



Agenda Date: 02/19/20
Agenda Item: 1A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE ALLEGED FAILURE OF)
NATIONAL GAS AND ELECTRIC, LLC TO COMPLY)
WITH CERTAIN PROVISIONS OF N.J.S.A. 48:3-78 ET)
SEQ. AND THE NEW JERSEY ADMINISTRATIVE)
CODE, N.J.A.C. 14:4-1.1 ET SEQ.)

ORDER ACCEPTING OFFER
OF SETTLEMENT

DOCKET NO. EO20020094

Parties of Record:

Gary Lancaster, Esq., Executive Vice President and General Counsel on behalf of National Gas & Electric, LLC

BY THE BOARD:

By this Decision and Order the New Jersey Board of Public Utilities (“Board”) considers an Offer of Settlement of any and all potential violations under the Electric Discount and Energy Competition Act (“EDECA”, or “Act”), N.J.S.A. 48:3-49 et seq. and more specifically, N.J.S.A. 48:3-78, N.J.S.A. 48:3-79, and N.J.A.C. 14:4-1.1 et seq. (the “Regulations”) by National Gas & Electric, LLC (“NGE”), who has been operating as a third party supplier to provide electric power and natural gas services to residential and small commercial customers in New Jersey.

BACKGROUND

Pursuant to EDECA, the Board has authority and jurisdiction over all electric power suppliers and gas suppliers (collectively, “third party suppliers” or “TPS”) in New Jersey. Among other things, the Board licenses third party suppliers. N.J.S.A. 48:3-78(a) and N.J.S.A. 48:3-79(a) require that a person obtain electric and gas supplier licenses before providing electric and gas supply services to retail customers in this State. See also, N.J.A.C. 14:4-5.1(d)(1). Moreover, pursuant to N.J.S.A. 48:3-78(b) and N.J.S.A. 48:3-79(b), electric and gas supplier licenses are only valid for one year from the date of issuance unless timely renewals are filed.¹ See also, N.J.A.C. 14:4-5.6 and N.J.A.C. 14:4-5.7.

In addition, pursuant to EDECA, the Board requires that a TPS provide evidence of financial integrity, meet all reliability standards, and maintain a surety bond. See N.J.S.A. 48:3-78(c), N.J.S.A. 48:3-79(c), N.J.S.A. 48:3-79(f), N.J.A.C. 14:4-5.2, and N.J.A.C. 14:4-5.4. Pursuant to

¹ The energy licensing and registration laws were amended by P.L. 2019, c. 100-101. The amendments have an operative date of July 9, 2019.

the Act, the Board, among other things, is vested with investigative power, N.J.S.A. 48:3-81, alternative disciplinary power, N.J.S.A. 48:3-82, and authority to assess civil penalties, N.J.S.A. 48:3-83.

Pursuant to N.J.A.C. 14:4-5.1(d), a person without an electric and/or gas supplier license cannot: (1) provide electric and/or gas supply service or offer to provide electric and/or gas supply service; (2) advertise or market electric and/or gas supply service; (3) enroll customers for electric and/or gas supply service; or (4) contract or otherwise assume legal responsibility for electric and/or gas supply service. Moreover, no TPS may submit a change order to a local distribution company ("LDC") unless the change order is transmitted through an EDI system. See N.J.A.C. 14:4-2.3(g) and N.J.A.C. 14:4-2.3(b).

N.J.A.C. 14:4-5.6(a) and N.J.A.C. 14:4-5.7(a) set forth the obligation of the TPS licensee to timely file a renewal application. Specifically, the licensee must file a complete renewal application at least thirty (30) days before the expiration date of the existing license. If a timely renewal application is not submitted, the initial license expires at the end of its term. N.J.A.C. 14:4-5.7(b). In the event a licensee does not submit a renewal application within thirty (30) days before the end of the license term, pursuant to N.J.A.C. 14:4-5.6(b)-(d), the licensee must submit a new license application within forty-five (45) days after the end of the licensee's initial term, or request an extension of the forty-five (45)-day time period based on extraordinary hardship, during which time the licensee must continue servicing existing customers until directed otherwise by Board Staff of the Division of Audit ("Staff").

As a TPS, NGE is subject to the jurisdiction of the Board and must comply with EDECA and the Regulations.

