

a TPS without first registering as an energy agent.” N.J.S.A. 48:3-78(i) specifies that “any person acting as an energy agent shall be required to register with the board . . . This registration shall be updated annually.” See also, N.J.A.C. 14:4-5.8(g).

A similar provision regarding private aggregators is found in the Regulations. N.J.A.C. 14:4-5.1(g) provides that “[a]n entity shall not combine the energy loads of multiple end users, and arrange a contract with a TPS to purchase electric generation service or gas supply service on behalf of those end users, without first registering as a private aggregator under this subchapter”

To register as an EA or PA, a person must file an application on forms provided by the BPU, available on the Board's website at www.nj.gov/bpu/, and accompanied by the appropriate fee. N.J.A.C. 14:4-5.8(a)-(b). The applicant must provide Staff with “information regarding any existing, pending or past adverse rulings, litigation, liabilities, investigations or other matters relating to financial or operational status, including criminal charges against the registrant, its employees, or any affiliated entities.” N.J.A.C. 14:4-5.8(f)(5). A registration is only valid for one year from the date of issue. N.J.A.C. 14:4-5.8(g).

N.J.A.C. 14:4-1.2 defines “energy consultant” (“EC”) as “an energy agent that is registered with the Board pursuant to N.J.A.C. 14:4-5.11, and is thereby authorized to receive certain customer information from an LDC through electronic data interchange (EDI).” To register as an EC, a person must apply on forms provided by the BPU, available on the Board's website at www.nj.gov/bpu/, and submit the appropriate application fee. N.J.A.C. 14:4-5.11(a)-(b). An EC must also: have a \$10,000 surety bond; have documentation that the company maintains an office in the State of New Jersey; and is EDI compliant. N.J.A.C. 14:4-5.11(b) and -5.2(b)¹. Pursuant to N.J.A.C. 14:4-5.11(e), an EC registration is also “valid for one year from the date of issue.”

EAs, PAs, and ECs must submit a renewal application at least 30 days before the expiration of the existing registration. N.J.A.C. 14:5-9(a). A registration renewal is valid for one year. N.J.A.C. 14:4-5.9(f). If an EA, PA, or EC registrant fails to submit a timely renewal application: (1) the initial registration shall expire; (2) Board Staff shall not accept a renewal application; and (3) “The former registrant shall not act as, or represent themselves to others as, an energy agent or private aggregator . . . until the former registrant completes and submits a new registration, which is approved . . .” N.J.A.C. 14:4-5.9(b) (emphasis supplied).

Pursuant to EDECA, the Board, among other things, is vested with investigative powers, N.J.S.A. 48:3-80, disciplinary powers, N.J.S.A. 48:3-81, alternative disciplinary powers, N.J.S.A. 48:3-82, and with the authority to assess civil penalties, N.J.S.A. 48:3-83. Pursuant to N.J.A.C. 14:4-5.1(f) and -5.9(b)(3), a person without valid EA or EC registration, cannot “act as, or represent themselves to others as, an energy agent” In addition, the Board can deny, suspend, or revoke a registration; impose financial penalties; and prohibit acceptance of new customers. N.J.A.C. 14:4-5.13. In determining the amount of the fines, the Board may consider each day of each violation against each customer as a separate offense. N.J.A.C. 14:4-5.13(c). The Board may also consider any good faith efforts made by the company; the gravity of the violation; the number of past violations; and the appropriateness of the sanction or fine. N.J.A.C. 14:4-5.13(b).

¹ N.J.A.C. 14:4-5.2(b)(1) clarifies that a person must “[l]ease or own space in a building in New Jersey. The space shall be sufficient to house all records” As such, it is insufficient to merely have a registered agent in this State.

Also relevant to this matter is the initial registration application itself. The application is 5 pages long, excluding the instructions. The application requests certain information from the applicant, including contact information, what type of registration the applicant is seeking, the corporate structure, and regulatory information. It also asks the applicant to submit an internet website information disclosure form. If the applicant is seeking registration as an EC, the applicant must list its EA registration number if it is already registered. In addition, an EC applicant must provide the name, address, and telephone number of its New Jersey office as required by N.J.A.C. 14:4-5.11(b) and -5.2(b). The application instructions state that EC applicants must also submit a \$10,000 surety bond that will be maintained throughout the period of registration.

The application also inquires about adverse actions. Specifically, the application asks:

...

