

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF )  
GOOD ENERGY L.P. FOR A CERTIFICATE TO )  
PROVIDE ELECTRIC SUPPLY SERVICES ) PSC DOCKET NO. 14-0582  
WITHIN THE STATE OF DELAWARE )  
(SUBMITTED DECEMBER 19, 2014; FILED )  
JUNE 5, 2015) )

**ORDER NO. 8787**

**AND NOW**, this 22<sup>nd</sup> day of September, 2015, the Delaware Public Service Commission (the "Commission") determines and orders the following:

**WHEREAS**, pursuant to 26 *Del. C.* §1012(a), prior to doing business in the State of Delaware, every Electric Supplier<sup>1</sup> seeking to provide Electric Supply Service<sup>2</sup> to customers shall obtain a certificate from the Commission. In addition, Section 1012(a) provides that the Commission shall promulgate rules and regulations governing the information that Electric Suppliers shall be required to provide and requirements to be satisfied in order to obtain such certificate; and

**WHEREAS**, the Commission has promulgated such rules and regulations governing the information that Electric Suppliers are required to provide and the requirements that must be satisfied to obtain such a certificate. Such rules and regulations are set forth in 26 *Del. Admin. C.* §3001 (the "Supplier Rules"); and

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<sup>1</sup> Under 26 *Del. C.* §1001(14)(c), an "electric supplier" means a person or entity certified by the Commission that sells electricity to retail electric customers utilizing the transmission and/or distribution facilities of a nonaffiliated electric utility, including: Any broker, marketer or other entity (including public utilities and their affiliates).

<sup>2</sup> Under 26 *Del. Admin. C.* §3001-1.0, "Electric Supply Service" means the provision of electricity or electric generation service.

**WHEREAS**, pursuant to Section 3001-2.1 of the Supplier Rules, all Electric Suppliers (which includes brokers) must obtain an Electric Supplier Certificate<sup>3</sup> from the Commission to sell Electric Supply Service to, or arrange the purchase on behalf of, Retail Electric Customers<sup>4</sup> prior to offering contracts to Customers or commencing service; and

**WHEREAS**, Section 3001-2.1.1 of the Supplier Rules requires that all Electric Suppliers file with the Commission an Application<sup>5</sup> for an Electric Supplier Certificate which must contain all of the information and documents required to demonstrate to the Commission that it possesses the technical, financial, managerial and operational ability to adequately serve the public;" and

**WHEREAS**, Section 2.1.1.5 of the Supplier Rules requires that each Applicant<sup>6</sup> "present *substantial evidence* supporting their financial, operational, managerial and technical ability to render service within the State of Delaware;" and

**WHEREAS**, on December 19, 2014, pursuant to 26 *Del. C.* §1001 to §1020 and the Supplier Rules, Good Energy L.P. ("Good Energy" or the "Company") submitted an incomplete application that requested certification as a Retail Electric Supplier in order to broker the sale or purchase of Electric Supply Service.<sup>7</sup> In this incomplete application Good Energy listed several states in which it was conducting operations as a licensed electric broker, electric aggregator, gas aggregator, or energy broker/aggregator; and

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<sup>3</sup> Under Section 3001-1.0 of the Supplier Rules, an "Electric Supplier Certificate" or "ESC" means a certificate granted by the Commission to Electric Suppliers that have fulfilled the Commission's certification requirements.

<sup>4</sup> Under 26 *Del. C.* §1001(21), a "retail electric customer" or "customer" means a purchaser of electricity for ultimate consumption and not for resale in this State, including the owner/operator of any building or facility, but not the occupants thereof, that purchases and supplies electricity to the occupants of such building or facility.

<sup>5</sup> Although this term is capitalized in this section of the Supplier Rules, it not defined in either the Delaware Code or the Supplier Rules.

<sup>6</sup> Under Section 3001-1.0 of the Supplier Rules, an "Applicant" means an entity or person seeking to obtain an Electric Supplier Certificate.

<sup>7</sup> The Company's submission initially failed to meet the Commission's minimum filing requirements set forth in the Supplier Rules.

**WHEREAS**, Good Energy also stated in the incomplete application that it seeks certification as a Broker<sup>8</sup> and anticipates serving small commercial, large commercial, and industrial customers for the sale or purchase of electricity throughout the State of Delaware; and

**WHEREAS**, the Commission Staff ("Staff") investigated the information provided in the incomplete application, discovered that Good Energy had listed on its Internet website the State of Delaware as a service territory in which it was currently providing services as an electric broker, and subsequently sent a letter to Good Energy to request that the Company remove this information from its website;<sup>9</sup> and

**WHEREAS**, on January 20, 2015, Staff notified Good Energy that its application was deficient, requested certain required documents to complete the filing, and also requested additional documents, including certificates of good standing ("COGS")<sup>10</sup> for those states in which the Company was operating; and

