BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

IN RE:	**NOTICE OF PROPOSAL RULEMAKING TO AMEND EXISTING COMMISSION RULE CHAPTER 515-7-8: SERVICE QUALITY STANDARDS FOR CERTIFICATED MARKETERS AND REGULATED PROVIDERS**	**DOCKET NO: 15296**

SCANA ENERGY MARKETING, LLC'S COMMENTS IN RESPONSE TO THE COMMISSION'S NOTICE OF PROPOSED RULEMAKING TO AMEND EXISTING COMMISSION RULE CHAPTER 515-7-8: SERVICE QUALITY STANDARDS FOR CERTIFICATED MARKETERS AND REGULATED PROVIDERS

COMES NOW, SCANA Energy Marketing, LLC (hereinafter "SCANA") and files the following comments in response to the Georgia Public Service Commission's ("Commission") Notice of Proposed Rulemaking to Amend Existing Commission Rule Chapter 515-7-8: Service Quality Standards for Certificated Marketers and Regulated Provides, filed on or about October 4, 2023 (hereinafter, the "Proposed Rule").

A. INTRODUCTION.

SCANA appreciates the considerable time and resources the Commission's staff and working group spent reviewing and proposing modifications to the Service Quality Measures ("SQMs") applicable to natural gas marketers in Georgia. While SCANA is generally aligned with the direction taken in the Proposed Rule, SCANA contends several changes are necessary to create a rule that is easily understood, is capable of being uniformly followed by marketers, and can be consistently enforced by the Commission. The comments below address each of SCANA's material concerns. Additionally, attached hereto as Exhibit A is a redline with SCANA's suggested revisions to the Proposed Rule to address each of its concerns.

B. PROPOSED RULE 515-7-8-.12 SHOULD BE REVISED TO CLARIFY WHEN THE REMEDIATION PERIOD COMMENCES AND APPLICATION OF PENALTIES FOR THE PERIOD OF TIME AFTER THE REMEDIATION PERIOD ENDS.

As a beginning point, SCANA generally agrees with the legitimate goal of shortening (from what exists under the Benchmark Order)[1] the timetable between when a Marketer fails to meet a SQM benchmark repetitively and when the Marketer would face penalties for such non-compliance. Proposed Rule 515-7-8-.12, however, requires several changes to make it clear such that Marketers can uniformly comply with the rule.

1. Remediation Period Should Commence upon the Conclusion of the Second Month of Non-Compliance

Both subsections (a) and (b) of Proposed Rule 515-7-8-.12 provide: "such Marketer shall go into a 3-month remediation period that will begin starting the first day of the second month in which the Marketer missed the benchmark; and will continue for two (2) additional consecutive months." The effect of this language is that the "remediation period" will commence an entire month before the Marketer knows it failed to comply with the applicable benchmark – effectively shortening the period in which remediation could meaningfully occur to two months. The Proposed Rule further provides: "All remedial activities must be completed by the end of the remediation period." Read together, the Proposed Rule would require a Marketer to "file with the Commission a Remediation Action Plan (RAP) to identify and explain the deficiency, specify how the deficiency will be remedied, and provide a timetable for remedial activities" within 30[2] days of determining it failed to meet the SQM benchmark *and* then complete such remedial activities within another additional 60 days. This timeframe is wholly unworkable, especially in the context

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[1] As used in this document, "Benchmark Order" refers to the Commission's Order entered April 14, 2003 in Docket No. 15296-U wherein the Commission established service quality standards for certificated marketers as contemplated by Commission Rule 515-7-8-.03.

[2] The actual days would vary depending on the length of the month.

of the Call Center Service Level SQM. The primary levers a Marketer can pull to remedy deficiencies in call center performance is by hiring additional customer service representatives or retraining customer service representatives on the issues that are driving call volumes or call length times. It would be extraordinarily difficult – if not impossible – to plan for and fully execute upon such remedial activities within 60 days of determining such remedial activities would be necessary.

