publicly held company;

6. detailed pro forma balance sheets, income statements and statements of cash flow for the next three (3) years for the Applicant as well as the Applicant's business and marketing plans for the certificated area of service in Georgia;

7. the details of any unconditional purchase obligations that require payments by the Applicant in future periods;

8. a schedule of the Applicant's non-cancelable operating lease commitments;

9. the schedules detailing the Applicant's long-term debt and available credit facilities, including installments due on long-term debt; for five (5) years following the date of this application;

10. the details of any joint ventures or general partnership agreements between the Applicant and other parties;

11. the information as to whether an estimated claim from a loss contingency has been accrued by a charge to income as it relates to any pending or known litigation or actual claims;

12. the management's plan for dealing with matters relating to an Applicant's ability to continue as a going concern;

13. the Applicant's plan to provide for funds to be held in escrow by an independent third party in the event that prepaid services are to be offered or deposits are required; and

14. If the Applicant had any of the following conditions or events in the past ten (10) years or anticipates any of the following conditions or events within the next twelve months, the Applicant's plans (with respect to the Applicant's ability to continue as a going concern) for dealing with any of the following conditions or events:

(i) Recurring operating losses;
(ii) Working capital deficiencies;
(iii) Negative cash flows from operating activities;
(iv) Denial of credit from suppliers;
(v) Restructuring of debt;
(vi) Need to dispose of substantial assets;
(vii) Substantial dependence on the success of a particular project;
(viii) Uneconomic long-term commitments;
(ix) Need to significantly revise operations;
(x) Legal proceedings, legislation or similar matters that might jeopardize the Applicant's ability to continue operations;
(xi) Loss of a key franchise;
(xii) Loss of a certificate of authority to provide natural gas or electricity in another jurisdiction;
(xiii) Loss of a principal or key customer or supplier; or
(xiv) Loss of principal or key management or technical personnel.

15. any other information that the Applicant believes is relevant to the evaluation of its financial capability.

(l) the technical information shall include, but is not limited to:

1. the names, current business address(es), and principal place(s) of business of employees that will direct the Georgia operations, including an employee of the Applicant that will serve as a contact person for the Commission;

2. in the past ten (10) years, the information as to whether certificates of authority for the sale of natural gas have ever been issued by any other state(s) and whether such certificates are current. An Applicant shall also disclose to the Commission whether any application for certification has ever been denied and whether any certificate of authority issued to it or an affiliate has ever been suspended, revoked, modified, or sanctioned;

3. a list of the Applicant's comparable gas marketing activities by jurisdiction, to include the name of the companies with annual sales revenues, volumes of gas in therms or other measures of activity;

4. select the delivery group(s) that the Applicant seeks to serve; select the customer classes the Applicant seeks to serve: residential, commercial, and/or industrial;

5. The Applicant's forecast of estimated or anticipated gas supply and capacity needed to serve the Georgia market based upon the Applicant's

marketing strategy to acquire customers, as well as limitations, if any, on gas supply. This data can be included in the 36-month breakeven analysis located in 515-7-3-.03(2)(k)(2). This may include providing Staff access to applicable gas supply and capacity contracts. If applicable, these items may be filed pursuant to Commission Rule 515-3-1-.11 as trade secret material;

6. a list of all current contracts with interstate pipelines that the Applicant may use in conjunction with or in lieu of those provided by the EDC upon acquisition of market share in the respective delivery groups. If applicable, these items may be filed pursuant to Commission Rule 515-3-1-.11 as trade secret material;

7. a detailed description of the tools, strategy, and/or other information that the Applicant will utilize to mitigate natural gas price volatility;

8. a detailed description of the Applicant's natural gas purchasing strategy for the various customer classes (fixed, variable, commercial, etc);

9. a projection of the percentage of base load, seasonal, and spot gas supply contract the Applicant plans to utilize in its operations. The Applicant shall provide an explanation for the projected amounts;

10. a detailed description of the Applicant's contingency plan to provide gas to firm customers in the event that a supply disruption occurs;

11. the detailed procedures that will be employed by the Applicant in a gas-related emergency (i.e., force majeure, interstate capacity limitation);

12. a detailed description of the Applicant's operating experience and qualifications of principal management employees involved in the day-to-day activities of the entity's operation in Georgia;

13. the proposed terms of service as required by Chapter 515-7-9 of the Commission Utility Rules;

