



Agenda Date: 1/31/18
Agenda Item: 1A

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 J. ANDREW ASSOCIATES, INC.)	FINAL ORDER
D/B/A SEVEN – UTILITY MANAGEMENT)	
CONSULTANTS, LLC)	DOCKET NOS. EE16050429L
)	and GE16050430L

Parties of Record:

Kyle Bray, Director, J. Andrew Associates, Inc. d/b/a Seven – Utility Management Consultants, Inc.

BY THE BOARD:

This matter involves the application filed by J. Andrew Associates, Inc. d/b/a Seven – Utility Management Consultants, LLC (“SUMC”) seeking an initial registration to be an energy agent, a private aggregator, and/or an energy consultant in New Jersey.

BACKGROUND

The New Jersey Board of Public Utilities (“Board”), pursuant to the Electric Discount and Energy Competition Act (“EDECA”), N.J.S.A. 48:3-49 *et seq.*, specifically, N.J.S.A. 48:3-78, has authority and jurisdiction over all energy agents in New Jersey. Among other things, the Board registers energy agents (“EA”). N.J.S.A. 48:3-78. EDECA defines an EA as “a person that is duly registered pursuant to the provisions of [EDECA], that arranges the sale of retail electricity or electric related services, or retail gas supply or gas related services, between government aggregators or private aggregators and electric power suppliers or gas suppliers, but does not take title to the electric or gas sold.” N.J.S.A. 48:3-51 (definition of “energy agent”). See also, N.J.A.C. 14:4-1.2. A “private aggregator” (“PA”) is “a non-government business or non-profit organization authorized to operate in New Jersey, that combines the energy loads of multiple end users, and enters into a contract with an electric power supplier for the purchase of electric generation service or with a gas supplier for gas supply service on behalf of those end users. A private aggregator does not take title to the energy involved in the transaction.” N.J.A.C. 14:4-1.2.

The Board’s implementing rules are found at N.J.A.C. 14:4-1.1 *et seq.* (the “Regulations”). Pursuant to N.J.A.C. 14:4-5.1(f), “[a] person shall not arrange the retail sale of electricity, electric-related services, gas supply or gas-related services between an energy aggregator and 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).

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

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.

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) and (c). 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

A more detailed factual history was discussed in the Board's November 21, 2017 Initial Order in this matter ("Initial Order"). The Initial Order is subject to finalization by the Board unless SUMC requested a modification or dismissal of the Board's Findings in writing.

In the Initial Order, the Board found that SUMC's initial EA, EC, and PA registrations, EA-0257, EC-0079, and PA-0144, expired on September 17, 2014. Therefore, the Board found that SUMC does not have a valid and approved registration as an EA, a PA, or as an EC.

In addition, the Board found that SUMC does not satisfy the requirements to obtain an EC registration as it does not have a valid bond as required by N.J.A.C. 14:4-5.11(b)(2) since the bond expired on March 15, 2017 and because SUMC does not maintain a valid New Jersey office as required under N.J.A.C. 14:4-5.2(b) and N.J.A.C. 14:4-5.11(b)(3).

Moreover, the Board found 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.

The Board found that SUMC provided inconsistent 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).

The Board also found that SUMC has misrepresented to the Board concerning the investigation and regulatory proceeding by the Public Utility Commission of Pennsylvania ("PAPUC"). In its New Jersey applications, SUMC at times certified to the Board that its application was never denied by PAPUC, that it was never investigated nor that it was never involved in a regulatory proceeding in another jurisdiction.

On December 7, 2017, SUMC's Director, Kyle Bray, emailed Board Staff in acknowledgement of the Initial Order ("Response"). In the Response, Mr. Bray did not dispute the Board's Findings. Mr. Bray stated that he has instructed the removal of any reference to New Jersey on SUMC's website. Mr. Bray also represented that he is working to provide Staff with a list of New Jersey customers, if any.

As of January 9, 2018, SUMC's New Jersey specific website has been removed. However, SUMC has not submitted any customer information.

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.

The Board has reviewed and considered SUMC's Response, and has determined that further proceedings are not necessary as no material factual discrepancies have been raised. Accordingly, the Initial Order should be finalized without any modification.

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 continued to submit inconsistent responses on its applications. In addition, although SUMC had made representations that it had ceased all marketing, SUMC's website at the time of the Initial Order showed that SUMC was 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 as 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.

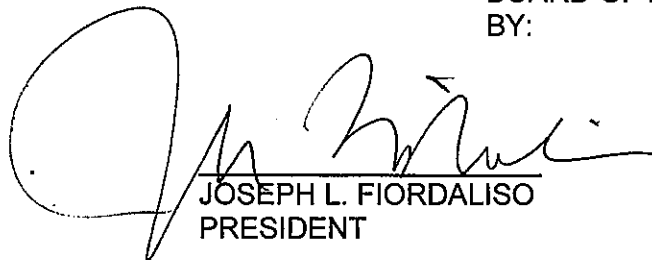
For these reasons, the Board **HEREBY FINALIZES** the Initial Order and **ORDERS** the following:

- 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 by February 20, 2018.
- The Board **FURTHER ORDERS** that by February 20, 2018, 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.

The effective date of this Order is February 10, 2018.

DATED: 1/31/18

BOARD OF PUBLIC UTILITIES
BY:



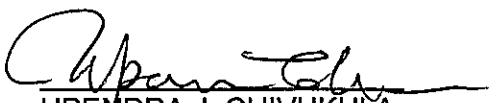
JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPEENDRA J. CHIVUKULA
COMMISSIONER



RICHARD S. MROZ
COMMISSIONER

ATTEST: 
CARMEN D. DIAZ
ASSISTANT BOARD SECRETARY

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
kbray@sevenutility.com

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

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

Alice Bator, Director
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
alice.bator@bpu.nj.gov

William Foley, Chief
Bureau of Management Audits
New Jersey 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

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

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

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