



Agenda Date: 11/21/17
Agenda Item: 1D

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

AUDITS

IN THE MATTER OF UNITED METRO ENERGY)
CORP. D/B/A UNITED METRO ENERGY SERVICES) ORDER ACCEPTING
CORP.) OFFER OF SETTLEMENT
)
) DOCKET NO. EO16090855

Party of Record:

John T. Ambrosio, Esq., Ambrosio & Associates, LLC, on behalf of United Metro Energy Corp.
d/b/a United Metro Energy Services Corp.

BY THE BOARD:

By this Decision and Order the New Jersey Board of Public Utilities ("Board") considers an Offer of Settlement of any and all potential violations under the Energy Discount and Energy Competition Act ("EDECA" or "Act"), N.J.S.A. 48:3-49 et seq. and more specifically, N.J.S.A. 48:3-79 and N.J.A.C. 14:4-1.1 et seq. (the "Regulations") by United Metro Energy Corp. d/b/a United Metro Energy Services Corp. ("United"), who had been operating as a third party supplier to provide natural gas supply services to residential and commercial customers in New Jersey.

BACKGROUND

Pursuant to EDECA, the Board has authority and jurisdiction over all electric power suppliers and gas suppliers (collectively, "third party suppliers" or "TPSs") in New Jersey. N.J.S.A. 48:3-78 and 48:3-79. Among other things, the Board licenses TPSs. N.J.S.A. 48:3-79(a) provides that "a person shall not offer to provide or provide gas supply service to retail customers in this State unless that person has applied for and obtained from the board, a gas supplier license." See also, N.J.A.C. 14:4-5.1(d)(1). Moreover, pursuant to N.J.S.A. 48:3-79(b), a license shall expire one year from the date of issuance unless the holder thereof pays to the board, within 30 days before the expiration date, a renewal fee accompanied by a renewal application on a form prescribed by the board." See also, N.J.A.C. 14:4-5.6 and N.J.A.C. 14:4-5.7.

In addition, pursuant to EDECA, the Board requires that a TPS provide evidence of financial integrity, meet all reliability standards, and maintain a surety bond. See N.J.S.A. 48:3-79(c), N.J.S.A. 48:3-79(f), N.J.A.C. 14:4-5.2, and N.J.A.C. 14:4-5.4. Pursuant to the Act, the Board,

among other things, is vested with investigative power, N.J.S.A. 48:3-81, alternative disciplinary power, N.J.S.A. 48:3-82, and authority to assess civil penalties, N.J.S.A. 48:3-83.

Pursuant to N.J.A.C. 14:4-5.1(d), a person without a gas supplier license cannot: (1) provide gas supply service or offer to provide gas supply service; (2) advertise or market gas supply service; (3) enroll customers for gas supply service; or (4) contract or otherwise assume legal responsibility for gas supply service. Moreover, no TPS may submit a change order to a local distribution company ("LDC") unless the change order is transmitted through an Electronic Data Interchange ("EDI") system. See N.J.A.C. 14:4-2.3(g) and N.J.A.C. 14:2-3(b).

N.J.A.C. 14:4-5.6(a) and N.J.A.C. 14:4-5.7(a) set forth the obligation of the TPS licensee to timely file a renewal application. Specifically, the licensee must file a complete renewal application at least thirty (30) days before the expiration date of the existing license. If a timely renewal application is not submitted, the initial license expires at the end of its term. N.J.A.C. 14:4-5.7(b). In the event a licensee does not submit a renewal application within thirty (30) days before the end of the license term, pursuant to N.J.A.C. 14:4-5.6(b)-(d), the licensee must submit a new license application within forty-five (45) days after the end of the licensee's initial term, or request an extension of the forty-five (45) day time period based on extraordinary hardship, during which time the licensee must continue servicing existing customers until directed otherwise by Board Staff of the Division of Audit ("Staff").

N.J.A.C. 14:4-5.5(h)(2) addresses licensing requirements if a company is reorganized, restructured, or merged with another entity, acquired another company or is acquired by another company. It states that the following requirements apply: "(2) If the resulting company does not retain the name of the original licensee, the new entity shall submit an application for a new license in accordance with this sub-chapter at least 30 calendar days before the name change, and shall meet all of the requirements that would apply if the entity had never held a license, including application fees and the issuance of a new surety bond;..."