SCANA proposes subsections (a) and (b) of Proposed Rule 515-7-8-.12 be revised to read: "such Marketer shall go into a 3-month remediation period that will begin ~~starting~~ the first day of the month following the second month in which the Marketer missed the benchmark; and will continue for two (2) additional consecutive months." Additionally, SCANA proposes that the remedial action plan be filed by the end of the first month of the remediation period. These changes, working in tandem, require the Marketer to file the Remedial Action Plan at the same point in time – approximately 30 days after the Marketer fails to meet the benchmark for a second month, but it provides three months after the Marketer learns of the second non-compliant month to complete the remedial activities. This timeline is much more realistic considering the practical limitations a Marketer would likely face in executing effective remedial efforts.

2. *Consistent Use of Defined Term "Successful Remediation" Provides Clarity on What is Necessary to Avoid the Payment of Penalties*

Both subsections (a) and (b) of Proposed Rule 515-7-8-.12 include two potentially inconsistent standards for compliance once the Marketer is in the remediation period. Proposed Rule 515-7-8-.12 provides:

> In order to achieve successful remediation and avoid a penalty, the Marketer, at a minimum, shall meet the established SQM benchmark of 80%[3] during the third month of the remediation period. Marketers failing to meet the benchmark in the third month will be assessed a penalty.

[3] Subsections (a) and (b) of Proposed Rule 515-7-8-.12 refer to an 80% benchmark for both Call Center Service Level and Billing Accuracy. Under the Benchmark Order, the Billing Accuracy benchmark has been higher.

With respect to the standard that will trigger a penalty, SCANA finds this language to be quite clear – the only way a Marketer will be penalized during the remediation period is if it fails to meet the applicable SQM benchmark during the third month of the remediation period.

However, an earlier sentence in that same subsection creates an ambiguity. Specifically, it provides: "*If the deficiencies were not eliminated and the established benchmark was not met*, then the Marketer will be assessed a penalty. Such penalty will be due on the 15th of the following month." Proposed Rule 515-7-8-.12(a) and (b) (emphasis added). The italicized language implies that a penalty could be assessed if (a) the marketer failed to meet the benchmark in any of the three months of the remediation period and (b) (because of the use of the word "and") in situations where the "deficiencies were not eliminated" even where all the benchmarks were "met." The word "deficiencies," especially since it is plural, suggests that the standard is something in addition to meeting the applicable SQM benchmark in the third month of the remediation period. Moreover, the phrase "deficiencies. . . eliminated" arguably introduces a subjective element into the application of the presumptive penalty. The assessment of a penalty should solely be based on the objective factor of whether the marketer met the SQM benchmark in that third month of the remediation period.

In SCANA's proposed changes, SCANA revises the definition of "successful remediation" to make clear that to avoid a penalty, the Marketer must satisfy the applicable SQM benchmark during the third month of the remediation period. While the Marketer is in the remediation period, only if the applicable SQM benchmark is not met in the third month will a penalty be due.

3. *SCANA Proposes Additional Language Regarding the Penalty Calculation if a Successful Remediation is Not Completed within the Remediation Period*

Subsections (a) and (b) of Proposed Rule 515-7-8-.12 provide: "Marketers failing to meet the benchmark in the third month will be assessed a penalty." SCANA proposes additional

language to clarify that the penalty assessed is for a *single* recording period. In other words, if a Marketer fails to meet all three months of the remediation period, the penalty is not for three months. Or if the Marketer fails to meet the SQM benchmark for the first and third month (but meets the second month), the penalty is still just for failing to meet the SQM benchmark for the third month. Specifically, SCANA proposes the following italicized language to clarify this concern:

> If there has not been a successful remediation, then the Marketer will be assessed a penalty <u>for the third recording period only without regard to the number of recording periods during the remediation period in which the Marketer failed to meet or exceed the SQM benchmark for [insert the applicable SQM benchmark]</u>.

SCANA understands its proposed changes do not deviate from the intent[4] of the language of the Proposed Rule, but rather adds clarity to prevent a future misunderstanding about its application.

4. *Creating and Using Defined Term "Probation Period" Explains the Period in which a Non-Compliant Marketer Remains Subject to a Penalty*

The two below italicized sentences in Subsections (a) and (b) of Proposed Rule 515-7-8-.12 create ambiguity on how the penalties will be applied *after* the remediation period has concluded.

