



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
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www.nj.gov/bpu/

AUDITS

IN THE MATTER OF N.J.S.A. 48:3-78b, N.J.S.A. 48:3-)
79b, N.J.A.C.14:4-5.6, N.J.A.C.14:4-5.7 AND N.J.A.C.)
14:4-5.10 - RENEWAL APPLICATIONS FOR ELECTRIC)
POWER AND GAS SUPPLIERS)

ORDER

DOCKET NO. ES14091015

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
See Attached List of Third Party Suppliers

BY THE BOARD¹:

On February 9, 1999, the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. ("EDECA"), became law. One of EDECA's objectives was to afford New Jersey consumers the opportunity to access the competitive markets for electric power generation and gas supply service. N.J.S.A. 48:3-50. Recognizing that regulatory oversight over competitive purveyors of retail power and natural gas supply was necessary, the Legislature mandated that third party suppliers ("TPS") be licensed by the Board and set forth requirements for third party suppliers – electric power suppliers and gas suppliers - to acquire and maintain licensure. N.J.S.A. 48:3-78a; N.J.S.A. 48:3-78b; N.J.S.A. 48:3-79a and N.J.S.A. 48:3-79b.

The implementing rules, N.J.A.C. 14:4-5.6 and 14:4-5.7 detail the time frames for the submission of the renewal application and the ramifications if the renewal application is not timely filed – the TPS must stop all advertising and marketing activities, as well as enrollment of new customers pending the filing of a new application within 45 days. The Board's regulations provide that the license shall be valid for one year from the date of issuance except where the TPS files a timely and complete renewal application before the license expires. Licensed electric power suppliers and gas suppliers are required to renew timely their licenses to continue to do business in New Jersey. N.J.A.C. 14:4-5.6 to -5.7. If a timely renewal application is filed, the license does not expire while the renewal application is under review. N.J.A.C. 14:4-5.6(a) and 14:4-5.7(c). Despite the clear regulatory language regarding the term of the license and the consequences of failing to file a timely renewal application, some third party suppliers have not filed for renewal before the expiration of their licenses but have continued to serve customers in

¹ President Richard S. Mroz and Commissioner Upendra J. Chivukula have recused themselves due to a possible conflict of interest and as such took no part in the discussion or deliberation of this matter.

the State as if their licenses were current.

There are approximately 130 TPSs in New Jersey. Approximately 22 companies have failed to timely file for renewal prior to the expiration of their licenses, and have continued to serve customers in the State as if their licenses were current, in violation of the Board's rules, described above. Although Staff will enforce the strict terms of the regulations going forward, to do so at this juncture could have a detrimental impact on both residential and commercial consumers, who could be left without an energy supplier and/or would be switched to the default supplier if the rules were strictly enforced at this time, creating confusion and, possibly, subjecting the consumer to higher prices.

EDECA has the competing goals of supporting access to competitive markets and maintaining regulatory certainty. In New Jersey there is obviously a competitive market, as evidenced by the large number of TPS, but because there has not been strict enforcement of licensing requirements, regulatory certainty has been lacking. As a solution, Staff recommends that the Board, for good cause, waive strict compliance with N.J.A.C. 14:4-5.6 and 14:4-5.7 in this circumstance. In special cases and for good cause shown, pursuant to N.J.A.C. 14:1-1.2(b)(1), the Board can waive the obligation of the parties to fully comply with the rules promulgated by the Board if such compliance would adversely affect the general public. Staff believes that providing a short period of time to allow for remediation of any procedural lapses for all TPS until December 31, 2014 is appropriate.

The waiver period would allow all TPSs to submit their filings or bring their filings up to date without the imposition of penalties. During this limited time period, all TPS filings will be reviewed by Staff and treated as if they had all been filed in a timely manner. This reprieve will serve the interests of the public by preventing a disruption to the retail energy market as well as to the utilities, as they would be required to provide default service to the prior customers of the affected TPS if the rules were strictly enforced. While the procedures adopted by the Board are of significant importance and are designed to ensure safe, adequate and proper service, procedural lapses have occurred and should not serve to negatively impact the overall market structure. Accordingly, Staff has concluded that a temporary waiver is a necessary measure at this time.

Staff recommends that the Board direct the Board Secretary to issue the attached letter to all TPSs outlining the terms of this waiver period.

DISCUSSION

As part of the Board's oversight responsibilities and ongoing review of issues regarding TPSs and the rules governing them, at its September 30, 2014 Agenda Meeting, the Board adopted rules consistent with L. 2013, c.263, and required every TPS to provide new and renewing customers with a one-page contract summary in plain language.