8. Has the applicant or any key operating personnel, officers, directors, partners, owners ever been under investigation in New Jersey or any other state, or federal jurisdiction, in connection with the sale or delivery of electricity or natural gas?

10. Has the applicant or any key operating personnel, officers, directors, partners or owners ever had a license, or right to engage in business or profession, revoked, denied, suspended or restrained by any agency in New Jersey or any other state, or by the Federal Government, in connection with the sale or delivery of electricity or natural gas?

11. Has the applicant or any key operating personnel, officers, directors, partners or owners of your organization ever been subject to any disciplinary proceeding in connection with a license or right to engage in any business or profession in New Jersey, any other state, or by the Federal Government in connection with the sale or delivery of electricity or natural gas?

...

13. Has the applicant or any of the operating personnel, officers, directors, partners, or owners ever been investigated or involved as a defendant in any regulatory proceeding?

...

FACTUAL AND PROCEDURAL HISTORY

On February 25, 2013, SUMC filed an initial application. In this certified application, SUMC asked to be an EA and an EC. SUMC had answered "yes" to Question Nos. 8, 10, 11, and 13. SUMC explained that there was an issue in Pennsylvania and that there was a lawsuit in Texas against a former employee. On September 18, 2013, the Board approved SUMC's registrations as an EA, EC, and PA (EA-0257, EC-0079, and PA-0144 respectively), which expired on September 17, 2014.

On March 1, 2016, SUMC contacted Staff to obtain a copy of its 2013 application, which Staff forwarded. On March 10, 2016, SUMC filed the first of several initial registration applications. In this certified application, SUMC asked to be an EA and an EC. SUMC did not submit the

filing fee and did not submit a surety bond. Regarding the office requirement, SUMC listed the West Trenton address of its registered agent, Business Filings Incorporated, but did not submit the address of its New Jersey office. SUMC answered "no" for Question Nos. 10, 11, and 13 and answered "yes" to Question No. 8.

On April 11, 2016, the Board received the filing fee in the amount of \$500. The check was accompanied with the first page of the application. However, SUMC used its own application form, i.e., on SUMC's letterhead, as opposed to the Board approved form. In this one page filing, SUMC asked to be an EA and/or PA.

On April 18, 2016, SUMC filed an uncertified application using its own application form on SUMC's letterhead. In this uncertified application, SUMC asked to be an EA and/or PA. Although it did not indicate that it was seeking to be registered as an EC, it submitted a \$10,000 surety bond, for the term of March 16, 2016 through March 15, 2017. For Question Nos. 8, 10, and 11, SUMC answered "no." For Question No. 13, SUMC answered "yes." For Question No. 14, it indicated that "this is our first attempt at registration with this Board." SUMC listed its registered agent's address for its office. SUMC did not include the internet website information disclosure form.

In an email exchange on July 13, 2016, Board Staff asked SUMC whether it was operating as an EA and EC since its registrations had expired on September 17, 2014. On that date, SUMC replied, "at that point, we immediately suspended all marketing campaigns in the state of NJ and we have held off up to the present time. We are looking forward to re-establishing our registration."

Based on the differing responses in the foregoing applications, on August 30, 2016, Staff advised SUMC that it needed to submit an amended, error-free application.

On December 22, 2016, SUMC filed another initial registration application. In this certified application, SUMC asked to be an EA and an EC. A \$10,000 surety bond was submitted for the term of March 16, 2016 through March 15, 2017. SUMC answered "no" to Question Nos. 8, 10, 11, and 13. It again listed its registered agent's address as its office.

On March 2, 2017, SUMC submitted a revised answer to Question No. 13, changing its answer to "yes." SUMC explained that there was a Pennsylvania action originated by a former employee. However, it did not resubmit a certification or full application. On March 6, 2017, SUMC submitted a corrected page one of the application, which showed that only EA was selected. This first page correction was submitted by itself and not accompanied with subsequent pages of the application form.

SUMC's surety bond expired on March 15, 2017.

On April 11, 2017, SUMC filed another application. In this certified application, SUMC checked "no" in response to the question asking if the application was also for EC. It answered "yes" to Question Nos. 8, 10, 11, and 13. It listed the address of its registered agent as its office address.

On September 11, 2017, Staff found SUMC's website, which contained the following statement:

New Jersey Electricity Deregulation and Natural Gas Deregulation [SUMC] is ready to assist your company in negotiating the best electricity and natural gas contracts possible in New Jersey. Please call one of our Energy Consultants at 866-85-SEVEN or complete our [online form](#). [SUMC's] staff of energy consultants are here to help you get the most benefit of New Jersey electricity and natural gas deregulation.