> *That penalty will continue for every month thereafter.* For a period of one (1) year after filing the remediation report, the Marketer will remain subject to penalties for each recording period if the deficiency remains or reoccurs. *The Marketer will not be given remediation opportunities again until such time as the service provider has demonstrated compliance with the benchmark for twelve consecutive months.*

Proposed Rule 515-7-8-.12(a) and (b) (emphasis added).

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[4] SCANA understands the policy behind the remediation period is to give Marketers a limited safe harbor from penalties while the Marketer focuses on remediating the issue in a sustainable, cost-effective manner. Making the penalties fully retroactive would be in contravention of this purpose.

The first sentence does not set an end date for penalties if a successful remediation does not occur within the remediation period. While the next sentence's use of the word "remains" implies that the penalty will not be assessed if there is compliance with the SQM benchmark in a subsequent month, SCANA contends the breadth of the first sentence above (also italicized) should not be limited by mere implication.

The second sentence and third sentence (also italicized) quoted above are inherently in conflict and require clarification in order to avoid future concerns about uniform application among Marketers. Specifically, the second sentence suggests that penalties will only be assessed in the one (1) year after the remediation period ends. But, the third (and italicized) sentence implies by the use of the undefined term "remediation opportunities" that a Marketer cannot be eligible for the safe harbor from penalty assessment available where a Marketer files a Remedial Action Plan until they have been in compliance for one year.

The following example highlights the tension between these two sentences. If a Marketer fails a second time to meet a SQM benchmark in December 2024, under the Proposed Rule, the remediation period would expire at the end of February 2025, such that the remediation report would be due March 5, 2025.[5] If a Marketer fails to meet or satisfy the SQM benchmark in May 2025 and April 2026, under the second sentence, the Marketer would not face a penalty for its April 2026's non-compliance. However, if the Commission applied the third (and italicized) sentence, it is not clear what happens. In that scenario, there would not have been 12 consecutive months after March 5, 2025 of compliance such that the Marketer would be required (or eligible for the safe harbor created by such a filing) to file a remedial action plan for its April 2026's non-

[5] As discussed above, under SCANA's proposed changes, the remediation period would not expire until the end of March 2025 in this example.

compliance, but it is not clear that the Commission, under the Proposed Rule, would have authority to issue a penalty for the Marketer's failure to meet the SQM benchmark in April 2026 because it was more than a year after the remediation report was filed.

SCANA's interest in this comment is to create a rule that is easily understood by certificated marketers and capable of being uniformly enforced by the Commission. Therefore, SCANA proposes the rule include "Probation period" as a defined term, with the following proposed definition:

> "Probation period" means the one (1) year period commencing on the first day immediately after the end of the remediation period; provided, however, if the Marketer fails to meet or exceed the applicable SQM Benchmark in any one month within the initial one (1) year probation period, the probation period shall automatically be extended such that the probation period shall not end until the Marketer has met or exceeded the applicable SQM Benchmark for twelve consecutive recording periods.

This definition creates a rolling 12 month probationary period commencing at the conclusion of the remediation period. To simplify application of the rule, SCANA proposes deleting the above-quoted inconsistent sentences and replacing them (all keyed to the above definition proposed for "probation period") with the following:

> During the probation period, the Marketer shall pay a penalty for each recording period it fails to meet or exceed the SQM benchmark for [Call Center Service Level OR Billing Accuracy]. A Marketer who fails to meet or exceed the SQM benchmark for [Call Center Service Level OR Billing Accuracy] after the probation period has ended shall be allowed to participate in the remediation procedures set forth in this Rule prior to being obligated to pay a penalty.

C. PROPOSED RULE 515-7-8-.13 SHOULD BE REVISED TO ELIMINATE THE TIERED PENALTY APPROACH

SCANA proposes elimination of the market share based, tiered approach to establishing the presumptive penalty set forth in Proposed Rule 515-7-8-.13. For over 20 years, the presumptive penalty has been set by the Benchmark Order at $25,000 per violation, subject to the

safe harbor provisions set forth therein, without regard to market share. There is no rationale reason to now lower that penalty for the majority of Marketers in the marketplace.

