



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

AUDITS

)
IN THE MATTER OF THE PROPOSAL TO PERFORM
AUDITS OF COMPETITIVE SERVICES PURSUANT TO
THE ELECTRIC DISCOUNT AND ENERGY)
COMPETITION ACT, N.J.S.A. 48:3-55, 48:3-56 and)
48:3-58

ORDER

DOCKET NOS.
AA02020094, EA02020095,
EA02020096, EA02020097,
EA02020098

(Service List Attached)

BY THE BOARD:

On March 20, 2002, the Board authorized Staff to issue a Request For Proposal ("RFP") to independent consultant firms to perform audits of the competitive services offerings of New Jersey's four electric distribution companies, Atlantic City Electric Company ("ACE"); Jersey Central Power & Light ("JCP&L"); Public Service Electric & Gas ("PSE&G"); and Rockland Electric Company ("RECO" or "Rockland") (hereinafter collectively referred to as "EDCs"), pursuant to N.J.S.A. 48:3-55, 48:3-56 and 48:3-58. The general purpose of these audits was to review the EDCs competitive services offerings so as to insure that the four companies and their affiliates offering competitive retail services did not enjoy any unfair competitive advantage over other non-affiliated purveyors of competitive retail services. The scope of the audits included a review of competitive services offerings, affiliate relationships and interrelated transactions so as to determine whether the EDCs have complied with the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 et seq., and the Board's rules, regulations and Orders related to competitive services.

The Auditors were to offer their expert opinion, based on an appropriate methodology, as to whether there was strict separation and allocation of each EDC's revenues, costs, assets, risks and functions between the EDC's electric distribution operations and its related competitive

business segments ("RCBS"). The audits were also to determine: (1) whether the separation of utility and non-utility organizations was reasonable based upon the Board's affiliate relation and fair competition standards, N.J.A.C. 14:4-5 ("the Standards"); (2) whether there was cross-subsidization between utility and non-utility segments within a public utility of holding company; (3) the effect on ratepayers of the use of utility assets in the provision of non-safety related competitive services; (4) the effect of competitive services on utility workers; and (5) the effect of utility practices on the market for competitive services. The Auditors were also asked to give their opinion on whether recommendations from the previous competitive services audit, conducted in 2000 and adopted by a February 8, 2002 Board Order in docket no. AA00040232, have been fully implemented.

Following submission of proposals in response to the RFP and evaluation and review of the proposals by Board Staff, on March 20, 2002, the Board selected Liberty Consulting Group ("Liberty") to perform the competitive services audits of all four of the EDCs. The various audits were performed under the supervision of the Board's Division of Audits and were completed on or about March 31, 2003. At its April 22, 2003 Agenda meeting, the Board acknowledged receipt, for filing purposes only, of the Competitive Services Audit Reports ("Audit Reports") in their entirety, and directed that any EDC or any other party wishing to contest the methodology or findings of the audits, or to otherwise comment on the audit results, file comments and/or motions to intervene with the Board Secretary. Subsequently, the Division of the Ratepayer Advocate ("RPA") moved for an extension of the time for response to the reports, and requested time to conduct discovery. The RPA also requested that hearings be scheduled. The Board afforded the RPA an additional sixty (60) days for written comment and reserved decision on scheduling a hearing.

In May 2003, the RPA issued discovery requests to Liberty. Although there was some discussion among the parties as to whether the discovery requests were outside the scope of the audits, Board Staff and the Division of Law directed Liberty to provide responses. On June 23, 2003, the RPA filed written comments on the Audits but did not renew its request for hearings. The Fuel Merchant's Association ("FMA") also filed comments limited to the PSE&G audit. The EDCs filed initial comments as well as responses to the comments filed by the RPA and the FMA.

The Board carefully reviewed the Audit Reports and the comments received. Additionally, it is important to recognize that these Audit Reports audit activities from January 2001 to June 30, 2002 and that circumstances may have changed at the utilities since that time. Before new audits are commenced, it would be appropriate to finalize these audits. The Board HEREBY ADOPTS the recommendations that have not been contested by the utilities, as more fully described and provided in the Audit Reports and HEREBY FINDS that the uncontested recommendations should be timely implemented under the supervision of the Board's Staff so as to assure compliance with EDECA and N.J.A.C. 14:4-5.

