



Control Number: 50795



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**DOCKET NO. 50795**

**APPLICATION OF FORZA ENERGY,  
LLC FOR A RETAIL ELECTRIC  
PROVIDER CERTIFICATE**

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**PUBLIC UTILITY COMMISSION  
COMMISSION  
BY \_\_\_\_\_  
OF TEXAS**



**COMMISSION STAFF'S RECOMMENDATION ON DEFICIENCY AND  
COMPLETENESS OF THE APPLICATION**

**COMES NOW** the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this response to Order No. 1, Staff's Recommendation on Deficiency and Completeness of the Application. Staff recommends that the application be deemed insufficient for further review. In support thereof, Staff shows the following:

**I. BACKGROUND**

On April 29, 2020, Forza Energy, LLC (Forza) filed an application under PURA<sup>1</sup> § 39.352 and 16 Texas Administrative Code (TAC) § 25.107 for an Option 1 retail electric provider (REP) certificate.

On May 1, 2020, the administrative law judge issued Order No. 1, directing Staff to file a recommendation on the deficiency and completeness of Forza's application by May 20, 2020. Therefore, this pleading is timely filed.

**II. RECOMMENDATION ON DEFICIENCY OF APPLICATION**

After reviewing the application filed in this docket, and as supported by the attached memoranda of Fred Goodwin, of the Commission's Customer Protection Division, and Werner Roth, of the Commission's Market Analysis Division, Staff concludes that Forza has not demonstrated compliance with 16 TAC § 25.107(f)(1)(B), 25.107(f)(2), or 25.107(g)(1)(E). Additionally, the application did not include any technical and managerial information required under 16 TAC § 25.107(g)(2)(A)-(H).

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<sup>1</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001–66.016 (PURA).

### **III. CONCLUSION**

For the reasons discussed above, Staff respectfully requests that Forza's application be deemed deficient and respectfully requests the entry of an order consistent with the above recommendation.

Dated: May 20, 2020

Respectfully submitted,

#### **PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION**

Rachelle Nicolette Robles  
Division Director

Eleanor D'Ambrosio  
Managing Attorney

/s/ Daniel Moore  
Daniel Moore  
State Bar No. 24116782  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711  
(512) 936-7465  
(512) 936-7268 (facsimile)  
Daniel.Moore@puc.texas.gov

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#### **CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on May 20, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Daniel Moore  
Daniel Moore

# ***Public Utility Commission of Texas***

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## **Memorandum**

**TO:** Daniel Moore, Attorney  
Legal Division

**FROM:** Fred Goodwin, Licensing and Compliance Analyst  
Customer Protection Division

**DATE:** May 20, 2020

**RE:** Docket No. 50795 – *Application of Forza Energy, LLC for a Retail Electric Provider Certificate*

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### **Staff's Recommendation on Technical and Managerial Sufficiency**

#### **I. Application**

On April 29, 2020, Forza Energy, LLC (Forza or the Applicant) filed an application with the Public Utility Commission of Texas (Commission) for certification as an Option 1 retail electric provider (REP) throughout the state of Texas pursuant to Public Utility Regulatory Act § 39.352 and 16 Texas Administrative Code (TAC) § 25.107.

#### **II. Sufficiency Analysis**

The general, certification, basic, and content requirements applicable to a new REP certification application are listed in 16 TAC § 25.107(c), (d), (e), and (g)(2), respectively.

##### *General requirements*

Under 16 TAC § 25.107(c)(2), an application for REP certification “shall be made on a form approved by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant.”

Staff confirmed that the application was submitted on a Commission-approved form, that it was verified by oath, and that it was signed by an officer of the company. As detailed below, not all required sections of the application were completed as required.

#### *Certification requirements*

Under 16 TAC § 25.107(d), 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 the applicant selects Option 1, it must designate its geographic service area as: (i) 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 ERCOT service area (or other independent organization to the extent it is within Texas).

The Applicant made its designation in section B-1(a) of its application as an Option 1 REP in the entire state of Texas.

#### *Basic requirements*

Under 16 TAC § 25.107(e)(1)(A), the Commission may not authorize more than five assumed names for a REP at one time. The Applicant did not request any assumed names.

Under 16 TAC § 25.107(e)(1)(B), a REP business name “shall not be deceptive, misleading, vague, otherwise contrary to §25.272 of this title (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.”

The application was submitted in the name of “Afzai Ali”, one of the principals of Forza. The application also indicates in Section A-8(a) that the certificate should be issued in the name of “Afzai Ali”. However, 16 TAC § 25.107(e)(1) requires that “if the applicant is a corporation, the commission shall issue the certificate in the corporate name of the applicant”. The Texas Secretary of State finds that Forza is registered as a domestic corporation (file no. 803558671).

Staff verified that the corporate name of “Forza Energy, LLC” does not duplicate any existing REP names and is not otherwise deceptive, misleading, vague, or otherwise contrary to 16 TAC § 25.272.

Under 16 TAC § 25.107(e)(2), a REP “shall continuously maintain an office located within Texas for the purpose of providing customer service, accepting service of process and making available in that office books and records sufficient to establish the REP’s compliance with PURA and the commission’s rules.” The REP location may not be a post office box.

The Applicant listed its required Texas office address in Section A-6(c) of the application and it is not a post office box.