United had acquired the assets of a company called Metro Energy Group LLC ("Metro") through bankruptcy. Metro had filed for Chapter 11 Bankruptcy in the United States Bankruptcy Court, Eastern District of New York on September 27, 2012, bearing Docket No. 1-12-46917-ess. The Bankruptcy Court approved the sale of Metro's assets to United on February 15, 2013. Prior to Metro filing for bankruptcy, Metro's gas supplier license, License No. GSL-0041, had expired on February 9, 2012 and its surety bond had expired on March 17, 2012.

On September 23, 2016, the Board issued an Order to Show Cause ("OTSC") alleging, among other things, that Metro's gas supplier license expired in 2012 and that its surety bond also expired in 2012. The Board alleged that Metro had not renewed this license with the Board before it expired on February 9, 2012. The Board asserted that an investigation initiated by Board Staff disclosed that an entity called United had acquired Metro. United is a Delaware corporation with a mailing address of 500 Kingland Avenue, Brooklyn, New York 11222. The Board further alleged that United had not filed an application to become a gas supplier in New Jersey and had not provided a surety bond to the Board. In addition, the Board alleged that United had no valid EDI account. Accordingly, the Board ordered United to show cause why a final order should not be issued requiring United to cease all enrollment of new customers, cease all marketing practices in New Jersey, and return all customers to Public Service Electric Gas Company ("PSE&G").

In its November 14, 2016 response to the OTSC ("Response"), United admitted that it acquired the assets of Metro through a bankruptcy proceeding in 2013. United also admitted that it had not filed an application for a gas supplier license and that it had not provided a surety bond to the Board. (Response at ¶ 5, 6.) In addition, United admitted that it was servicing three gas customers, two of which were residential and one was commercial. Id. at ¶ 8.

On December 9, 2016, United filed an initial application for approval to provide gas supply services in PSE&G's service territory. The application remains under review by Staff.

By Order dated December 12, 2016 ("December Order"), the Board found that United violated N.J.S.A. 48:3-79(a), N.J.S.A. 48:3-79(b), N.J.S.A. 48:3-79(c), N.J.A.C. 14:4-5.1(d), and N.J.A.C. 14:4-5.4 and ordered United to advise its customers by December 19, 2016 that they would be returned to PSE&G. The Board further directed PSE&G to accept the customers and to return them to PSE&G's default Basic Gas Supply Service by December 20, 2016. The Board further stated that any decision to assess penalties on United pursuant to its failure to comply with the statutes and rules or to address the other allegations in the OTSC will be dealt with in a separate Order.

As a result of correspondence, telephone conversations, and meetings with United, United submitted an Offer of Settlement ("Offer of Settlement") (attached) to resolve the OTSC. In the Offer of Settlement, United made a monetary offer in the amount of \$8,000.00 to resolve all issues concerning the violations alleged by Staff up to and including November 1, 2017.

DISCUSSION AND FINDINGS

As noted above, in the December Order, the Board found that United failed to comply with the licensing and renewal requirements under the Act and the Regulations, including N.J.S.A. 48:3-79(a), N.J.S.A. 48:3-79(b), N.J.S.A. 48:3-79(c), N.J.A.C. 14:4-5.1(d), and N.J.A.C. 14:4-5.4. In addition, United had no valid EDI account which is required in order for a local distribution company to process a change order. See N.J.A.C. 14:4-2.3(g) and N.J.A.C. 14:2-3(b).

In considering the Offer of Settlement, the Board notes that United has responded to all Staff requests during the investigation. The Board also notes that United responded to the OTSC, admitting that it had not submitted a license application and that it was serving three customers in New Jersey. Pursuant to the December Order, those customers were returned to PSE&G. United has also filed an initial application to become a licensed TPS. In addition, Staff has determined that no complaints have been filed with the Board or the Division of Consumer Affairs against Metro or United by any of its New Jersey customers since Metro's last renewal approval on February 10, 2011 and prior to their customers return to PSE&G. Moreover, United has represented that there are no investigations in other states and they have not had their license revoked in other states. United also has represented that it: (1) has ceased marketing as a TPS; (2) has made all sales tax payments to the State of New Jersey since 2011; (3) has an effective Certificate of Authority from the New Jersey State Treasurer to do business in the State; and (4) has committed to complying with all provisions of the Act and Regulations.