With regard to the contested recommendations, the Board will afford the parties involved in the proceeding an opportunity to update their initial comments. Once the comments are received and reviewed, this matter will return to the agenda for further consideration. The following recommendations are contested by the appropriate utilities:

ACE

Liberty developed 31 recommendations for ACE. ACE agrees with 15 of the recommendations and disagrees with 16 recommendations that are listed below.

Recommendation # 7: Revise the ACE Compliance Plan to provide direction to employees on how to implement and adhere to the Standards.

Recommendation # 8: Amend the ACE Compliance Plan on Section 14:4-5.3(n) either to prohibit the advice to customers about its PUHC RCBS, or to provide guidance to employees on what advice is appropriate and how that advice can be provided with regard to competitors.

Recommendation # 11: Adopt and enforce the requirement that all indirect purchasing costs be captured in a fashion that will support their apportionment according to the amount of purchases made and make the apportionment of such indirect costs in that manner.

Recommendation # 12: Include in the Compliance Plan and Cost Allocation Manual (CAM) compliant practices and procedures for the pricing of joint services.

Recommendation #13: Modify the pricing procedures in the CAM to be consistent with the Standards.

Recommendation # 15: Institute refresher training to ensure that the day-to-day accounting procedures (such as when an affiliate should pay its own invoice) are clearly understood and implemented.

Recommendation # 17: Develop and institute an A&G loader to be included in activity type prices used for direct charges.

Recommendation # 18: Develop a method for capturing the indirect A&G costs in each cost center, so that any remaining costs that are allocated reflect the fully loaded cost of that activity.

Recommendation # 19: Reconcile for differences between budgeted and actual activity type prices.

Recommendation # 21: Make the disclaimer required under Section 14:4-5.5(k) of the Standards on the website, whenever a Conectiv Retail Affiliate is mentioned in juxtaposition with a discussion of utility service offerings in New Jersey.

Recommendation # 25: Re-position the duties of the individuals who serve as Director or an Officer for both a utility and related competitive business segment of the utility's holding company.

Recommendation # 27: Formulate detailed procedures for pricing transactions under Section 14:4-5.5(t); establish a structured communications and training program for their use; and provide for a formal program of internally verifying compliance with those procedures.

Recommendation # 28: Formalize a lease agreement between ACE and Atlantic Southern Properties for the Mays Landing office building, with the charges to ACE based on the lower of book value or demonstrated market value.

Recommendation # 29: Add the required disclaimer to the Conectiv Energy web pages that mention Conectiv Energy Supply, Inc.

Recommendation # 30: Demonstrate the adequacy of steps to protect the utility from the negative effects of affiliation with unregulated businesses and the continuing sufficiency of utility spending.

Recommendation # 31: Place restrictions on ACE investments in the money pool similar to those required by the Board for JCP&L.

JCP&L

The final report released by Liberty contained fourteen (14) recommendations regarding its audit of JCP&L's competitive service offerings. JCP&L reviewed the audit report and has accepted seven (7) recommendations and disagreed with seven (7) recommendations listed below.

Recommendation # 1: Treat GPU Telecom, The MYR Group, and FEFSG as RCBS's of First Energy for purposes of compliance with the Standards.

Recommendation # 4: Amend the Compliance Plan either to prohibit providing advice to customers about any holding company RCBS or to provide guidance to employees on what advice is appropriate and how that advice can be provided with regard to competitors.

Recommendation # 8: Perform a structured analysis of the continuing sufficiency of general allocators to align cost responsibility with cost causation; increase the use of direct charges and more specific allocators where found appropriate.

Recommendation # 11: In the event that the Board decides that clause (1) of the Section 14:4-5.5(p) prohibits RCBS employees from being also involved in the provision of non-competitive utility and safety services, JCP&L should refrain from using utility RCBSs, as demonstrated by the Harlan Electric and Elliot-Lewis examples, to maintain its utility infrastructure.

Recommendation # 12: Reposition the duties of the individuals who serve as a Director or an Officer for both a utility and a related competitive business segment of the utility's holding company so that JCP&L is in compliance with the standard.

Recommendation # 13: Revise either or both the Compliance Plan and Accounting Policy P-07-B (or its post-merger equivalent) to provide more guidance regarding the transfer of assets.