**WHEREAS**, on February 25, March 27, and April 1, 2015, Staff sent correspondence to Good Energy and again requested (on each of these dates) that the Company provide COGS for all states in which Good Energy was operating; and

**WHEREAS**, on April 15, 2015, Good Energy responded to Staff and stated that "due to an oversight by our compliance partner" who failed to file required annual reports, Good Energy's business [sic] registration had been forfeited in Maryland;<sup>11</sup> and

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<sup>8</sup> Pursuant to Section 1001(3) of the Act, a "broker" means a person or entity that acts as an agent or intermediary in the sale or purchase of, but that does not take title to, electricity for sale to retail electric customers. Brokers are included in the definition of an Electric Supplier under Section 1001(14)(c) of the Act.

<sup>9</sup> In its January 6, 2015 letter, Staff stated that such listing "leads consumers and others to believe that the Company is authorized to provide services in Delaware" when, in fact, Good Energy was not yet licensed as an electric broker in the State of Delaware. Staff later confirmed that Good Energy had removed from its website this information regarding Delaware.

<sup>10</sup> A COGS is a document issued by a secretary of state or other state official which proves that a company is legally authorized to exist and to conduct business in such state as a domestic or foreign company.

<sup>11</sup> The Company's authorization to act as a foreign entity in the State of Maryland is separate from any state business license.

**WHEREAS**, Staff has confirmed that Good Energy registered as a foreign entity in Maryland on October 10, 2008, but Maryland administratively forfeited Good Energy's status on November 16, 2009, because the Company failed to file property returns for 2009; and

**WHEREAS**, Good Energy then later registered for authorization to exist in Maryland as a *different* foreign entity on March 4, 2015;<sup>12</sup> and

**WHEREAS**, Staff's investigation has revealed that prior to 2009, Good Energy was conducting business in Maryland as an unlicensed broker and the Maryland Public Service Commission fined Good Energy \$100.00 for such illegal conduct;<sup>13</sup> and

**WHEREAS**, in its response to Staff dated April 15, 2015, Good Energy also stated that the "Massachusetts filings have been resolved" and that it had been issued a new business registration and COGS for that state; and

**WHEREAS**, Staff's investigation has revealed that Good Energy has been conducting business in Massachusetts since May of 2005 but failed to file and obtain the required legal authorization to conduct such business there until April 13, 2015.<sup>14</sup> This conduct is a violation of Massachusetts laws;<sup>15</sup> and

**WHEREAS**, Staff's investigation has also revealed that Good Energy did not file with and obtain from Massachusetts the required legal authorization to do business as a foreign entity

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<sup>12</sup> See **Attachment "A,"** which is the Maryland State Department of Assessments & Taxation document entitled "WHAT DOES IT MEAN THAT MY BUSINESS ENTITY IS "NOT IN GOOD STANDING" OR "FORFEITED", AND WHAT STEPS DO I HAVE TO TAKE TO CORRECT THIS SITUATION?" (Dated January 2009; revised August 2015).

<sup>13</sup> See Exhibit "A" to Staff's Memorandum dated August 28, 2015.

<sup>14</sup> See Good Energy's letter dated June 3, 2015.

<sup>15</sup> Mass. Gen. Laws ch. 109, §49 provides, in pertinent part, that every foreign limited partnership doing business in the commonwealth must submit to the secretary of state an application for registration as a foreign limited partnership. Mass. Gen. Laws. ch. 109, §55(a) and Mass. Gen Laws ch. 156D, §15.02(d) provide the penalties for a foreign limited partnership doing business in the commonwealth which fails to register with the secretary of state.

in that state until April 13, 2015, which was after Staff repeatedly requested that Good Energy send COGS from each state in which it was operating;<sup>16</sup> and

**WHEREAS**, Staff's investigation has also revealed that although Good Energy obtained a license to act as an aggregator/broker in Maine in 2010, the Company failed to file and obtain authorization to do business as a foreign entity in Maine until after Staff had requested that Good Energy send it the COGS from each state in which it was operating;<sup>17</sup> and

**WHEREAS**, Staff's investigation has revealed that Good Energy has applied three times for certification in Ohio as an aggregator/power broker but failed to timely renew two of the licenses it had been granted.<sup>18</sup>

- Good Energy's first application (Docket No. 10-0022-EL-AGG) was granted on February 9, 2010, but then cancelled on April 16, 2012, because Good Energy failed to timely renew this license.
- Good Energy's second application (Docket No. 17-1752-EL-AGG) was filed on June 6, 2012, and granted on July 9, 2012. But Good Energy again failed to timely renew its license, so this certificate expired on July 7, 2014.
- Good Energy's third application was filed on August 6, 2014. At the same time, the Company filed a motion requesting a time extension and an expedited ruling. As support for the motion, Good Energy stated it had been unable to file its renewal application on time "due to a misunderstanding of the required renewal

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<sup>16</sup> Good Energy did not register as a foreign entity in Massachusetts until April 13, 2015. See Good Energy's response dated April 15, 2015, and the COGS for Massachusetts attached to the response.