One specific concern with the Proposed Rule is that the penalties associated with the tiers seem arbitrary. For example, aa Marketer with a 10.1% market share would be subject to a presumptive penalty of $20,000.00 per violation, but a Marketer with a 9.9% market share would be subject to a presumptive penalty of $5,000.00 for the same violation – merely 25% of the penalty the Marketer with .2% more of market share would face. Moreover, enforcement is made more difficult because market share could fluctuate between tiers from month to month, creating further ambiguity.

If the goal of the tiered approach is to recognize each Marketer's financial situation is different, the Proposed Rule grants (as does the Benchmark Order) the Commission the discretion to adjust the presumptive penalty upon petition from the Marketer or other interested party. In such a proceeding, the Marketer can explain how its market share should implicate the amount of the penalty. In short, the Commission should not adopt an arbitrary tiered penalty approach, but should maintain the existing penalty structure, including the Commission's discretion to adjust the presumptive penalty amount.

D. FORMULAS FOR MEASURING SQM BENCHMARKS IN THE PROPOSED RULE SHOULD BE ADJUSTED TO BE CONSISTENT WITH HISTORICAL REPORTING

1. Proposed Rule 515-7-8-.05 related to Billing Accuracy Includes an Incorrect Formula.

Proposed Rule 515-7-8-.05 related to Billing Accuracy included the following: "(Total number of bills issued / Total number of corrected bills) *100." While the Benchmark Order does not specify an exact formula, the forms used by the Commission for Marketers to report billing accuracy use the following formula:

(Total number of bills issued – Total number of bills canceled and corrected) / Total number of bills issued) *100.

SCANA proposes modifying Proposed Rule 515-7-8-.05 to correct the formula used to measure billing accuracy.

2. *Proposed Rule 515-7-8-.04 related to Call Center Service Levels Should be Clarified with Regarding to Calls Terminated prior to 180 Seconds*

SCANA proposes two modifications to Proposed Rule 515-7-8-.04 to ensure all marketers are uniformly calculating the SQM benchmark related to Call Center Service Levels. Calls that are in queue but terminated before 180 seconds should not count against the Marketer because the Marketer may have answered the call in less than 180 seconds. If the Commission were to include calls in queue that were abandoned by the customer before 180 seconds in the SQM formula, it would effectively be lowering the 180 second threshold to a constantly changing and undefined standard that subjects the Marketer to variables outside of its control.[6] Stated differently, such calls should not be included within the denominator of this SQM formula. However, if the termination of the call in queue occurs after 180 seconds, the call should be counted against the marketer and included in the denominator. But because the term "offered calls" is not defined, it is not clear whether the Commission would intend for such calls to be included in the denominator when reporting. Therefore, SCANA proposes eliminating the word "offered" and adding to the definition of "calls" a clarification that calls where a customer terminates a call *prior to* waiting 180 seconds in the queue should not be counted. To accomplish this clarification, SCANA proposes the following change:

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[6] There are innumerable reasons a customer may abandon a call before 180 seconds that have no bearing on a Marketer's call center quality. These include but are not limited to poor call reception/no call reception; the customer resolved their own issue; the customer received another call; the customer received a visitor; the customer wanted to discuss the issue at a later time; etc.

For the purpose of this Rrule, "calls" shall include calls in queue terminated by the calling party, after 180 seconds, prior to speaking with an agent. The formula for measuring this benchmark shall be as follows:

(Total number of calls answered by an agent in 180 seconds or less / Total number of ~~offered~~ calls) *100.

E. SCANA PROPOSES OTHER CHANGES TO ADD CLARITY

- In Proposed Rule 515-7-8-.02(n), SCANA is proposing the following language: "For purposes of this Rule, including without limitation with respect to reporting, remediation, and penalties, the ~~term marketer includes the~~ Regulated Provider shall be treated as if it were a separate and independent Marketer." SCANA understands the proposed change to this definition was to make it clear that the Regulated Provider would be treated as if it was a marketer. The additional language proposed by SCANA is meant to further clarify that the Regulated Provider will report, remediate, and be subject to penalties based on its own activities and that a certificated marketer performing the function of Regulated Provider will not include regulated provider customers in its SQM benchmark reporting.
- In Proposed Rule 515-7-8-.03, SCANA proposes the following change: "If a Marketer fails to meet an SQM benchmark established by the Commission, the Marketer shall notify Staff in the data reporting filing of the missed SQM benchmark ~~in that month's reporting filing~~." Consistent with the Benchmark Order, this language clarifies that the data reporting filing, which is typically filed trade secret, itself is intended to be the mechanism to report a failure to meet a SQM benchmark. In light of the trade secret nature of this information, there is no other practical mechanism to provide separate notice outside of the data recording filing that could be later verified. For example, if oral notice over the phone or in person was sufficient, no record would be created of such notice that could later be used to verify