### *Content requirements*

Under 16 TAC § 25.107(g)(2)(A)-(H) certain technical and managerial information must be included in the REP’s initial certification application. Staff confirmed that the application does not include the required information as indicated in the chart below:

<i>Rule</i>	<i>Requirement</i>	<i>Application</i>
16 TAC §25.107(g)(2)(A)	Competitive experience	<b>Not provided</b>
16 TAC §25.107(g)(2)(B)	Complaint history	<b>Not provided</b>
16 TAC §25.107(g)(2)(C)	Insolvency, bankruptcy, etc.	<b>Not provided</b>
16 TAC §25.107(g)(2)(D)	Investigation of principals	<b>Not provided</b>
16 TAC §25.107(g)(2)(E)	Fraud by principals	<b>Not provided</b>
16 TAC §25.107(g)(2)(F)	ERCOT registration affidavit	<b>Not provided</b>
16 TAC §25.107(g)(2)(G)	Principals involved in POLR	<b>Not provided</b>
16 TAC §25.107(g)(2)(H)	Other evidence	None offered

Staff notes that it contacted the Applicant via email about the deficiencies in the application on April 29, 2020.

### **III. Conclusion**

Staff has reviewed the application and found that it was submitted on a Commission-approved form and that it contains almost none of the information required by 16 TAC § 25.107. Therefore, Staff recommends that the application be considered not sufficient for further review, from a technical and managerial perspective.

The financial and risk management qualifications of the applicant will be reviewed separately. This recommendation does not address the merits of the application.

If you have any questions, please contact Fred Goodwin at 512-936-7454.

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## **Memorandum**

**TO:** Daniel Moore, Attorney  
Legal Division

**FROM:** Werner Roth, Market Economist  
Market Analysis Division

**DATE:** May 20, 2020

**RE:** Docket No. 50795 – *Application of Forza Energy, LLC for a Retail Electric Provider Certificate*

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### **Commission Staff's Deficiency Recommendation Regarding Financial Analysis for REP Certificate**

#### **Application**

On April 29, 2020, Forza Energy, LLC (Forza) filed an application (Application) with the Public Utility Commission of Texas (Commission) requesting an Option 1 Retail Electric Provider (REP) certificate to provide retail electric services throughout the entire state of Texas.

#### **Analysis**

##### *Access to Capital*

An applicant must choose one of three methods to demonstrate that they meet the capital requirements stated in 16 Texas Administrative Code (TAC) § 25.107(f)(1):

- If an applicant elects to meet the requirements of 16 TAC § 25.107(f)(1)(A)(i), they must demonstrate an investment-grade credit rating.
- If an applicant elects to meet the requirements of 16 TAC § 25.107(f)(1)(A)(ii), they must demonstrate “tangible net worth greater than or equal to \$100 million, a minimum current ratio (current assets divided by current liabilities) of 1.0, and a debt to total capitalization ratio not greater than 0.60, where all calculations exclude unrealized gains and losses resulting from valuing to market the power contracts and financial instruments used as supply hedges to serve load, and such calculations are supported by an affidavit from an executive officer of the REP attesting to the accuracy of the calculation.”
- If an applicant elects to meet the requirements of 16 TAC § 25.107(f)(1)(B), they must demonstrate “shareholders’ equity, determined in accordance with generally accepted accounting principles, of not less than one million dollars for the purpose of obtaining



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## **Memorandum**

certification, and the REP or its guarantor must provide and maintain an irrevocable stand-by letter of credit payable to the [C]ommission with a face value of \$500,000 for the purpose of maintaining certification.”

Forza neither indicated which of the methods it selected nor submitted the required documentation to verify compliance with any of these methods in the Application. As such, Forza has not met the requirements of 16 TAC § 25.107(f)(1).

### *Customer Deposits*

An applicant must comply with 16 TAC § 25.107(f)(2)(B), which states the following:

A REP certified pursuant to paragraph (1)(B) of this subsection shall keep customer deposits and residential advance payments in an escrow account or segregated cash account, or provide an irrevocable stand-by letter of credit payable to the [C]ommission in an amount sufficient to cover 100% of the REP's outstanding customer deposits and residential advance payments held at the close of each month. For purposes of this subparagraph only, to qualify as a segregated cash account, the account must be with a financial institution whose deposits, including the deposits in the segregated cash account, are insured by the Federal Deposit Insurance Corporation, the account is designated as containing only customer deposits, the account is subject to the control or management of a provider of pervasive and comprehensive credit to the REP that is not affiliated with the REP, and the terms for managing the account protect customer deposits.

Forza did not indicate whether it wishes to have the option of collecting deposits or advance payments in the Application. If Forza wishes to collect deposits, it will need to provide the necessary documentation to comply with 16 TAC § 25.107(f)(2).

### *Risk Manager Experience*

Commission rule 16 TAC § 25.107(g)(1)(E) requires the following:

At least one principal or permanent employee who has five years of experience in energy commodity risk management of a substantial energy portfolio. Alternatively, the REP may provide documentation demonstrating that the REP has entered into a contract for a term not less than two years with a provider of commodity risk management services that has been providing such services for a substantial energy portfolio for at least five years. A substantial energy portfolio means managing electricity or gas market risks with a minimum value of at least \$10,000,000.

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## **Memorandum**

Forza did not provide information on which employee would meet the risk manager requirements. The Application must indicate the length of time a permanent or principal employee has managed a substantial energy portfolio, a description of the portfolio the employee managed, and a declaration of the portfolio's minimum value, as required under 16 TAC § 25.107(g)(1)(E).

### **Recommendation**

Forza has not demonstrated compliance with 16 TAC § 25.107(f)(1), 25.107(f)(2), and 25.107(g)(1)(E). As such, Staff recommends that the Application be found insufficient for further review from a financial perspective. Staff further recommends that Forza be required to cure the identified deficiencies in a supplemental filing.