



STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF GOOD)
ENERGY, L.P.: REQUEST FOR WAIVER) DECISION AND ORDER
RELATED TO GOVERNMENT ENERGY) GRANTING WAIVER REQUEST
AGGREGATION SUBMITTALS FOR THE)
TOWNSHIP OF SOMERDALE PURSUANT TO)
N.J.A.C. 14:1-1.2(b)) DOCKET NO. EW19121538

Parties of Record:

Eric H. Jaso, Esq., Spiro Harrison, on behalf of Good Energy, L.P.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

By this Decision and Order, the New Jersey Board of Public Utilities (“Board” or “BPU”) considers the petition filed by Good Energy, L.P. (“Good Energy”) requesting a waiver of the Board’s Government Energy Aggregation (“GEA”) regulations at New Jersey Administrative Code (“N.J.A.C.”) 14:4-6.4 and 6.6 (“Petition”).

BACKGROUND

On December 20, 2019, Good Energy filed the Petition with the Board seeking a waiver from compliance with N.J.A.C. 14:4-6.4 and 6.6 as applied to the GEA program for which it serves as the energy agent on behalf of the Borough of Somerdale (“GEA Program”). The Educational Services Commission of New Jersey (“ESCNJ”), formerly named the Middlesex Regional Educational Services Commission, partnered with Good Energy to provide GEA services for the GEA Program.

The Board’s GEA Program regulations at N.J.A.C. 14:4-6.6 require the lead agency of a GEA program, or its designee, to provide copies of various final GEA documents to Board Staff (“Staff”) and the New Jersey Division of Rate Counsel (“Rate Counsel”). These regulations also require the lead agency to provide various draft GEA documents to Staff and Rate Counsel for review and comment prior to the use of the documents.¹

¹ The required documents include: a) A copy of the authorizing resolution or ordinance (N.J.A.C. 14:4-6.6(a)); b) A copy of the draft bidding documents (N.J.A.C. 14:4-6.6(i)); c) A copy of the draft contract (N.J.A.C. 14:4-6.6(l)); d) A copy of the executed contract (N.J.A.C. 14:4-6.6(n)); e) A copy of the draft notice to customers (including opt-out information) (N.J.A.C.14:4-6.6(t)); and f) A copy of the final notice to customers (N.J.A.C. 14:4-6.6(s)).

The Board's regulations at N.J.A.C. 14:4-6.4(j) provide the logistics for providing the required documents.

In 2016, Good Energy and ESCNJ submitted draft bidding documents and draft opt-out notices for the implementation of a GEA program in the Borough of Somerdale. On May 25, 2016, the Borough of Somerdale entered into a contract with TriEagle Energy to serve its GEA participants who were located in Atlantic City Electric Company's ("ACE's") service territory, and a contract with ConEdison Solutions to serve its GEA participants who were located in Public Service Electric and Gas Company's ("PSE&G's") service territory. The contract with ConEdison ended in October 2017 and the customers were returned to PSE&G. On August 29, 2017, the Borough of Somerdale extended the contract with TriEagle. The extended contract ended in October of 2018 and the customers were returned to ACE.

On April 30, 2019, the Borough of Somerdale went out to bid to select a supplier for the GEA Program. ESCNJ again partnered with Good Energy to provide GEA services for the GEA Program. It came to Staff's attention that Good Energy and ESCNJ failed to comply with the regulations at N.J.A.C. 14:4-6 et seq. regarding another GEA program administered by ESCNJ and Good Energy. Good Energy and ESCNJ reviewed their GEA programs and informed Staff that they had the same compliance issues in this GEA Program. Specifically, no documents were submitted to the Board, Staff, or Rate Counsel regarding a contract extension with TriEagle in 2017, a new supplier selected in 2019, and the continuation of the GEA Program in 2019.