compliance. But, if a separate writing was required, the trade secret nature of such notice would be lost.

- In Proposed Rule 515-7-8-.10(b), SCANA proposes adding the following clause: "Except where the benchmark and penalties are established by this Rule". This change is necessary to clarify that a hearing on the benchmark or penalty amount will not be held as a matter of course on those benchmarks and penalties established by this Proposed Rule. While this procedure was followed initially to set the Call Center Service Level benchmark and Billing Accuracy benchmark, because these standards and associated presumptive penalties will now be established by the Rule, the Benchmark Order will be superseded. SCANA recommends that the Order adopting the Final Rule related to this Proposed Rule expressly say as much to avoid confusion about the continued application of the Benchmark Order (which differs in some material ways from the Proposed Rule). The only reason to maintain the hearing concept that is to be re-codified in Proposed Rule 515-7-8-.10 is so that a mechanism exists to establish penalties for non-compliance with those SQMs other than those related to Billing Accuracy and Call Center Service Levels.
- In subsections (a) and (b) of Proposed Rule 515-7-8-.12, SCANA proposes removing the sentence: "Such a penalty will be due on the 15th of the following month." It is not clear in this language whether "following month" refers to the month after the non-compliance or the month after the remediation report is due. To avoid confusion, the due date should only be set out in one section of the rule. Proposed Rule 515-7-8-.13 already provides: "Payments are due by the 15th of the month following the Remediation Report and every 15th of the subsequent month thereafter, if applicable." Therefore, the reference to a

payment deadline should be eliminated from subsections (a) and (b) of Proposed Rule 515-7-8-.12.

F. CONCLUSION

While SCANA believes that the Proposed Rule may improve the natural gas regulatory structure, it is concerned that many of the changes, especially subsections (a) and (b) of Proposed Rule 515-7-8-.12 related to remediation, do not eliminate regulatory uncertainty that exists for Marketers under the Benchmark Order. This regulatory uncertainty creates an unlevel playing field in the marketplace because different marketers interpret regulatory schemes differently based on, among other things, their risk tolerance. Moreover, ambiguous rules are difficult to uniformly administer, which may result in the unnecessary use of Commission and Marketer resources. Therefore, SCANA respectfully requests the Commission accept SCANA's recommended changes and re-issue the Notice of Proposed Rulemaking with its suggested changes incorporated therein.

Respectfully submitted, this 3rd day of November 2023.

HALL BOOTH SMITH, P.C.

WILLIAM BRADLEY CARVER
Georgia Bar No.: 115529
JOEL L. MCKIE
Georgia Bar No.: 585780
Attorneys for SCANA Energy Marketing, LLC

191 Peachtree Street, Suite 2900
Atlanta, GA 30303
(404) 954-5000 (O)
(404) 954-5020 (F)

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DOCKET NO: 15296

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **SCANA ENERGY MARKETING, LLC'S COMMENTS IN RESPONSE TO THE COMMISSION'S NOTICE OF PROPOSED RULEMAKING TO AMEND EXISTING COMMISSION RULE CHAPTER 515-7-8: SERVICE QUALITY STANDARDS FOR CERTIFICATED MARKETERS AND REGULATED PROVIDERS** via hand delivery and/or by United States Mail, properly addressed with adequate postage affixed thereto, upon the following as reflected:

Sallie Tanner
Executive Secretary
Georgia Public Service Commission
244 Washington St., S. W.
Atlanta, GA 30334
stanner@psc.ga.gov

Patricia Chang
Senior State Government Affairs Manager
Constellation Energy
116 John Street
Lowell, Massachusetts 01852
Patricia.Chang@constellation.com

