



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/

ENERGY

IN THE MATTER OF COMMERCIAL UTILITY)	DECISION AND ORDER
CONSULTANTS, INC. – REQUEST FOR WAIVER)	GRANTING WAIVER REQUEST
RELATED TO GOVERNMENT ENERGY)	
AGGREGATION SUBMITTALS FOR THE TOWNSHIP)	
OF BLOOMFIELD AND THE CITY OF LINDEN)	
PURSUANT TO N.J.A.C. 14:1-1.2 CONSTRUCTION)	
AND AMENDMENT)	DOCKET NO. EW18030345

Parties of Record:

Raul Garcia, Esq., Post, Polak, Goodsell & Strauchler, P.A. on behalf of Commercial Utility Associates

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

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("Board" or "BPU") considers the letter petition ("Letter Petition") filed by Commercial Utility Consultants, Inc. ("CUC") requesting a waiver of the Board's Government Energy Aggregation ("GEA") regulations at N.J.A.C. 14:4-6.6(i).

BACKGROUND

On March 27, 2018, CUC filed the Letter Petition with the Board seeking a waiver from compliance with N.J.A.C. 14:4-6.6(i) as applied to the GEA programs for which it serves as the energy agent on behalf of the Township of Bloomfield and the City of Linden (collectively, "GEA Programs"). N.J.A.C. 14:4-6.6(i) requires the submission, for review by Board Staff ("Staff") and the New Jersey Division of Rate Counsel ("Rate Counsel"), of the draft bidding documents for a GEA program. While not cited in CUC's request, Board rules also require CUC to submit for review by Staff and Rate Counsel its draft public opt-out notice to residents of those municipalities participating in the GEA programs. N.J.A.C. 14:4-6.6(t).

Several years ago, CUC submitted the draft bidding documents for the first term of the GEA Programs and received comments from Staff and Rate Counsel. However, in 2017, CUC renewed the GEA Programs without submitting the draft bidding documents or the draft public notice to Staff or Rate Counsel for review. Rate Counsel and Staff also did not receive CUC's draft public opt-out notice for either of the GEA Programs.

For each of these recent GEA Programs, a supplier has been selected and has begun serving customers. CUC provided final versions of the bidding documents and the public opt-out notice with its Letter Petition.

CUC asserts that CUC's staff misinterpreted the rules related to establishing a GEA program and that this resulted in its failure to submit the required documents to the Board and Rate Counsel for review prior to renewing the GEA Programs. According to its Letter Petition, CUC mistakenly concluded that because it had submitted draft bidding documents several years ago, when these programs were first established and the first third party supplier ("TPS") was selected to serve the customers for each of these programs, there was no obligation to submit draft bidding documents or opt-out notices associated with the selection of any future suppliers to serve customers in these programs after the first supply contract ended.

On May 30, 2018, Rate Counsel filed comments on the Letter Petition. Rate Counsel stated that government energy aggregators are statutorily required to submit draft bid documents for review to Staff and Rate Counsel pursuant to N.J.S.A. 48:3-94(b)(1) and that N.J.S.A. 48:3-83 establishes the penalties for failure to do so. Accordingly, Rate Counsel asserted that the BPU lacks authority to waive CUC's statutory duty to submit draft bid documents for review. However, Rate Counsel noted that the Board may relax or permit deviations from its own rules in special cases and for good cause shown. N.J.A.C. 14:1-1.2(b). The Board may waive section(s) of its rules if full compliance with the rules would adversely affect ratepayers, the ability of a regulated utility to continue to render safe, adequate, and proper service, or the interests of the general public. N.J.A.C. 14:1-1.2(b). Rate Counsel sees merit to granting CUC's waiver request due to concern for the ratepayers participating in the Bloomfield and Linden GEA programs. Both GEA Programs are currently running with ratepayers enrolled and those ratepayers are relying on the rates produced by the programs. Those ratepayers, and the governing bodies of those municipalities, relied upon CUC's energy agent services to comply with applicable Board rules and should not face adverse consequences for their reliance.