<sup>17</sup> Good Energy did not file for authorization to conduct business in Maine until March 5, 2015. See Good Energy's response dated April 15, 2015, and the COGS for Maine attached to the response. Good Energy obtained an aggregator/broker license in Maine in Docket No. 2010-248.

<sup>18</sup> Under Ohio law, licenses for aggregators/power brokers last for two years and can be renewed not less than thirty and no more than sixty calendar days prior to the expiration date indicated on the competitive retail electric service provider's certificate. See Ohio Rev. Code §4901:1-24-09 (2015).

date and the time it took to prepare the financial exhibits." This application was granted on September 8, 2014; and

**WHEREAS**, Staff's investigation has also revealed that Good Energy listed Delaware as one of its "Jurisdictions of Operation" on its 2010 Ohio application, but Good Energy did not attempt to apply for an Electric Supplier license in the State of Delaware until December 2014;<sup>19</sup> and

**WHEREAS**, on June 5, 2015, Good Energy finished filing all documents needed to complete its application (the "Application") as required by the Supplier Rules; and

**WHEREAS**, Good Energy listed in its incomplete application that it had an aggregator license "pending" in the state of Texas; and

**WHEREAS**, in response to questions from Staff, Good Energy disclosed on June 4, 2015, that it began transacting business in Texas in April 2003, but its authority to transact business in Texas had been revoked in 2012 "due to failure to file a periodic report." Good Energy also stated it had subsequently filed the requested periodic report and associated fees with the Texas secretary of state but has failed to submit to Staff the requested COGS for Texas; and

**WHEREAS**, Staff's investigation has also revealed that Good Energy was involved in an investigation opened in 2012 by the New Hampshire Public Utilities Commission ("NH PUC").<sup>20</sup> In an email to the Executive Director of the NH PUC, Good Energy admitted that one of its employees had forged a form that requested the release of customer load data; and

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<sup>19</sup> See Exhibit B-1 of the Ohio 2010 application, which is attached to Staff's memorandum as Exhibit F.. Staff also notes that Good Energy also listed the following states for "Jurisdictions of Operation" on the same application: Connecticut, Illinois, Massachusetts, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Texas.

<sup>20</sup> See Docket No. 12-214.

**WHEREAS**, Staff has reported in its Memorandum to the Commission that the Application fails to fulfill all of the requirements set forth in the Supplier Rules for an Electric Supplier Certificate to act as a Broker. Staff believes that Good Energy has failed to present substantial evidence of its operational and managerial ability to render services as a Broker in the State of Delaware and therefore has recommended that the Commission not issue an Electric Supplier Certificate authorizing Good Energy to broker sales and customer purchases of Electric Supply Services in Delaware; and

**WHEREAS**, the Commission finds that it has the authority, based on the facts set forth above, to propose to deny Good Energy certification as an Electric Supplier in the State of Delaware; and

**WHEREAS**, pursuant to Delaware law, the Supplier Rules, and 29 *Del. C.* §10131(b), the Commission proposes to deny granting Good Energy certification as an Electric Supplier in the State of Delaware based on the Company's failure to present substantial evidence supporting its operational and managerial ability to render services as a Broker within Delaware;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. By issuing the Notice attached as Exhibit "A", the Commission hereby proposes to deny granting the Application which Good Energy filed with the Commission.
2. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

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Chair

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Commissioner

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Commissioner

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Commissioner

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Commissioner

ATTEST:

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Secretary

**EXHIBIT "A"**

**NOTICE OF PROPOSED DENIAL**

September 22, 2015

**VIA CERTIFIED MAIL AND REGULAR MAIL**

Mr. Maximillian Hoover

Manager, Good Offices Technology Partners, LLC, as General Partner of Good Energy, L.P.  
Good Offices Technology Partners, LLC  
220 Fifth Avenue, Suite 800  
New York, NY 10001

**WITH COPY VIA REGULAR MAIL TO:**

Mr. Javier Barrios, Managing Partner  
232 Madison Avenue, Third Floor  
New York, NY 10016

RE: IN THE MATTER OF THE APPLICATION OF GOOD ENERGY L.P. FOR A  
CERTIFICATE TO PROVIDE ELECTRIC SUPPLY SERVICES WITHIN THE  
STATE OF DELAWARE (SUBMITTED DECEMBER 19, 2014; FILED JUNE  
5, 2015) - PSC DOCKET NO. 14-0582

Dear Mr. Hoover:

On June 5, 2015, Good Energy, L.P. (the "Company") filed an application ("Application") with the Commission and requested certification, under 26 *Del. C.* §1012 and 26 *Del. Admin. C.* §3001, for it to act as an Electric Supplier (broker) in the State of Delaware. Staff and the Commission investigated the Application and have concluded that the Company has failed to present substantial evidence of its operational and managerial ability to render services as a Broker in the State of Delaware.