DISCUSSION AND FINDINGS

NGE's initial TPS licenses, License Nos. ESL-0181 and GSL-0157, was effective for a renewal term of June 22, 2018 through June 21, 2019. NGE did not renew this license with the Board before it expired on June 21, 2019. NGE continued to provide electric and gas service to existing residential and commercial customers in New Jersey. Through administrative inadvertence, NGE did not file a timely application for a renewal of its license. On July 2, 2019, Staff directed NGE to file a new initial license application, as required, rather than a renewal license application. NGE did file such an initial application, which was received by the Board on July 8, 2019.

Staff has conducted an investigation regarding NGE's compliance with the Act and the Regulations. Staff has alleged that NGE failed to comply with the licensing and renewal requirements under the Act and the Regulations, including N.J.S.A. 48:3-78, N.J.S.A. 48:3-79, N.J.A.C. 14:4-5.1, N.J.A.C. 14:4-5.6, and N.J.A.C. 14:4-5.7.

NGE has responded promptly and effectively to all Staff requests during the investigation. Staff has determined that no complaints have been filed with the Board or the Division of Consumer Affairs against NGE by any of its New Jersey customers since NGE obtained its TPS renewal on June 22, 2018. In addition, NGE has at all times, since becoming licensed in New Jersey in 2016, maintained surety bonds as required by the BPU.

NGE stated that it has ceased all marketing and advertising activities and has not added new customers since notification of the lapse by the Board on July 2, 2019. NGE further claims that no customers were added after expiration, even prior to Board notice of the expiration. However, according to Jersey Central Power and Light Company, seven new customers were enrolled

from June 21, 2019 through July 30, 2019. In addition, electric and gas service plan options were still available via NGE's searching tool on its website after notice of the expired licenses was sent by the Board.

As a result of correspondence and telephone conversations, NGE submitted an Offer of Settlement ("Offer") (attached) regarding its alleged violations. In the Offer of Settlement, NGE did not admit to any violations and made a monetary offer in the amount of \$5,000.00 to resolve all issues concerning the violations alleged by Staff.

The Board has reviewed the matter and **HEREBY FINDS** that the Offer represents a reasonable settlement of the alleged violations. Therefore, the Board **HEREBY ACCEPTS** the Offer of Settlement proffered by NGE. The Board will **CONSIDER** under a separate docket number the initial application filed by NGE on July 8, 2019. The Offer of Settlement is accepted subject to the following conditions:

1. NGE will pay to the State of New Jersey the sum of \$5,000.00 in full and final settlement of any and all potential violations under the Act and/or the Regulations which have been or could have been alleged by the Board or the Staff against NGE, up to and including January 23, 2020.
2. The Offer of Settlement shall not relieve NGE or its parents, affiliates, subsidiaries or successors, from any violations, if any, of the Act, the Regulations, or Board Orders that may occur after January 23, 2020.
3. Any future repeated violation(s) of the Act, the Regulations, or Board Orders by NGE or its parent, affiliates, subsidiaries, or successors that may now or in the future provide energy services that is the subject of this Offer of Settlement, shall be deemed to be a second, third, or subsequent violation, as appropriate, pursuant to provisions of N.J.S.A. 48:3-83.
4. NGE will comply with all provisions of the Act and Regulations regarding TPS licensing requirements as set forth at N.J.S.A. 48:3-78, N.J.S.A. 48:3-79, and N.J.A.C. 14:4-5.6.
5. The execution of this Offer of Settlement shall not be relied upon by NGE or its affiliates, subsidiaries or successors in any attempt to mitigate any future claim that any such entity has violated the terms and conditions of the Act, the Regulations, or any Board Order.

The Board **FURTHER ORDERS** that no later than ten (10) days from the Effective Date of this Order, NGE shall pay the Settlement Payment of Five Thousand Dollars (\$5,000.00). Payment must be made out to the **TREASURER, STATE OF NEW JERSEY** and

Sent to: Jonathan Wallace, Interim Chief Fiscal Officer
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, New Jersey 08625-0350
Attn: Audits


*You must include a copy of this order with your check.


The Board's acceptance of the Offer of Settlement is for purposes of this proceeding only, addresses any and all allegations or potential allegations in the Offer of Settlement, and shall not be construed as limiting the Board's authority in any other matter affecting NGE or a successor company.