Recommendation # 14: Add to the Compliance Plan a specific statement regarding how new employees are to be trained on the standards, which should also include a specific timeframe for the "refresher" training offered to employees.

PSE&G

After its review, Liberty developed 24 recommendations of which PSE&G agreed in principal with 19 and disagreed with 5 recommendations listed below.

Recommendation #1: Treat Sunburst as a utility RCBS for all purposes relevant to the Standards.

Recommendation #8: Require periodic examination of the closeness of the relationship between total operating company procurement expenditures and procurement expenditures under master agreements and assure periodic updating of the allocation factors applied.

Recommendation #12: Reposition the duties of the individuals who serve as a Director or an Officer for both the utility and a holding company RCBS so that PSE&G is in compliance with the standard.

Recommendation #20: Require that PSE&G adopt and implement practices that prohibit its solicitation of customers for Sunburst services.

Recommendation #23: End the sharing of directors and officers with PSEG ET.

RECO

After their review, Liberty developed 21 recommendations for RECO, of which, the Company agreed in principal with 16 and disagreed with 5 recommendations listed below.

Recommendation #1: Require the disclosure necessary to examine relationships and transactions that exist between either Orange & Rockland ("O & R") and Rockland, on the one hand, and all Retail Competitive Business Services ("RCBS") of Consolidation Edison, Inc. ("CEI") and Consolidated Edison Company of New York ("CECONY") as a common service supplier, on the other hand.

Recommendation #2: Treat all CEI RCBSs as covered by the Standards if they have or offer to serve retail customers in New Jersey, whether or not in the Rockland service territory.

Recommendation #13: Conduct an examination of all shared administrative services costs for the years 2001 and 2002 to determine the extent of errors similar to those uncovered during transaction testing, make necessary corrections, and validate the accuracy and completeness of administrative services costs.

Recommendation #15: Provide for a systematic review of unrecorded usage of CECONY shared administrative services by the non-regulated affiliates.

Recommendation #16: Reconcile the standard rate to actual costs for shared services directly charged to unregulated affiliates and CEI.

Consultant's Professional Fees

In accordance with the contracts entered into with Liberty to perform the audits of the EDCs, a 20% holdback of professional fees was negotiated and retained by each EDC. The contracts stipulate that the 20% holdback shall be paid when the final report is filed with the Board and Liberty has met all obligations. The total amount of the holdback fees is \$164,658.71, detailed as follows:

- ACE - \$40,742.70
- JCP&L- \$40,138.46
- PSE&G - \$72,306.43
- RECO - \$11,471.12

The Board appreciates the efforts of Liberty as well as the recommendations provided. In addition to adopting the findings and uncontested recommendations set forth in each Audit Report, the Board HEREBY AUTHORIZES release of the 20% holdback by each of the EDCs and HEREBY DIRECTS timely payment to be made to Liberty.

FURTHER PROCEEDINGS

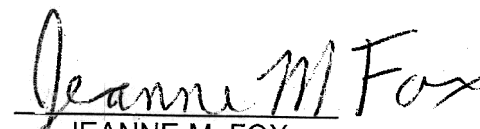
In light of the foregoing, the Board HEREBY ORDERS:


- 1 The EDCs, under the supervision of the Division of Audits, shall prepare detailed plans for implementation of the uncontested recommendations in the respective Audit Reports. Board Staff shall monitor, evaluate and modify, as necessary, the implementation of the recommendations. A proposed schedule for such implementation shall be prepared and submitted by each EDC to the Director of the Division of Audits by November 30, 2005.
- 2 Updates to original comments filed by the utilities or the interveners addressing contested issues raised by the Audit Reports should be filed within fifteen (15) days of the issuance of this Order.


3. Replies to updated comments shall be filed within fifteen (15) days of the filing of the updated comments.

DATED: 11/14/05

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

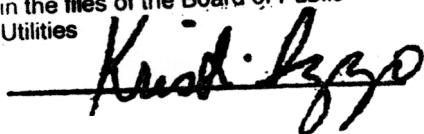

CONNIE O. HUGHES


JACK ALTER
COMMISSIONER

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



IM/O the Audit of Competitive Services Offerings of Atlantic City Electric Company, Jersey Central Power & Light Company, Public Service Electric & Gas Company and Rockland Electric Company,
BPU Docket Nos. AA02020094, EA02020095, EA02020096, EA02020097 and EA02020098

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