[www.sevenutility.com/NJderegtext.html]²

Relevant to SUMC's responses to the application questions concerning adverse matters, is an investigation conducted by the Public Utility Commission of Pennsylvania ("PAPUC"). On May 12, 2011, SUMC filed an application for approval to supply electricity or generation services as a broker/consultant³ engaged in the business of supplying electricity to the public in Pennsylvania. On December 20, 2012, the PAPUC issued an Opinion and Order, which among other things, denied SUMC's application, finding that SUMC omitted several litigation matters and affiliation information in its application. In addition, the PAPUC found that SUMC was acting as a broker/consultant without a valid license.

DISCUSSION AND FINDINGS

Pursuant to N.J.S.A. 48:3-78(i), N.J.A.C. 14:4-5.1(f), N.J.A.C. 14:4-5.8(a), N.J.A.C. 14:4-5.9(b)(3), and N.J.A.C. 14:4-5.11(a), SUMC cannot operate, act, or represent itself as an EA, PA, and/or EC without a valid and approved EA, PA, or EC registration. As more fully described above, SUMC's initial EA, EC, and PA registrations, EA-0257, EC-0079, and PA-0144, were valid for one year and expired on September 17, 2014. SUMC did not renew these registrations with the Board before they expired on September 17, 2014. Pursuant to N.J.A.C. 14:4-5.9(b)(3), SUMC's previous registrations lapsed and SUMC is precluded from representing itself as an EA, PA, and/or EC until a new application has been approved. Accordingly, the Board **FINDS** that SUMC's registrations expired on September 17, 2014. The Board **FURTHER FINDS** that SUMC does not have a valid and approved registration as an EA, a PA, or as an EC.

In addition, the applications which SUMC submitted in 2016 and 2017 had conflicting information on whether it was seeking to register as an EA, a PA and/or an EC. For example, in its March 10, 2016 application, SUMC indicated that it was seeking EA, PA, and EC registrations, but it failed to include a surety bond as required by N.J.A.C. 14:4-5.11(b)(2). With its April 18, 2016 application, SUMC included a \$10,000 surety bond with a term of March 16, 2016 to March 15, 2017, but SUMC had indicated in that application that it was seeking an EA and/or PA registration and not an EC registration. SUMC also failed to maintain a valid New Jersey office. In its March 10, 2016, December 22, 2016, and April 11, 2016 applications, SUMC listed the West Trenton address for its registered agent, Business Filings Incorporated. This address is not a valid office as required under N.J.A.C. 14:4-5.11(b)(3). Therefore, the Board **FINDS** that SUMC does not satisfy the requirements to obtain an EC registration as it does not have a valid bond and does not maintain a valid New Jersey office.

² As of November 8, 2017, SUMC's website page continues to advertise its EA and EC services in New Jersey.

³ A "broker" or "marketer" is "an entity, licensed by the PAPUC, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy." 66 Pa.C.S. 2803.

Moreover, despite SUMC's representations that it had suspended all marketing since its registrations had expired, a September 11, 2017 screenshot of its website, demonstrates that it was representing itself as an EC in this State. The screenshot also reflects that SUMC was marketing its services by the following statements: "[SUMC] is ready to assist your company in negotiating the best electricity and natural gas contracts possible in New Jersey" and [SUMC's staff of energy consultants are here to help you get the most benefit of New Jersey electricity and natural gas deregulation." Accordingly, the Board **FINDS** that SUMC has been operating, acting, or representing itself as an EA, PA, and an EC without a valid EA, PA, and/or EC registration as required by N.J.S.A. 48:3-78(i), N.J.A.C. 14:4-5.1(f), N.J.A.C. 14:4-5.1(g), N.J.A.C. 14:4-5.8(a), N.J.A.C. 14:4-5.9(b)(3), and N.J.A.C. 14:4-5.11.