This Order shall be effective on February 29, 2020.

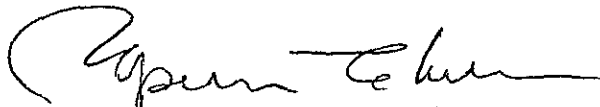
DATED: 2/19/20

BOARD OF PUBLIC UTILITIES
BY:


JOSEPH L. FIORDALISO
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER


ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
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 THE ALLEGED FAILURE NATIONAL GAS & ELECTRIC, LLC TO COMPLY WITH CERTAIN PROVISIONS OF N.J.S.A. 48:3-78 ET SEQ., AND THE NEW JERSEY ADMINISTRATIVE CODE, N.J.A.C. 14:4-1.1 ET SEQ.

**OFFER OF SETTLEMENT
DOCKET NO. EO20020094**

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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
DIVISION OF AUDITS**

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Telephone: (832) 217-1897

Attorney for National Gas & Electric, LLC

In the Matter of the Alleged Non-Compliance of National Gas & Electric, LLC with Certain Provisions of <u>N.J.S.A.</u> , 48: 3-78 <u>et seq.</u> and the New Jersey Administrative Code, <u>N.J.A.C.</u> 14: 4-1.1 <u>et seq.</u>	Offer of Settlement BPU Docket No. _____
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WHEREAS, National Gas & Electric, LLC (“NGE”) is a third-party supplier (“TPS”) in New Jersey, pursuant to the New Jersey Administrative Code, N.J.A.C. 14:4-5.1 and 14:4-5.2, providing electric power service under ESL-0181 and natural gas service under GSL-0157 to residential and small commercial customers; and

WHEREAS, as a TPS, NGE is subject to the jurisdiction of the Board of Public Utilities (the “Board” or “BPU”) pursuant to the Electric Discount and Energy Competition Act, New Jersey Statutes Annotated, N.J.S.A., 48: 3-78 et seq., and the New Jersey Administrative Code, N.J.A.C. 14: 4-1.1 et seq. (the “Regulations”).

WHEREAS, N.J.A.C. 14: 4-5.6(a) requires a licensee to timely submit any necessary license renewal applications in accordance with N.J.A.C. 14: 4-5.6 et seq.; and

WHEREAS, in the event a licensee does not submit a renewal application within thirty (30) days before the end of the license term, pursuant to N.J.A.C. 14: 4-5.6(b)-(d), the license must

submit a new license application within forty-five (45) days after the end of the licensee's initial term, or request an extension of the forty-five (45) day time period based on hardship, during which time the licensee must continue servicing existing customers until directed otherwise by Board Staff of the Division of Audit ("Staff"); and

WHEREAS, NGE submitted to Staff an initial license application on July 5, 2019; and

WHEREAS, NGE supplemented its license application and responded to questions and requests for additional documentation on July 31, 2019, and was contacted by a Deputy Attorney General, regarding the status of NGE's application for renewals of its electric and natural gas supplier license renewal applications on January 13, 2020; and

WHEREAS, Staff has investigated NGE's compliance with the Act and the Regulations;
and

WHEREAS, as a result of said investigation, Staff has alleged that NGE has failed to comply with:

- a. Licensing and renewal requirements under the Act; and
- b. Licensing and renewal requirements under the Regulations; and

WHEREAS, NGE has continued to provide electric power serviced and natural gas services to its customers at Staff's directions during the period its application was under review;
and

WHEREAS, NGE ceased to market, advertise, or add customers since July 2, 2019 pursuant to the Board letter of that date and, in fact, NGE had not been marketing, advertising, or adding customers since the expiration of its respective electric and natural gas TPSs on June 21, 2019; and

WHEREAS, NGE has responded promptly and effectively to all Staff requests; and

WHEREAS, no complaints were filed with the Board or with the Division of Consumer Affairs against NGE by any of its New Jersey customers in 2019; and

WHEREAS, NGE has maintained surety bonds as required by the BPU for retail electric power service and natural gas service at all times since becoming licensed; and

WHEREAS, Board Staff has reviewed the initial license renewal applications filed by NGE on July 5, 2019 and as supplemented on July 31, 2019; and

WHEREAS, NGE wishes to amicably resolve the issues raised by Staff without delay;