14. the rules for contracting with firm customers as referenced in O.C.G.A. §§ 46-4-153(a)(2)(C), 46-4-158.2, 46-4-158.3, 46-4-160(a), 46-4-160(h), 46-4-160(i), 46-4-160(j), and 46-4-160(k), and Commission Utility Rules Chapter 515-7-6;

(i) the rules for contracting with firm customers shall include, but are not limited to:

(I) the bills and contracts must be written in clear and plain language;

(II) the bills must contain sufficient information to allow customers to verify the accuracy of their bills;

(III) the pricing structure must be clearly explained, including any late fees or interest charges;

(IV) the contract term must be specified along with any termination rights;

I. the firm customers must be allowed to cancel their contract without penalty within 72 hours of signing it.

II. the firm customer must be given the right to cancel their fixed rate contract with their current marketer without an exit fee only if they relocate to a different delivery group and a fixed rate is not offered by their current marketer in the new delivery group. However, if the customer refuses to continue the term of their current fixed rate contract with their current marketer, an exit fee may be charged.

(V) the bill must include the EDC's 24-hour emergency telephone number;

(VI) the EDC's active customer account number must be placed on each bill; and

(VII) the bill must comply with all requirements of Commission Rules that specifically address marketer billing practices and marketer bills.

(ii) the Applicant acknowledges that it must comply with federal telemarketing rules and Georgia consumer protection laws.

15. the Applicant's plan to provide for funds to be held in escrow by an independent third party in the event that prepaid services are to be offered or deposits are required;

16. a statement as to whether day-to-day operations such as gas procurement, nominations and planning will be provided by in house personnel or will be contracted for by a third party; and

17. any other information that the Applicant believes is relevant to the evaluation of its technical capability.

(m) Legal disclosures shall include, but are not limited to:

1. a statement, to include supporting documentation, as to whether the Applicant, the Applicant's officers and/or its directors, partners, or employees in managerial positions, who have declared bankruptcy or had a civil judgment rendered against it/him/her in the past ten (10) years;

2. a statement, to include supporting certified copies of dispositions, as to whether the Applicant, any of its officers and/or directors, partners, or employees in managerial positions who have been fined and/or found guilty/liable by a state public service commission, or other state or federal court or agency, for any violations in the past ten (10) years.

3. a statement, to include supporting certified copies of legal dispositions, as to whether the Applicant, any of its officers and/or its directors, partners, or employees in managerial positions who have been fined and/or found guilty/liable by a State public service commission, or other State or Federal court or agency, for predatory marketing practices in the past ten (10) years, whether such marketing practices were managed in-house or by an outside third-party.

4. a statement as to whether the Applicant, any of its officers and/or its directors, partners, or employees in managerial positions who have entered into a settlement agreement or been fined or found liable by a state public service commission, or other state or federal court or agency, for any violations in the past ten (10) years; and

5. a statement disclosing any existing, pending or past adverse rulings, judgments, litigation, contingent liabilities, revocations of authority, administrative regulatory investigations (i.e., FERC, SEC) related to the Applicant, any of its officers and/or its directors, partners, owners, or employees in managerial positions for the past ten (10) years.

(3) Applicants that are EMC gas affiliates shall provide, but are not limited to, the following:

(a) In addition to providing the information set forth in its Utility Rule 515-7-3-.03(2), an Applicant that is an EMC gas affiliate shall include with its application for a certificate of authority proposed terms and conditions to govern the relationship between the electric membership corporation and its EMC gas affiliate as contemplated in O.C.G.A. § 46-4-153.

(b) As proposed, these terms and conditions shall be designed to prevent cross-subsidization between the provision of electricity and the provision of natural gas services, to encourage and promote fair competition in the overall retail natural gas market, and to protect the privacy of both electric and natural gas consumers.

(c) The order subsequently issued by the Commission in response to the EMC gas affiliate's application shall meet the objectives set forth in O.C.G.A. § 46-4-153.1, as well as such other requirements the Commission shall determine are necessary to protect electric and natural gas consumers and promote competition.