Beginning in March 2016, SUMC filed a series of initial applications. Although the application requires that the applicant provide a certification under oath stating that the information contained in the application was accurate, SUMC provided inconsistent and untruthful answers to Question Nos. 8 (which asked about any investigation in any jurisdiction in connection with the sale or delivery of electricity or natural gas investigation); 10 (which asked whether a license, or right to engage in business or profession, had been revoked, denied, suspended or restrained by any jurisdiction, in connection with the sale or delivery of electricity or natural gas), 11 (which asked about any disciplinary proceeding in connection with a license or right to engage in any jurisdiction in connection with the sale or delivery of electricity or natural gas), and 13 (which asked whether they had ever been investigated or involved as a defendant in any regulatory proceeding). Specifically:

- By application filed on March 10, 2016, SUMC answered "no" for Question Nos. 10, 11, and 13. However, it answered "yes" to Question No. 8.
- By application filed on April 18, 2016, for Question Nos. 8, 10, and 11, SUMC answered "no." For Question No. 13, SUMC answered "yes."
- By application filed on December 22, 2016, SUMC answered "no" to Question Nos. 8, 10, 11, and 13.
- By application filed on March 2, 2017, SUMC submitted a revised answer to Question No. 13, changing its answer to "yes" and providing an explanation.
- By application filed on April 11, 2017, SUMC answered "yes" to Question Nos. 8, 10, 11, and 13.

Based on the above, the Board **FINDS** that SUMC provided inconsistent answers to Question Nos. 8, 10, 11, and 13. The Board **FURTHER FINDS** that SUMC has misrepresented to the Board that it was not investigated by PAPUC, that it was not subject to a disciplinary proceeding in PA, that it was not the defendant in a regulatory proceeding, and that the PAPUC had denied its license application. Specifically, the PAPUC denied SUMC's application to be a broker/consultant in 2012 because SUMC was acting as a broker/consultant without a valid license and because it failed to provide litigation information on the application. However, in its New Jersey applications, SUMC at times certified to the Board that its application was never denied, that it was never investigated nor that it was never involved in a regulatory proceeding in another jurisdiction.

The Board has the authority to impose financial penalties or to deny an application. N.J.S.A. 48:3-83 and N.J.A.C. 14:4-5.13(a). In considering the appropriate sanction for a violation of the statutes and the rules, the Board looks at: any good faith efforts made by the violator; the gravity of the violation; the number of past violations; and the appropriateness of the sanction. N.J.A.C. 14:4-5.13(b). Here, SUMC was given an opportunity to submit an amended, error free

application to resolve the inconsistent answers provided in its various applications. Notwithstanding said opportunity, SUMC's December 2016 application again omitted any reference to the PAPUC proceeding when SUMC continued to answer "no" to Question Nos. 8, 10, 11, and 13. And, in the very next submission in March 2017, SUMC only revised its response to Question 13. In addition, although SUMC had made representations that it had ceased all marketing, SUMC's website shows that SUMC is still actively marketing itself as a registered EC, PA, and/or EC in New Jersey. Moreover, the Board cannot ignore the gravity of SUMC's actions in representing itself an EC when it has no valid New Jersey registration nor SUMC's misrepresentations concerning the PAPUC proceeding when the PAPUC had denied SUMC's license, because of SUMC's omissions in that application regarding litigation matters and because it found that SUMC was acting as a broker/consultant without a valid license.

For these reasons, the Board **ORDERS** that upon the filing of a Final Order in this matter, the Findings above shall be deemed final, and the following sanctions imposed:

- SUMC's application to be an EA, a PA and/or an EC in this State is **DENIED**.
- SUMC is hereby **PROHIBITED** from submitting an initial EA, PA, and/or EC registration application for two (2) years from the effective date of this Order.
- SUMC is hereby **PROHIBITED** from having customer specific information.
- The Board **ORDERS** SUMC to cease immediately all marketing to New Jersey customers and from arranging the retail sale of electricity, electric-related services, gas supply or gas-related services.
- The Board **FURTHER ORDERS** SUMC not to represent itself or act as an EA, PA and/or EC.
- The Board **FURTHER ORDERS** SUMC to provide Staff with a certification that it has ceased these marketing activities within ten (10) days of the effective date of the Final Order.
- The Board **FURTHER ORDERS** that within ten (10) days of the effective date of the Final Order, SUMC shall provide Staff with a list of all New Jersey customers from September 18, 2014 to the present and to notify all current New Jersey customer(s), if any, that it does not have a valid registration as an EA, PA, and/or EC.