The Board has reviewed the matter and **HEREBY FINDS** that the Offer of Settlement represents a reasonable settlement of the OTSC. Therefore, the Board **HEREBY ACCEPTS** the Offer of Settlement proffered by United. The Offer of Settlement is accepted subject to the following conditions:

1. United will pay to the State of New Jersey the sum of Eight Thousand Dollars (\$8,000.00) in full and final settlement of any and all potential violations under the Act and/or the Regulations which have been or could have been alleged by the Board or the Staff against United, up to and including November 1, 2017.
2. The Offer of Settlement shall not relieve United or its parents, affiliates, subsidiaries or successors, from any liability for violations, if any, of the Act, the Regulations, or Board Orders that may occur after November 1, 2017.
3. Any future repeated violation(s) of the Act, the Regulations, or Board Orders by United or its parents, affiliates, subsidiaries, or successors that may now or in the future provide energy services that is the subject of this Offer of Settlement, shall be deemed to be a second, third, or subsequent violation, as appropriate, pursuant to provisions of N.J.S.A. 48:3-83.
4. United will comply with all provisions of the Act and Regulations regarding TPS licensing renewal requirements as set forth at N.J.S.A. 48:3-78, N.J.S.A. 48:3-79, and N.J.A.C. 14:4-5.6.
5. The Offer of Settlement shall neither be deemed an admission by United or its affiliates, subsidiaries or successors of any violation of the Act, the Regulations, or any Board Order, nor a determination by the Board or Staff that such a violation has occurred, nor shall Board approval of the Offer of Settlement be deemed a determination that a violation has occurred, except to the extent admitted by United in its Response and as found by the Board in its December Order.
6. The Offer of Settlement shall not be relied upon by United or its affiliates, subsidiaries or successors in an attempt to mitigate any future claim that any such entity has violated the terms and conditions of the Act, the Regulations, or any Board Order.

The Board **FURTHER ORDERS** that no later than five (5) days from the Effective Date of this Order, United shall pay the Settlement Payment of Eight Thousand Dollars (\$8,000.00). Payment must be made out to the **TREASURER, STATE OF NEW JERSEY** and

Sent to: Mike Greco, Chief Fiscal Officer
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625
Attn: Audits

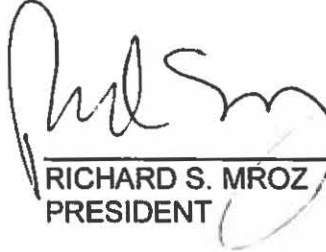
*You must include a copy of this order with your check.

The Board's acceptance of the Offer of Settlement is for purposes of this proceeding only, addresses any and all allegations or potential allegations in the Offer of Settlement, and shall not be construed as limiting the Board's authority in any other matter affecting United or a successor company.

This Order shall be effective on December 1, 2017.

DATED: 11/21/17

BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT

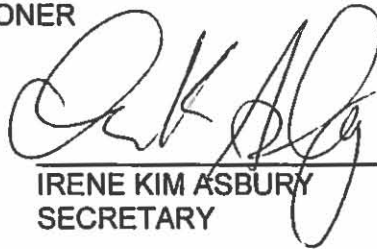

JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

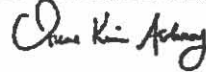

DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:


IRENE KIM ASBURY
SECRETARY

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



**IN THE MATTER OF UNITED METRO ENERGY CORP. D/B/A UNITED METRO
ENERGY SERVICES CORP. OFFER OF SETTLEMENT
DOCKET NO. EO16090855**

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IN THE MATTER OF UNITED METRO
ENERGY CORP., d/b/a UNITED METRO
ENERGY SERVICES CORP.,

Respondents.

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
DOCKET NO.: EO16090855

OFFER OF SETTLEMENT

WHEREAS, United Metro Energy Corp., through its wholly owned subsidiary United Metro Energy Services Corp., ("Metro Energy") is a third-party supplier ("TPS") and provided natural gas service to commercial and industrial customers in New Jersey; and

WHEREAS, as a TPS, Metro Energy is subject to the jurisdiction of the Board of Public Utilities (the "Board" or "BPU") pursuant to the Energy Discount and Energy Competition Act, N.J.S.A. 48:3-78 *et seq.* (the "Act"), and the administrative regulations promulgated thereunder at N.J.A.C. 14:4-1.1 *et seq.* (the "Regulations"); and

WHEREAS, pursuant to N.J.A.C. 14:4-5.1(d), a person without a gas supplier license cannot: (1) provide gas supply service or offer to provide gas supply service; (2) advertise or market gas supply service; (3) enroll customers for gas supply service; or (4) contract or otherwise assume legal responsibility for gas supply service; and