The Commission proposes to deny the Application based on the lack of substantial evidence as required by the Commission's Regulations. Please see the attached **Order No. 8787** which sets forth in further detail the Commission's reasons for this proposed denial of the Company's request to obtain certification as an Electric Supplier in the State of Delaware.

You have ten (10) calendar days to request a hearing before the Commission if you wish to argue that there is no basis to deny the Company's Application. Submit any request for a hearing in writing by U.S. mail to the attention of the Commission Secretary. In the absence of a hearing, the Commission's proposed decision to deny the Application will become final. If the Company requests a hearing, please be advised that it will have the following rights at that hearing:

- 1) Your company shall have the right to present evidence, to be represented by counsel and to appear personally or by other representative.

Letter to Mr. Maximillian Hoover  
Dated September 22, 2015

- 2) Your company or your counsel shall have the right to examine and cross-examine the witnesses.
- 3) Your company may subpoena witnesses. Requests for subpoenas should be directed to: Donna Nickerson, Secretary, Public Service Commission, 861 Silver Lake Blvd., Dover, Delaware 19904.
- 4) All testimony before the Commission shall be under oath, and a stenographic record of the hearing shall be made.
- 5) The Commission must reach its decision in this matter based upon the evidence received at the hearing.

If your company does not request a hearing, the denial of its Application will be finalized by the Commission at its next meeting. If you have any questions concerning this matter, please contact the Commission office at (302) 736-7500.

Sincerely,

Donna Nickerson, Secretary  
DELAWARE PUBLIC SERVICE COMMISSION

Enclosure: Order

**ATTACHMENT "A"**

Maryland State Department of Assessments & Taxation document entitled:  
"WHAT DOES IT MEAN THAT MY BUSINESS ENTITY IS "NOT IN  
GOOD STANDING" OR "FORFEITED", AND WHAT STEPS DO I  
HAVE TO TAKE TO CORRECT THIS SITUATION?"  
(Dated January 2009; revised August 2015)

**WHAT DOES IT MEAN THAT MY BUSINESS ENTITY IS "NOT IN GOOD STANDING" OR "FORFEITED", AND WHAT STEPS DO I HAVE TO TAKE TO CORRECT THIS SITUATION?**

- Check the status of any business entity by clicking "Business Data Search" from the SDAT home page, and further clicking on "General Information" when the entity's name is displayed.
- "Not in Good Standing" means the entity has not filed the current year's Annual Report/Personal Property Return or it owes a late filing penalty.
- "Forfeited" means the "legal existence" of the entity has been relinquished and it is usually for failing to make required Annual Report/Personal Property Return filings for prior years.
- See the reason why an entity has been "forfeited" by clicking on the "Amendments" column heading on the page alphabetically listing the entity's name.
- You correct the "Not in Good Standing" status by filing with the Department the missing Annual Report/Personal Property Return and pay the \$300 filing fee. The combined Personal Property Annual Report (Form 1) for prior years can be downloaded from the website by clicking on "Forms and Applications" on the dark blue banner near the top of the page.
- There are four steps for any entity to correct the "forfeited" status:
  - (1) File all missing Annual Reports/Personal Property Returns for every year and pay the \$300 annual filing fee for each year;
  - (2) Pay the local county/city government's personal property tax bill for any reported property after the Department has sent an assessment notice to the local government;
  - (3) Obtain a "tax clearance certificate" from the local government after any personal property tax bills have been paid; and
  - (4) File "Articles of Revival or Reinstatement" with the Department by attaching a copy of the tax clearance certificate. Instructions and a form for reinstatement can be downloaded from the Department's website by clicking on "Forms and Applications" on the dark blue banner near the top of the page.
- Any business entity that needs to correct its "forfeited" legal status immediately may come to the Department's Corporate Charter public filing counter on the 8<sup>th</sup> floor of our offices at 301 West Preston Street, Baltimore, Maryland 21201. There is an additional \$50 "expedited filing fee" required under the law for immediate processing service. If the missing Personal Property Returns have been filed and a tax clearance certificate has already been obtained, then one can "fax" into the Department's Charter unit the reinstatement document, the clearance certificate, the Articles of Revival or Reinstatement, and credit card authorization for a \$150 fee (\$100 for the Articles and \$50 for the expedited fee). A Charter fax cover sheet requesting the necessary information is available online at <http://www.dat.maryland.gov/sdatweb/charterfax.pdf>