(d) To ensure that cross-subsidizations do not occur between the electricity services of an electric membership corporation and the gas activities of its gas affiliate, the terms and conditions ordered by the Commission shall provide that each electric membership corporation having a gas affiliate shall:

1. Fully allocate all electricity activities costs and gas activities costs, including costs for any shared services, between the electric membership corporation's electricity activities and the gas activities of its gas affiliate, in accordance with the applicable uniform system of accounts and generally accepted accounting principles, as applicable;

2. Develop and maintain a cost allocation manual, approved by the Commission, describing the electric membership corporation's methods of cost allocation and such other information and policies reasonably required by the Commission to ensure compliance with Article 5 of Chapter 4 of Title 46 of the Official Code of Georgia Annotated and the terms and conditions ordered by the Commission. Such manual shall:

(i) Establish rules for the pricing of transactions between an electric membership corporation and its gas affiliate, including the transfer of assets between the two, which rules shall provide that any transfer of assets shall be the greater between market rates or book value;

(ii) Provide that any loans from the electric membership corporation to its gas affiliate shall be at market rates, shall not reflect rates which are generally available through the use of any tax exempt financing, and may not be tied to any loans from the federal or state government;

(iii) Require the electric membership corporation and its gas affiliate to maintain separate books of accounts and records which shall, subject to the Commission's rules for treatment of trade secrets, be subject to production and inspection by the Commission for the sole purpose of confirming compliance with this article, the cost allocation manual, and the terms and conditions of the gas affiliate's certificate; and

(iv) Require the annual filing of a statement with the Commission certifying the compliance by the electric membership corporation and its gas affiliate with the approved cost allocation manual, which annual filing shall itemize financial summary information in the form of Federal Energy Regulatory Commission (FERC) account codes as requested by the Commission Staff.

3. Not charge any costs of the gas affiliate to the electricity customers of the electric membership corporation.

(e) To protect customer privacy and prevent the misuse of customer information, the terms and conditions ordered by the Commission shall provide that no electric membership corporation shall release any proprietary customer information to its gas affiliate without obtaining prior verifiable authorization from the customer, as determined in accordance with rules established by the Commission.

(f) The Commission may require that any customer service that an electric membership corporation provides to its gas affiliate be offered to all marketers at the same rate and on the same terms and conditions as provided to the gas affiliate. Any such services provided to the gas affiliate or marketers must be on a strictly confidential basis, such that the electric membership corporation does not share information regarding one marketer with any other marketer, including an EMC gas affiliate.

(g) The terms and conditions shall accommodate the organizational structures of electric membership corporations.

(h) To assure separate but coordinating governance of an electric membership corporation and its gas affiliate, the terms and conditions shall prohibit more than one half of the persons serving as members of the board of directors of a gas affiliate from

at the same time serving on the board of directors of an electric membership corporation.

(i) The Commission shall make accommodation for the specific legal requirements imposed by state or federal laws applicable to electric membership corporations and other cooperatives.

(4) Any information that the Applicant deems to be proprietary or confidential may be filed pursuant to Commission Rule Chapter 515-3-1-.11, Trade Secrets.

(5) An Applicant shall submit to the Executive Secretary of the Commission the number of copies indicated on the application form. The original, signed by the Applicant, must accompany the copies. Failure to provide the appropriate number of copies or the signed original will result in the rejection and return of the application.

(6) Any application that is deemed to be incomplete after it is filed with the Commission shall not be considered until such time as all of the information requested therein has been furnished. The sixty (60) day time frame during which the Commission is charged with conducting a public hearing or hearings on an application shall not commence unless and until a completed application has been submitted by the Applicant. The Commission shall provide the Applicant with a notification within fifteen (15) days after filing whether said application is deemed to be complete, or, if incomplete, what information is lacking. The Commission shall notify the Applicant no later than fifteen (15) days following its receipt of any additional information whether such information is sufficient to regard the application as complete. If the additional information is not sufficient, the notification sent to the Applicant by the Commission shall include a specific statement detailing the information that must be clarified or which otherwise does not adequately respond to the original request.

(7) The Commission shall deem an application to be withdrawn if the Applicant fails to furnish any information requested in a notice of incompleteness within fifteen (15) business days after the date on which the request for additional information was issued.

(8) A certificate of authority may not be transferred, assigned, or leased except upon application to and approval by the Commission.

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Ordering Paragraphs

WHEREFORE IT IS ORDERED, that the Commission hereby adopts Utility Rule 515--7-3-.03.

WHEREFORE IT IS ORDERED, that said adopted rule as amended having been published as provided in O.C.G.A. § 50-13-3(b) shall be filed with the Administrative Procedure Act Division of the Secretary of State as provided in O.C.G.A. § 50-13-6(b).

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other relief shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by the action of the Commission in Administrative Session on the 17th day of October 2023.

Sallie Tanner
Executive Secretary

10-19-23
Date

Jason Shaw
Chairman

10-19-23
Date