NOW, THEREFORE, NGE submits this Offer of Settlement as follows:

1. NGE will pay to the State of New Jersey the sum of Five Thousand Dollars (\$5,000.00) in full and final settlement of any and all potential violations under the Act and/or the Regulations that have been or could have been alleged by the Board or the Staff against NGE, up to and including the date of this Offer of Settlement.
2. At the next regularly scheduled Board agenda meeting, subject to scheduling connections, Staff agrees to recommend that the Board: (1) accept this Offer of Settlement, (2) approve the initial electric power license renewal application filed by NGE on July 5, 2019 as supplemented on July 31, 2019; and (3) approve the initial natural gas license renewal application filed by NGE on July 5, 2019 as supplemented on July 31, 2019.
3. The Parties agree that the Five Thousand Dollar (\$5,000.00) payment will be made within ten (10) days of the effective date of the Board Order adopting the terms of this Offer of Settlement.

4. This Offer of Settlement shall not relieve NGE or its parents, affiliates, subsidiaries or successors from any liability for violations, if any, of the Act, the Regulations, or Board Orders that may occur after the date of this Offer of Settlement.
5. NGE shall comply with all provisions of the Act and Regulations regarding TPS licensing renewal requirements as set forth in N.J.S.A., 48: 3-78 et seq. and in N.J.A.C. 14: 4-5.6.
6. The execution of this Offer of Settlement shall neither be deemed an admission by NGE or its affiliates, subsidiaries, or successors of any violation of the Act, the Regulations, or any Board Order, nor a determination by the Board or Staff that such a violation has occurred, nor shall Board approval of this Offer of Settlement be deemed a determination that a violation has occurred.
7. The execution of this Offer of Settlement shall not be relied upon by NGE or its affiliates, subsidiaries, or successors in any attempt to mitigate any future claim that any such entity has violated the terms and conditions of the Act, the Regulations, or any Board Order.

By:



Gary L. Lancaster, Esq.
Executive Vice President and General Counsel

Attorney for National Gas & Electric, LLC

**IN THE MATTER OF THE ALLEGED FAILURE OF NATIONAL GAS & ELECTRIC,
LLC TO COMPLY WITH CERTAIN PROVISIONS OF N.J.S.A. 48:3-78 ET SEQ., AND
THE NEW JERSEY ADMINISTRATIVE CODE, N.J.A.C. 14:4-1.1 ET SEQ.**

**OFFER OF SETTLEMENT
DOCKET NO. _____**

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Philip D. Murphy
Governor

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Lt. Governor

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President

Mary-Anna Holden
Commissioner

Dianne Solomon
Commissioner

Upendra Chivukula
Commissioner

Bob Gordon
Commissioner

February 19, 2020

Gary Lancaster
Asst. General Counsel
National Gas & Electric, LLC
One Gateway Center, Suite 2600
Newark, NJ 07102

Re: **Electric Power and Natural Gas Supplier Initial Licenses**
Docket Nos. EE19070804L and GE19070803L

Dear Mr. Lancaster:

In accordance with the Electric Discount and Energy Competition Act of 1999, N.J.S.A. 48:3-49 et seq., at its February 19, 2020 Agenda meeting, the New Jersey Board of Public Utilities (the "Board") voted to issue the Electric Power Supplier and Natural Gas Supplier Licenses, numbers ESL-0244 and GSL-0215, to National Gas & Electric, LLC. Pursuant to signed bills S.604 and S.605 (2018) [P.L. 2019, c. 100-101], your licenses may be renewed without expiring so long as a license renewal fee accompanied by an annual information update form is submitted to the Board within 30 days prior to your annual **anniversary date of February 19th**.

These licenses are effective February 19, 2020. These licenses and the rights thereunder are **Non-Transferable**.

This letter is not an endorsement of, nor is it intended for use in, the marketing promotions of the licensee. Licensees shall comply with all applicable laws and regulations, including the Electric Discount and Energy Competition Act, which prohibits the unauthorized change of a customer's energy provider and other fraudulent and illegal marketing activities.

If you have any questions, please contact Darren Erbe at (609) 292-1406.

Sincerely,

A handwritten signature in blue ink that reads "Aida Camacho-Welch".

Aida Camacho-Welch
Secretary of the Board

ACW/dee