WHEREAS, pursuant to N.J.A.C. 14:4-5.3, to be eligible for a gas supplier license, the person must file a complete application with the Board with the applicable fee; and

WHEREAS, Staff was notified on July 1, 2016, that an entity known as Metro Energy Group, LLC ("MEG") was allegedly providing gas supplier services without valid gas supplier

licenses; and

WHEREAS, upon a review of Board records, Staff determined that MEG's Gas Supplier License No. GSL-0041 expired on February 9, 2012 and its surety bond expired on March 17, 2012; and

WHEREAS, on September 27, 2012, MEG and each of its affiliated companies filed for relief under Chapter 11 of the United States Bankruptcy Code in the Eastern District of New York. All of the cases were jointly administered under the caption *In re Metro Fuel Oil Corp.*, Case No. 12-46913 (ESS); and

WHEREAS, on February 15, 2013, the Bankruptcy Court entered an Order approving the sale of substantially all of the assets of MEG and its affiliates to Metro Energy (hereinafter referred to as the "Sale Order"); and

WHEREAS, among the assets transferred to Metro energy was the three (3) natural gas customers of MEG located in the State of New Jersey; and

WHEREAS, it was further determined by Staff that Metro Energy had allowed MEG's TPS license to expire, and that it had failed to file an initial application for a TPS license in its own name; and

WHEREAS, on September 23, 2016, the Board initiated the above captioned matter by way of Order to Show Cause alleging that Metro Energy was operating as a TPS in violation of the Act and Regulations; and

WHEREAS, in an Order dated December 12, 2016, the Board directed that Metro Energy cease all enrollment of new customers, cease all marketing practices in New Jersey, and return all customers to the gas distribution companies ("GDCs"); and

WHEREAS, Metro Energy promptly complied with the Board's order and has ceased all operations in the State of New Jersey; and

WHEREAS, Metro Energy submitted to Staff an initial license application on December

8, 2016 which application Staff will not process until the above captioned matter is resolved; and

WHEREAS, Metro Energy has responded promptly and effectively to all Staff requests; and

WHEREAS, Metro Energy wishes to amicably resolve the issues raised by Staff without the need for time-consuming and expensive litigation;

NOW, THEREFORE, Metro Energy submits this Offer of Settlement, as follows:

1. Metro Energy will pay to the State of New Jersey the sum of Eight Thousand Dollars (\$8,000.00) in full and final settlement of any and all potential violations under the Act and/or the Regulations which have been or could have been alleged by the Board or the Staff against Metro Energy, up to and including November 1, 2017.

2. At the next regularly scheduled Board agenda meeting, subject to scheduling considerations, Staff agrees to recommend that the Board accept this Offer of Settlement.

3. This Offer of Settlement shall not relieve Metro Energy or its parents, affiliates, subsidiaries or successors, from any liability for violations, if any, of the Act, the Regulations, or Board Orders that may occur after November 1, 2017.

4. Any future repeated violation(s) of the Act, the Regulations, or Board Orders by Metro Energy or its parents, affiliates, subsidiaries or successors that may now or in the future provide energy services that is the subject of this Offer of Settlement, shall be deemed to be a second, third, or subsequent violation, as appropriate, pursuant to provisions of N.J.S.A. 48:3-83.

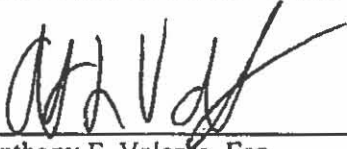
5. Metro Energy will comply with all provisions of the Act and Regulations regarding TPS licensing renewal requirements as set forth at N.J.S.A. 48:3-78, N.J.S.A. 48:3-79 and N.J.A.C. 14:4-5.6.

6. The execution of this Offer of Settlement shall neither be deemed an admission by Metro Energy or its affiliates, subsidiaries or successors of any violation of the Act, the

Regulations, or any Board Order, nor a determination by the Board or Staff that such a violation has occurred, nor shall Board approval of this Offer of Settlement be deemed a determination that a violation has occurred.

7. The execution of this Offer of Settlement shall not be relied upon by Metro Energy or its affiliates, subsidiaries or successors in an attempt to mitigate any future claim that any such entity has violated the terms and conditions of the Act, the Regulations or any Board Order.

UNITED METRO ENERGY CORP.

By: 

Anthony F. Valente, Esq.
General Counsel

Dated: November 1, 2017