Steven Jones, Attorney
Taylor English Duma LLP
1600 Parkwood Circle,
Suite 200,
Atlanta, GA 30339
sjones@taylorenglish.com

Herschel K. Arant, Jr., VP Operations
CENNAT, Inc. d/b/a Fuel Georgia
923 South Mulberry Street
Jackson, Georgia 30233
harant@cgemc.com

Phyllis P. Redd
VP, Financing & Accounts
CENNAT, Inc. d/b/a Fuel Georgia
923 South Mulberry St.
Jackson, GA 30233
predd@cgemc.com

Brett Newsom
VP - Regulatory Affairs
SCANA Energy
3344 Peachtree Road, Suite 2150
Atlanta, GA 30326
brett.newsom@scanaenergy.com

Tara Surratt
Manager Regulatory Affairs
Scana Energy
3344 Peachtree Road, Suite 2150
Atlanta, GA 30326
Tara.Surratt@SCANAEnergy.com

Phil Weatherly
Director of Business Development
Walton Gas
P. O. Box 260
842 Highway 78 NW
Monroe, Georgia 31655-0260
pweatherly@waltonemc.com

Jim Bottone
Vice President
Walton Energy and External Affairs
Walton EMC
P. O. Box 260
842 Highway 78 NW
Monroe, Georgia 31655-0260
jbottone@waltonemc.com

John Holtz
Xoom Energy, Stream,
GreenMountain
11208 Statesville Road, Suite 200
Huntersville, NC 28078
john.holtz@greenmountain.com
NERetailRegulatory@nrg.com
Heather.Caporale@nrg.com

Patricia McFadin
South Star Energy Services (GNG)
817 W.Peachtree St NW, Suite 1000
Atlanta, GA 30308
Trish.McFadin@southstarenergy.com

Meredith W. Hodges
Gas South, LLC
3725 Cumberland Blvd,
Suite 1500
Atlanta, GA 30339
Meredith.Hodges@GasSouth.com

Charles B. Jones III
Georgia-Traditional Manufacturers Association
The Hurt Bldg.
50 Hurt Plaza, Suite 985
Atlanta, GA 30303
cjones@gtma.org

Avi Keilson
Regulatory Affairs
Town Square Energy, LP
520 Broad Street
Newark, NJ 07102
akeilson@genieretail.com

Steve Moore
Director – Regulatory Affairs
Mansfield Power & Gas, LLC
1025 Airport Parkway
Gainesville, GA 30501
smoore@mansfieldpowergas.com

Frank Cotter
Treasurer
Colonial Energy, Inc.
3975 Fair Ridge Drive
Suite T-10 North
Fairfax, Virginia 22033
fcotter@colonialenergy.com
regulatory@colonialenergy.com

Keith Tunison, CPA
Chief Financial Officer
EMC Natural Gas, Inc.
d/b/a True Natural Gas
807 Collinsworth Road
Palmetto, GA 30268
ktunison@truenaturalgas.com

Daniel N. Hart
Chief Operating Officer
True Natural Gas
807 Collinsworth Road
Palmetto, GA 30268
dhart@truenaturalgas.com

Melissa Walden
Director of Marketing and Customer Care
True Natural Gas
807 Collinsworth Road
Palmetto, GA 30268
mwalden@truenaturalgas.com

Robert B. Baker
Robert B. Baker, P.C.
2480 Briarcliff Road, NE Suite 6
Atlanta, GA 30329
bobby@robertbbaker.com

Lori Smith
Brandi Kirkpatrick
FireSide Natural Gas, LLC
2655 Dallas Highway, Suite 250
Marietta, Georgia 30064
lorismith@firesidenaturalgas.com brandikirkpatrick@firesidenaturalgas.com

This 3rd day of November 2023.

HALL BOOTH SMITH, P.C.

WILLIAM BRADLEY CARVER, SR.
Georgia Bar No.: 115529
JOEL L. MCKIE
Georgia Bar No.: 585780
Attorneys for SCANA Energy Marketing, Inc.

191 Peachtree Street, N.E.
Suite 2900
Atlanta, GA 30303
(404) 954-5000 · (404) 954-5020/Fax