

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF ENERCOM, INC. D/B/A ENERCOM OF)
MICHIGAN, INC. FOR A CERTIFICATE)
TO PROVIDE ELECTRIC SUPPLY) PSC DOCKET NO. 13-410
SERVICES WITHIN THE STATE OF)
DELAWARE (FILED OCTOBER 28, 2013;)
AMENDED DECEMBER 16, 2013))

ORDER NO. 8488

AND NOW, this 18th day of March, 2014, 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 Supplier¹ seeking to provide Electric Supply Service² 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

¹ 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).

² 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 must obtain an Electric Supplier Certificate³ from the Commission to sell Electric Supply Service to, or arrange the purchase on behalf of, Retail Electric Customers⁴ prior to offering contracts to Customers or commencing service; and

WHEREAS, Section 2.1.1 of the Supplier Rules requires that all Electric Suppliers file with the Commission an original and ten copies of an Application⁵ for an Electric Supplier Certificate. Such application must contain "all the information and exhibits hereinafter required and may contain such additional information as the Applicant⁶ deems appropriate 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 "present **substantial evidence** supporting their financial, operational, managerial and technical ability to render service within the State of Delaware." (emphasis added). This Section further provides, in part, that "[s]uch evidence shall include, but is not limited to" information such as a list of states in which the Applicant or any of its affiliated interests is presently selling electric supply service to Retail Electric Customers (Section 3001-

³ 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.

⁴ 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.

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

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

2.1.1.5.3 of the Supplier Rules), a list of state in which the Applicant or any of its affiliated interests has been denied approval of a State Commission to sell electricity to Retail Electric Customers or has had its authority revoked (Section 3001-2.1.1.5.4), a list of states in which Applicant or any of its affiliated interests is presently selling electric supply service to Retail Electric customers and a list of states in which Applicant or any of its affiliated interests has pending applications to sell electric supply service to Retail Electric customers (Section 3001-2.1.1.5.3); relevant operational experience of each principal officer responsible for Delaware operations (Section 3001-2.1.1.5.5), and a statement detailing any criminal activities of which the Applicant or any of its affiliated interests has been charged or convicted, or which the principal or corporate officers of the Applicant or any of its affiliated interests has been charged or convicted (Section 3001-2.1.1.8.6); and

WHEREAS, Section 3001-2.1.1.5.9.11 also provides the following: "The Commission or its Staff may consider any other information submitted by the Applicant if it can show the financial, operational, managerial, and technical abilities of an Applicant;" and

WHEREAS, pursuant to the Electric Utility Restructuring Act (the "Act") (26 Del. C. §1001 - §1020) and the Supplier Rules, on October 28, 2013, EnerCom, Inc. d/b/a EnerCom of Michigan, Inc. (the "Company") filed an application (the "Application") requesting certification as a Retail Electric Supplier in order to broker the sale or purchase of Electric Supply Service; and

WHEREAS, in the Application, the Company stated that it seeks certification as a Broker⁷ that will utilize appropriate energy procurement strategies to meet the needs of commercial and industrial customers in Delaware; and

WHEREAS, in the Application, the Company also stated in support of its compliance with regional requirements (Section 3001-2.1.1.4) that it was currently active (as a broker) in Michigan, Ohio, Illinois, Pennsylvania, and Indiana; and

WHEREAS, in the Application, the Company further listed the following states in which it was presenting selling electric supply service to Retail Electric Customers (Section 3001-2.1.1.5.3): "Active states: MI, OH, IL, PA, and IN;" and

WHEREAS, after further investigation, it was discovered that on July 9, 2010, the State of Illinois had revoked the Company's authorization to do business in that state and that the Company was never licensed to do business in the State of Indiana; and

WHEREAS, in the Application, the President of the Company (Mr. Gerald F. Gora or "Mr. Gora") stated in an affidavit that in 1991 through 1993, he had been convicted of embezzlement and that his convictions resulted in both corporate and personal bankruptcies and incarceration. Documents provided to Staff show that Mr. Gora was convicted of ten counts and ordered to pay restitution for each count in amounts ranging from \$5,000.00 to \$39,264.79; and

⁷ 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.

