



Agenda Date: 07/15/20  
Agenda Item: 1B

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF THE ALLEGED FAILURE OF )  
ENERPENN USA, LLC TO COMPLY WITH CERTAIN )  
PROVISIONS OF N.J.S.A. 48:3-78 ET SEQ., AND THE )  
NEW JERSEY ADMINISTRATIVE CODE, N.J.A.C. 14:4- )  
1.1 ET SEQ. BPU Docket No. EO20060465 )  
ORDER ACCEPTING OFFER )  
OF SETTLEMENT )  
DOCKET NO. EO20060465

**Party of Record:**

**Ira G. Megdal, Esq.**, Cozen O'Connor, P.C., on behalf of EnerPenn USA, LLC d/b/a YEP Energy

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. 48:3-78, and N.J.A.C. 14:4-1.1 et seq. (the "Regulations") by EnerPenn USA, LLC d/b/a YEP Energy ("EnerPenn"), who has been operating as a third party supplier to provide electric power services to residential, commercial, and industrial 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 "TPS") in New Jersey. Among other things, the Board licenses third party suppliers. N.J.S.A. 48:3-78(a) and N.J.S.A. 48:3-79(a) require that a person obtain electric and gas supplier licenses before providing electric and gas supply services to retail customers in this State. See also, N.J.A.C. 14:4-5.1(d)(1). Moreover, pursuant to N.J.S.A. 48:3-78(b), electric supplier licenses are only valid for one year from the date of issuance unless timely renewals are filed. 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. 48:3-78(c), 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 an electric and/or gas supplier license cannot: (1) provide electric and/or gas supply service or offer to provide electric and/or gas supply service; (2) advertise or market electric and/or gas supply service; (3) enroll customers for electric and/or gas supply service; or (4) contract or otherwise assume legal responsibility for electric and/or 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 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”).

As a TPS, EnerPenn is subject to the jurisdiction of the Board and must comply with EDECA and the Regulations.

## **DISCUSSION AND FINDINGS**

EnerPenn’s initial TPS license, License No. ESL-0117, was effective for a renewal term of May 25, 2016 through May 24, 2017. EnerPenn did not renew this license with the Board before it expired on May 24, 2017. EnerPenn continued to provide electric service to residential, commercial, and industrial customers in New Jersey. Through administrative inadvertence, EnerPenn did not file a timely application for a renewal of its license. A late renewal application from EnerPenn was received by the Board on April 10, 2018. On June 7, 2018, Staff directed EnerPenn to file a new initial license application. EnerPenn did file such an initial application, which was received by the Board on June 25, 2018. During the period of time from May 24, 2017 to June 25, 2018, EnerPenn has advertised or marketed its electric supplier services in New Jersey via the searching tool for electric power plans on its website. Approximately 50 customers were enrolled during this time period that are still being supplied by EnerPenn. EnerPenn has responded promptly and effectively to all Staff requests for information.

Staff has conducted an investigation regarding EnerPenn’s compliance with the Act and the Regulations. Staff has alleged that EnerPenn failed to comply with the licensing and renewal requirements under the Act and the Regulations, including N.J.S.A. 48:3-78, N.J.S.A. 48:3-79, N.J.A.C. 14:4-5.1, N.J.A.C. 14:4-5.6, and N.J.A.C. 14:4-5.7.

EnerPenn has responded promptly and effectively to all Staff requests during the investigation. Staff has determined that not a single complaint had been filed with the Board or the Division of Consumer Affairs against EnerPenn by any of its New Jersey customers since EnerPenn obtained its TPS renewal was approved on May 25, 2016. In addition, EnerPenn has at all times, since becoming licensed in New Jersey on December 14, 2011, maintained surety bonds as required by the BPU, from the period of July 21, 2011 to July 20, 2020 for electric generation service.

As a result of correspondence and telephone conversations, EnerPenn submitted an Offer of Settlement (“Offer”) (attached) regarding its alleged violations. In the Offer of Settlement, EnerPenn did not admit to any violations and made a monetary offer in the amount of \$2,800.00 to resolve all issues concerning the violations alleged by Staff.