The Board has reviewed this matter and, based on the information provided to the Board to date, **FINDS** that a number of TPSs have filed for their license renewals after the expiration dates of their licenses or have not filed for renewal although their licenses have expired. The Board **ALSO FINDS** that it is necessary to enforce the terms of the regulations going forward to maintain regulatory certainty, but that to strictly impose the provisions in the Board rules immediately could disrupt the retail energy market, cause confusion among the TPSs, consumers and the utilities over the status of licenses, subject the administrative process to simultaneous requests for hearings, and lead to hardship on the utilities that would then be

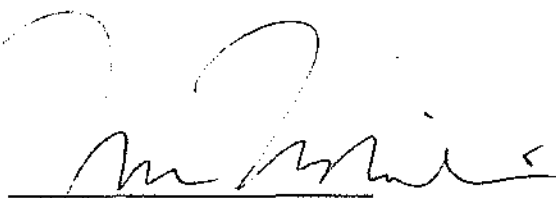
required to immediately provide default service to the customers of the affected TPSs. Therefore, the Board **GRANTS** a waiver of the time frames for license renewals under N.J.A.C. 14:4-5.6, -5.7 (a), (b) and (c) for a limited period of time which commences on the effective date of this Order and expires on December 31, 2014, at which time the rules will be in full force and effect.

This waiver will allow the TPSs to make the necessary filings to bring their licenses into compliance. During this time, any pending filing by a TPS will be reviewed by Staff and treated as if it had been filed in a timely manner, regardless of the actual filing date. A TPS whose license renewal application is technically out of time may also file a renewal application during this period, which will be reviewed by Staff and treated as if it had been filed in a timely manner. Filings that are within time will be reviewed and treated as required by the rules. During the waiver period, Staff will only process the most recent filing for each of the TPS and will not revisit previous applications for purposes of determining timely renewal.

This Order will be effective as of October 31, 2014.

DATED: 10/22/14

BOARD OF PUBLIC UTILITIES
BY:



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COMMISSIONER

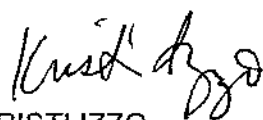


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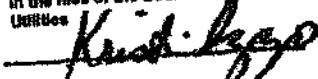
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ATTEST:



KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



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N.J.A.C.14:4-5.7 AND N.J.A.C. 14:4-5.10-
RENEWAL APPLICATIONS FOR ELECTRIC POWER AND GAS SUPPLIERS
BPU DOCKET NO. ES14091015

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RENEWAL APPLICATIONS FOR ELECTRIC POWER AND GAS SUPPLIERS

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**IN THE MATTER OF N.J.S.A. 48:3-78b, N.J.S.A. 48:3-79b,
N.J.A.C. 14:4-5.6., N.J.A.C. 14:4-5.7 AND N.J.A.C. 14:4-5.10
RENEWAL APPLICATIONS FOR ELECTRIC POWER AND GAS SUPPLIERS**

DOCKET NO. ES14091015

Notification List

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Kristi Izzo
Secretary of the Board
(609) 292-1599

October 22, 2014

TO ALL THIRD PARTY SUPPLIERS:

The Board has been reviewing a number of issues regarding Third Party Suppliers (TPS) and the rules and regulations governing them, and has already acted, or will act shortly, on issues related to customer service. These issues include the rules required under L.2013, c.263, a comprehensive review of the Board's current rules and regulations, and the action taken at the September 30, 2014 Agenda Meeting to require each TPS to provide a one-page contract summary in plain language to new and renewing customers. The Board's Order and sample of the contract summary may be found at:

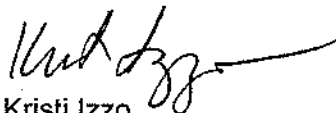
<http://www.nj.gov/bpu/pdf/boardorders/2014/20140930/9-30-14-7F.pdf>.

As part of this ongoing review of the regulations governing TPS, it has come to the Board's attention that certain statutes and regulations regarding the renewal of licenses are not being followed, particularly regarding the dates for submission of the renewal applications. The Board reminds TPSs of their obligations to fully comply with all applicable statutes and regulations. The Board intends to enforce the strict terms of the statute and regulations going forward. However, because there has not been strict enforcement in the past, the Board will relax the time frames for license renewals under N.J.A.C. 14:4-5.6, -5.7 (a), -5.7(b) and -5.7(c) to allow all TPS to submit their filings, or bring their filings up to date without the imposition of penalties.

To allow the TPS to make any necessary filing to bring its license into compliance, the Board will implement a limited waiver period until December 31, 2014. During this time, any pending filing by a TPS will be reviewed by staff and treated as if it had been filed in a timely manner regardless of the actual filing date. A TPS whose license renewal application is technically out of time may also file a renewal application, which will be reviewed by staff and treated as if it had been filed in a timely manner. Filings that are within time will be reviewed and treated as required by the rules. During the limited waiver period, staff will only process the most recent filing for each of the TPS and will not revisit previous applications for purposes of determining

timely renewal. Effective January 1, 2015, N.J.S.A. 48:3-78(b) and 48:3-79(b) and the associated TPS rules at N.J.A.C. 14:4-5.6 to 5.7 shall be strictly enforced. Renewal applications must be received at least 30 days before the expiration of the current license, and if the renewal is not timely filed, the TPS must stop all marketing and advertising activities and new customer sign-ups pending the filing of an application for a new license.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristi Izzo", with a long horizontal flourish extending to the right.

Kristi Izzo
Secretary of the Board