



Agenda Date: 6/17/15  
Agenda Item: 1A

**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/)

AUDITS

IN THE MATTER OF N.J.A.C. 14:4-5.9 through 5.11 - ) ORDER  
RENEWAL APPLICATIONS FOR ENERGY AGENTS, )  
ENERGY CONSULTANTS AND PRIVATE )  
AGGREGATORS ) DOCKET NO. ES15060650

**Parties of Record:**

**Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel**

**(See Attached List of Energy Agents, Energy Consultants and Private Aggregators)**

**BY THE BOARD:**

On February 9, 1999, the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 to - 107 ("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, including over those who facilitate sales in the competitive market, the Board, through implementing rules, mandated that Energy Agents, Energy Consultants and Private Aggregators ("EAs", "ECs" and "PAs") be registered by the Board, and set forth requirements for these entities to acquire and maintain registration. N.J.A.C. 14:4-5.8 through 5.11.

The implementing rules, N.J.A.C. 14:4-5.9(b) through 5.11, detail the time frames for the submission of the renewal application and the ramifications if the renewal application is not timely filed; the EA, EC and PA must not act as, or represent themselves to others as an EA, EC or PA, until the former registrant completes and submits a new registration, accompanied by a fee for an initial registration. The Board's regulations provide that the registration shall be valid for one year from the date of issuance except where the EA, EC or PA files a timely and complete renewal application thirty days before the registration expires. Registered EAs, ECs and PAs are required to renew timely their registration to continue to do business in New Jersey. N.J.A.C. 14:4-5.9(a). If a timely renewal application is filed, the registration does not expire while the renewal application is under review. N.J.A.C. 14:4-5.9(c). Despite the clear regulatory language regarding the term of the registration and the consequences of failing to file

a timely renewal application, some EAs, ECs and PAs have not filed for a renewal before the expiration of their registrations but have continued to serve customers in the State as if their registrations were current.

There are approximately 289 EAs, ECs and PAs registered in New Jersey. Approximately 65 companies have failed to timely file for renewal prior to the expiration of their registrations, and may have continued to serve customers in the State as if their registrations 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 residential and commercial consumers, third party suppliers and the utilities over the status of the energy sales where EAs, ECs and PAs have been involved.

The rules have 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 EAs, ECs and PAs, but because there has not been strict enforcement of registration requirements, regulatory certainty has been lacking. As a solution, Staff recommends that the Board, for good cause, waive strict compliance with the renewal registration timelines contained in N.J.A.C. 14:4-5.9 through 5.11 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 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 EAs, ECs and PAs until September 30, 2015 is appropriate.

The waiver period would allow all EAs, ECs and PAs to submit their filings or bring their registrations up to date without the imposition of penalties. During this limited time period, all EA, EC and PA filings would 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 unnecessary confusion to residential and commercial consumers, third party suppliers and the utilities over the status of the energy sales arranged by entities with expired registrations. 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 that 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 EAs, ECs and PAs outlining the terms of this waiver period.

## **DISCUSSION**

The Board has reviewed this matter and, based on the information provided to the Board to date, **FINDS** that a number of EAs, ECs and PAs have filed for their registration renewals after the expiration dates of their registrations or have not filed for renewal although their registrations have expired. The Board **ALSO FINDS** that it is necessary to enforce the terms of the rules going forward to maintain regulatory certainty, but that to strictly enforce the provisions of the Board rules immediately could disrupt the retail energy market, cause confusion among EAs, ECs and/or PAs, residential and commercial consumers, third party suppliers and the utilities over the status of the energy transactions facilitated by entities with lapsed registrations and subject the administrative process to simultaneous requests for hearings. Therefore, the Board **GRANTS** a waiver of the time frames for registration renewals under N.J.A.C. 14:4-5.9 through

5.11 for a limited period of time which commences on the effective date of this Order and expires on September 30, 2015, at which time the rules will be in full force and effect.

This waiver will allow the EAs, ECs and PAs to make the necessary filings to bring their registrations into compliance. During this time, any pending filing by an EA, EC and/or PA will be reviewed by Staff and treated as if it had been filed in a timely manner, regardless of the actual filing date. An EA, EC and PA whose registration 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 EAs, ECs and PAs, and will not revisit previous applications for purposes of determining timely renewal.

This Order will be effective as of June 26, 2015.

DATED: *June 18, 2015*

BOARD OF PUBLIC UTILITIES  
BY:

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PRESIDENT

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ATTEST  
*[Signature]*  
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

*[Signature]*

IN THE MATTER OF N.J.A.C. 14:4-5.9 through 5.11 - RENEWAL APPLICATIONS FOR  
ENERGY AGENTS, ENERGY CONSULTANTS AND PRIVATE AGGREGATORS

DOCKET NO. ES15060650

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Irene Kim Asbury  
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June 17, 2015

**TO ALL ENERGY AGENTS, ENERGY CONSULTANTS AND PRIVATE AGGREGATORS:**

As part of this ongoing review of the rules governing energy agents, energy consultants and private aggregators ("EA/EC/PAs"), it has come to the Board's attention that the time periods for the filing of renewal applications for registrations are not being followed. The Board reminds EA/EC/PAs of their obligations to fully comply with all applicable regulations. The Board intends to enforce the strict terms of the regulations going forward. However, because there has not been strict enforcement in the past, the Board will relax the time frames for registration renewals under N.J.A.C. 14:5.9 through - 5.11 to allow all EA/EC/PAs to submit their filings, or bring their filings up to date without the imposition of penalties.

To allow an EA/EC/PA to make any necessary filing to bring its registration into compliance, the Board will implement a limited waiver period until September 30, 2015. During this time, any pending filing by an EA/EC/PA will be reviewed by staff and treated as if it had been filed in a timely manner regardless of the actual filing date. An EA/EC/PA whose registration 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 EA/EC/PA, and will not revisit previous applications. Effective October 1, 2015, N.J.A.C. 14:4-5.9 through - 5.11 shall be strictly enforced. Renewal applications must be received at least 30 days before the expiration of the current registration, and if the renewal is not timely filed, the EA/EC/PA must not act as, or represent themselves to others as, an EA/EC/PA pending the filing of an application for a new registration.

Sincerely,

A handwritten signature in black ink, appearing to read "Irene Kim Asbury".

Irene Kim Asbury  
Secretary of the Board

/ac

**IN THE MATTER OF N.J.A.C. 14:4-5.9 through 5.11 - RENEWAL APPLICATIONS  
FOR ENERGY AGENTS, ENERGY CONSULTANTS AND PRIVATE AGGREGATORS**

**DOCKET NO: ES15060650**

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