This Initial Order shall be subject to finalization by the Board at its next regularly scheduled agenda meeting unless within twenty (20) days of the effective date of this Order SUMC requests a modification or dismissal of the above Findings by:

- a. Submitting a written request for modification or dismissal to the Secretary of the Board and to Alice Bator, Director, Division of Audits, Board of Public Utilities, 44 South Clinton Avenue, 3rd Floor, Suite 314, P.O. Box 350, Trenton, New Jersey 08625-0350.
- b. Setting forth in writing any and all reasons why said Findings should be modified or dismissed.
- c. Submitting any and all documents or other written evidence supporting SUMC's consideration and reasons therefor or offered in mitigation of penalty.
- d. Any submissions will be reviewed by the Board and the Board will thereafter determine whether further proceedings are necessary. If no material discrepancies are raised through a supplemental submission during the thirty-day period, and if the Board is not persuaded that the submitted materials merit further consideration, a Final Order will be entered.

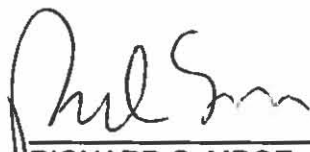
In the event that SUMC's submissions establish a need for further proceedings, SUMC shall be notified with regard thereto. In the event that an evidentiary hearing is ordered, the Findings above shall serve as notice of the factual and legal allegations in such proceeding. Further, in the event a hearing is held and upon review of the record, the Board shall not be limited to the findings, conclusions, and sanctions stated herein.


In the event that the Board receives no written submission from SUMC within 20 days of the effective date of this Order, the Initial Order shall be subject to finalization at the Board's next regularly scheduled agenda meeting.

This Initial Order shall be effective on December 1, 2017.

DATED: 11/21/17

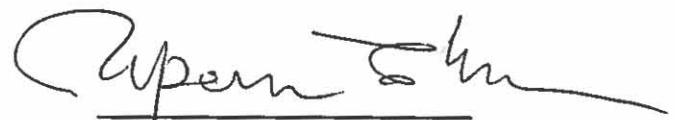
BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

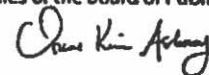

MARYANNA HOLDEN
COMMISSIONER


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 J. ANDREW ASSOCIATES, INC. D/B/A SEVEN – UTILITY
MANAGEMENT CONSULTANTS, LLC

DOCKET NOS. EE16050429L & GE16050430L

SERVICE LIST

Kyle Bray, Director
J. Andrew Associates, Inc. d/b/a Seven – Utility
Management Consultants, Inc.
16430 Rhinefield Street
Tomball, TX 77377
info@sevenutility.com

Mary Patricia Keefe, Esq.
Vice President
Regulatory Affairs and Business Support
Mid-Atlantic
Elizabethtown Gas Company
520 Green Lane
Union NJ 07083
pkeefe@southernco.com

Steven R. Cocchi
Vice President, Strategy and Growth
South Jersey Gas Company
One South Jersey Plaza
Route 54
Folsom, NJ 08037
SCocchi@sjindustries.com

Steven Huber
Manager- Energy Supply and Administration
PSE&G
80 Park Plaza
Newark, NJ 07012
Steven.Huber@pseg.com

Roger Pederson
Manager Regulatory Affairs – Atlantic City
Electric
Pepco Holdings, LLC – An Exelon Company
Mailstop 63ML38
5100 Harding Highway
Mays Landing, NJ 08330-2239
roger.pedersen@pepcoholdings.com

Irene Kim Asbury, Esq.
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
Irene.asbury@bpu.nj.gov

Alice Bator, Director
Division of Audits
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
alice.bator@bpu.nj.gov

William Foley, Chief
Bureau of Management Audits
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
william.foley@bpu.nj.gov

Valencia Hunt, Auditor 2
Division of Audits
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
Valencia.Hunt@bpu.nj.gov

Dante Cusi, Auditor 3
Division of Audits
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
Dante.Cusi@bpu.nj.gov

Kevin Connelly, Staff Analyst
Rate and Regulatory Affairs - NJ
Jersey Central Power & Light Company
300 Madison Avenue
PO Box 1911
Morristown, NJ 07962
kconnelly@firstenergycorp.com

Margaret Comes, Esq.
Associate Counsel
Rockland Electric Company
Room 1815-S
4 Irving Place
New York, NY 10003
COMESM@coned.com

Andrew K. Dembia, Esq.
Regulatory Affairs Counsel
New Jersey Natural Gas Company
1415 Wyckoff Road
P.O. Box 1464
Wall, New Jersey 07719
adembia@njng.com

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
sbrand@rpa.state.nj.us

Caroline Vachier, DAG
Department of Law & Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029
caroline.vachier@law.njoag.gov

Emma Yao Xiao, DAG
Department of Law & Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029
emma.xiao@law.njoag.gov