For the above reasons, under the circumstances of this matter, Rate Counsel does not object to the Board waiving the requirements to submit draft bidding documents for review by Staff and Rate Counsel at least 30 days before advertising for bids, as-per N.J.A.C. 14:4-6.6(i), and to submit a draft public notice with at least 15 days for review by Staff and Rate Counsel, as per N.J.A.C. 14:4-6.6(t). Rate Counsel also does not object to the Board accepting, as within time, CUC's submission of its draft bidding documents and draft public notice for the GEA Programs at this time despite failing to do so in accordance with the time frames set forth in N.J.S.A. 48:3-94(b)(1) and (c) and N.J.A.C. 14:4-6.6(i) and (t). However, Rate Counsel recommended that any Board Order approving CUC's request include conditions to ensure this situation does not reoccur.

DISCUSSION AND FINDINGS

N.J.A.C. 14:4-6.6(i) requires the lead agency of a GEA program to provide a copy of the draft bidding documents to the Board and to Rate Counsel for their comment at least 30 days prior to advertising for bids. N.J.A.C. 14:4-6.6(t) requires the lead agency of a GEA program to provide a copy of the draft opt-out notice that will be used to notify customers of the GEA program. When a lead agency or its delegated energy consultant submits the draft bidding documents that will be used to select the first supplier for a GEA program, this does not alleviate the obligation to submit the draft bidding documents that will be used to select subsequent suppliers to serve customers once the first supply contract has ended. Likewise, when a lead agency or its delegated energy consultant submits draft opt-out notices for a GEA program, this does not alleviate the obligation to submit the draft opt-out notice that will be used when a new supplier is selected that reflects the name of the new supplier and the terms of service under the new supplier.

While not intentional, CUC did fail to comply with the Board's GEA regulations in this case. CUC's failure was based upon its misinterpretation of the regulations. Further, as Rate Counsel stated, there are merits to granting CUC's waiver request due to concern for the ratepayers participating in the Bloomfield and Linden GEA Programs. The Board is persuaded by Rate Counsel's argument that those ratepayers and the governing bodies of those municipalities relied upon CUC's energy agent services to comply with applicable Board rules and should not face adverse consequences for their reliance upon CUC.

Accordingly, the Board **ACCEPTS** as within time, CUC's submission of its draft bidding documents and draft public notice for the GEA Programs at this time despite CUC's failure to do so in accordance with the time frames set forth in the regulatory scheme. Further, the Board **GRANTS** a waiver of N.J.A.C. 14:4-6.6(i) and (t) for CUC, subject to the below conditions:

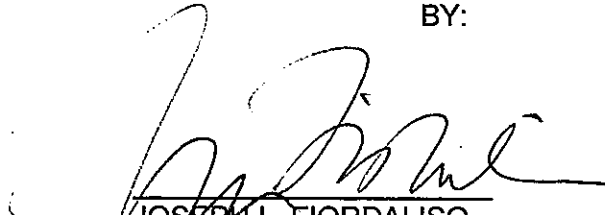
1. This waiver applies only to this Letter Petition. Any other failure to comply with the statutory and regulatory requirements applicable to any GEA program by CUC, or any other entity, shall be subject to the provisions in Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49, et seq., and in the Board's rules.
2. CUC shall comply with all statutory and regulatory requirements applicable to any GEA program for which it serves as a licensed energy agent.
3. CUC shall notify the Board and Rate Counsel if it anticipates any difficulty complying with any statute or Board rule applicable to any GEA program or its services as a licensed energy agent.
4. Rate Counsel and Staff retain all rights to review and comment upon all future documents material to GEA programs or CUC's services as a licensed energy agent in appropriate proceedings.

This Order shall not affect nor in any way limit the exercise of the authority of the Board or of this State, in any future petition, request or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or any other matter affecting CUC or any GEA program.


This Order shall be effective on August 4, 2018.

DATED: 7/25/18

BOARD OF PUBLIC UTILITIES
BY:




JOSEPH L. FIORDALISO
PRESIDENT



MARYANNA HOLDEN
COMMISSIONER



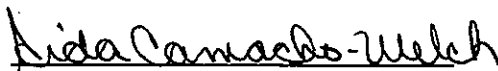
DIANNE SOLOMON
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UPENDRA J. CHIVUKULA
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ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

! HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

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TOWNSHIP OF BLOOMFIELD AND THE CITY OF LINDEN PURSUANT TO N.J.A.C. 14:1-1.2
CONSTRUCTION AND AMENDMENT

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