WHEREAS, in the Application, Mr. Gora further stated in his affidavit that in 2008, the State of Illinois inquired about the activities of a "rogue independent sales agent" that occurred in that state. Mr. Gora stated that as a result, the Company entered into an "Assurance of Voluntary Compliance" with the State of Illinois regarding its laws and regulations. He further disclosed that "[t]his incident did not affect EnerCom because in 2010 EnerCom became a licensed broker of alternative energy in the State of Illinois." Based on this statement alone, the Company admits that it was doing business in the State of Illinois before the Company was licensed to do so. In addition, as noted above, the State of Illinois revoked the Company's authorization to do business in that state on July 9, 2010; and

WHEREAS, in response to questions from the Commission Staff ("Staff"), on December 16, 2013, the Company filed supplemental information and an amended affidavit (the "Amended Application"). In the Amended Application, the Company stated that it was a licensed broker in the State of Illinois (license dated September 16, 2010) and that it was not certified as a broker in the State of Indiana because no broker or other type of license was required in that state for the Company's activities there; and

WHEREAS, after further investigation, it was discovered that the Company may or may not be related to another company with the same name (EnerCom, Inc.) that had been registered as a foreign corporation in Michigan. This second company ("EnerCom #2") had its authorization revoked in the State of Michigan, Arizona, and Georgia; and

WHEREAS, in response to further questions, on March 4, 2014, the Company filed supplemental information in support of its Amended Application. In that filing, the Company confirmed that it was not currently in good standing in the State of Illinois and stated this was due to an error involving a merger with another company. The Company provided a certificate of good standing dated February 14, 2014, to show that it was now in good standing in that state. The Company also confirmed that it was never licensed to do business in the State of Indiana "due to an oversight." The Company did, however, provide a certificate of good standing for the State of Indiana dated February 14, 2014; and

WHEREAS, in its March 4, 2014 supplement, the Company denied that it has any affiliations with EnerCom #2 ("EnerCom, Inc." a/k/a A&S Enercom Services, Inc. with Michigan corporate ID #637255), asserted that it has no affiliations in Arizona or Georgia, asserted that it was never registered to do business in those states, and asserted that it has no knowledge of the status of EnerCom #2 in those states; and

WHEREAS, Staff has reported to the Commission that the Application fulfills all of the requirements for an Electric Supplier Certificate to act as a Broker as set forth in the Supplier Rules and therefore has recommended that the Commission issue an Electric Supplier Certificate authorizing the Company to broker sales and customer purchases of Electric Supply Services in the State of Delaware; and

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

WHEREAS, pursuant to the Act, the Supplier Rules, and 29 Del. C. §101031, the Commission proposes to deny granting the Company certification as an Electric Supplier in the State of Delaware based the following: (i) the misstatements made by the Company in its Application regarding its licensing status in Indiana and business entity status in Indiana and Illinois, (ii) its failure to obtain prior authorization to do business in another state (Illinois) before engaging in sales activities there and its misrepresentation regarding its authority to do business in that state as of the date of the Application;

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, as amended and supplemented, which the Company 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:

/s/ Dallas Winslow
Chair

/s/ Joann T. Conaway
Commissioner

EXHIBIT "A"

March 18, 2014

VIA CERTIFIED MAIL AND REGULAR MAIL

EnerCom, Inc. d/b/a Enercom of Michigan, Inc.
30600 Telegraph Road, Suite 3370
Bingham Farms, MI 48025
Attn: Mr. Douglas Boyce, Vice President, Sales

WITH COPIES TO:

InCorp Services, Inc.
One Commerce Center
1201 Orange Street, #600
Wilmington, DE 19889

WITH COPIES TO:

Elio Battista, Jr., Esquire
[ADDRESS]

RE: In the Matter of the Application of EnerCom, Inc. d/b/a EnerCom of Michigan, Inc. for a Certificate to Provide Electric Supply Services within the State of Delaware (filed October 28, 2013; amended December 16, 2013)
PSC Docket No. 13-410

Dear Mr. Boyce:

On October 28, 2013, EnerCom, Inc. d/b/a EnerCom of Michigan, Inc. ("EnerCom") filed an application ("Application") with the Commission and requested certification, under 26 Del. C. §1012 and 26 Del. Amin. C. §3001, for it to act as an Electric Supplier (broker) in the State of Delaware. Staff and counsel to the Commission investigated the Application and has discovered that certain statements made on the Application, supplements, and/or amendment were false and that EnerCom was doing business in another state prior to obtaining authorization to conduct such activities.

The Commission proposes to deny the Application based on the misstatements and EnerCom's failure to obtain the necessary prior approval to operate as an authorized business entity in other states. Please see the attached Order No. 8488 which sets forth in further detail

the Commission's reasons for this proposed denial of EnerCom's request to obtain certification as an Electric Supplier in the State of Delaware.

You have ten days to request a hearing before the Commission if you wish to argue that there is no basis to deny your 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 your Application will become final. If you request a hearing, please be advised that you will have the following rights at that hearing:

- 1) You have the right to present evidence, to be represented by counsel and to appear personally or by other representative.
- 2) You or your counsel shall have the right to examine and cross-examine the witnesses.
- 3) You may subpoena witnesses. Requests for subpoenas should be directed to: Alisa Bentley, Secretary, Public Service Commission, 861 Silver Lake Blvd., Dover, Delaware.
- 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 you do not withdraw your Application or request a hearing, the denial of your 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,

Alisa Bentley, Secretary
DELAWARE PUBLIC SERVICE COMMISSION