The Board has reviewed the matter and **HEREBY FINDS** that the Offer represents a reasonable settlement of the alleged violations. Therefore, the Board **HEREBY ACCEPTS** the Offer of Settlement proffered by EnerPenn. The Board will **CONSIDER** under a separate docket number the initial application filed by EnerPenn on June 25, 2018. The Offer of Settlement is accepted subject to the following conditions:

1. EnerPenn will pay to the State of New Jersey the sum of \$2,800.00 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 EnerPenn, up to and including June 26, 2020.
2. The Offer of Settlement shall not relieve EnerPenn or its parents, affiliates, subsidiaries or successors, from any violations, if any, of the Act, the Regulations, or Board Orders that may occur after June 26, 2020.
3. Any future repeated violation(s) of the Act, the Regulations, or Board Orders by EnerPenn or its officers, directors, parent, 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. EnerPenn will comply with all provisions of the Act and Regulations regarding TPS licensing renewal requirement 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 execution of this Offer of Settlement shall not be relied upon by EnerPenn or its affiliates, subsidiaries or successors in any 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 ten (10) days from the Effective Date of this Order, EnerPenn shall pay the Settlement Payment of Two Thousand, Eight Hundred Dollars (\$2,800.00). Payment must be made out to the **TREASURER, STATE OF NEW JERSEY** and

Sent to: Jonathan Wallace, Interim Chief Fiscal Officer  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Trenton, New Jersey 08625-0350  
Attn: Audits

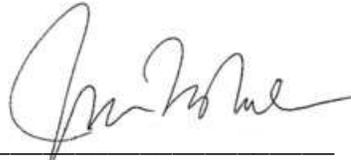
\*You must include a copy of this order with your check.

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 EnerPenn or a successor company.

This Order shall be effective on July 25, 2020.

DATED: July 15, 2020

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER

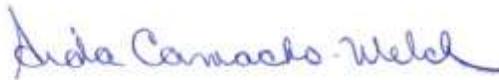


UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH  
SECRETARY

**IN THE MATTER OF THE ALLEGED FAILURE OF ENERPENN USA, LLC D/B/A YEP ENERGY TO COMPLY WITH CERTAIN PROVISIONS OF N.J.S.A. 48:3-78 ET SEQ., AND THE NEW JERSEY ADMINISTRATIVE CODE, N.J.A.C. 14:4-1.1 ET SEQ.**

**OFFER OF SETTLEMENT  
DOCKET NO. EO20060465**

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Sheila Y. Oliver  
Lt. Governor

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Joseph L. Fiordaliso  
President

Mary-Anna Holden  
Commissioner

Dianne Solomon  
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Upendra Chivukula  
Commissioner

Bob Gordon  
Commissioner

July 15, 2020

Christian Bedortha  
Asst. General Counsel  
EnerPenn USA, LLC d/b/a YEP Energy, Y.E.P.  
89 Headquarters Plaza North #1463  
Morristown, NJ 07960

Re: **Electric Power Supplier Initial License**  
Docket No. EE18060667L

Dear Mr. Christian Bedortha:

In accordance with the Electric Discount and Energy Competition Act of 1999, N.J.S.A. 48:3-49 et seq., at its July 15, 2020 Agenda meeting, the New Jersey Board of Public Utilities (the "Board") voted to issue the Electric Power Supplier License, numbers ESL-0237, to EnerPenn USA, LLC d/b/a YEP Energy, Y.E.P. Pursuant to signed bill S.604 (2018) [P.L. 2019, c. 100], your license may be renewed without expiring so long as a license renewal fee accompanied by an annual information update form is submitted to the Board within 30 days prior to your annual **anniversary date of July 15<sup>th</sup>**.

This license is effective July 15, 2020. This license and the rights thereunder are **Non-Transferable**.

***This letter is not an endorsement of, nor is it intended for use in, the marketing promotions of the licensee. Licensees shall comply with all applicable laws and regulations, including the Electric Discount and Energy Competition Act, which prohibits the unauthorized change of a customer's energy provider and other fraudulent and illegal marketing activities.***

If you have any questions, please contact Darren Erbe at (609) 292-1406.

Sincerely,

Aida Camacho-Welch  
Secretary of the Board

ACW/dee