Good Energy advised Staff that it had misinterpreted the rules related to GEA programs, thereby resulting in its failure to submit the required documents to Staff and Rate Counsel. The Borough of Somerdale selected a new supplier for its GEA Program, and the new supplier began serving customers in July of 2019. The Petition included final versions of the bidding documents, the opt-out notice, and the executed contract related to the selection of the new supplier for the GEA Program. In addition, the Petition included the 2017 extension contract with TriEagle and the related final opt-out notice.

Good Energy asserted in the Petition that it understood that the Board's regulations applied to the initial implementation of GEA programs, but did not believe the Board's regulations applied to the submittal of documents for any subsequent bids, selection of suppliers, customer notifications, or final contracts. Good Energy further asserted that the GEA Program is extremely successful and saving customers' money. Good Energy requested that the Board grant the waiver as any Board action to invalidate or terminate the GEA Program would unfairly penalize the GEA customers, and contravene the intentions of the municipality's governing body to achieve these savings and energy efficiencies.

On January 28, 2020, Rate Counsel filed comments on the Petition. Rate Counsel stated that N.J.A.C. 14:4-6.4 and 6.6 requires the submission, for review by Staff and Rate Counsel, of the draft bidding documents, draft contract, draft public opt-out notice to customers, the authorizing resolution or ordinance, the executed contract, and the final public opt-out notice to customers. Rate Counsel stated that the Board made it clear that these documents are mandatory when a GEA program is initiated, and upon each extension or renewal of the GEA program. Further, Rate Counsel stated that government energy aggregators are statutorily required to submit draft program documents to Staff and Rate Counsel for review and comment pursuant to N.J.S.A. 48:3-94. Accordingly, Rate Counsel asserted that the Board lacks authority to waive Good Energy's statutory duty to submit draft bid documents, contracts, and public opt-out notices to Staff and

Rate Counsel 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 in the interest of the general public. N.J.A.C. 14:1-1.2(b). Rate Counsel saw merit to granting Good Energy's waiver request due to concern for the ratepayers participating in the GEA Program. The GEA Program is currently running with ratepayers enrolled, and those ratepayers are relying on the rates produced by the GEA Program. Those ratepayers, and the governing body of the Borough of Somerdale, relied upon Good Energy and ESCNJ to comply with applicable Board rules and should not face adverse consequences for their reliance.

Therefore, Rate Counsel stated it does not object to the Board waiving the requirements to submit the required draft and final GEA documents for the GEA Program to Staff and Rate Counsel. Rate Counsel also does not object to the Board accepting, as within time, Good Energy's submission of its final bidding documents, contracts and public opt-out notices for the GEA Program despite failing to do so in accordance with the time frames set forth in N.J.A.C. 14:4-6.6. However, Rate Counsel recommends that any Board Order approving Good Energy'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. N.J.A.C. 14:4-6.6(l) similarly requires the lead agency of a GEA program to provide a copy of any draft contract to the Board and Rate Counsel. 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 and the new draft contract 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, or a supply contract is extended. Further, N.J.A.C. 14:4-6.6(a), (n), and (s) require the lead agency of a GEA program to provide a copies of final documents for a GEA program. When a lead agency or its delegated energy consultant submits required final documents for a GEA program, this does not alleviate the obligation to submit the final documents that are created when a new supplier is selected, or a supply contract is extended.

Good Energy failed to comply with the Board's GEA regulations in this case. The failure was not intentional, but rather, was based upon its misinterpretation of the regulations. The Board is persuaded by Rate Counsel's argument the ratepayers, and the Borough of Somerdale governing body, relied upon Good Energy's energy agent services to comply with applicable Board rules. As Rate Counsel stated, there is merit to granting Good Energy's waiver requests due to concern for the ratepayers participating in the Somerdale GEA Program and relying upon the rates produced by the program. Good cause exists in this particular case to ensure that ratepayers are not saddled with adverse consequences for their reliance upon Good Energy.

The Board's rules are to be liberally construed to permit the Board to effectively carry out its statutory functions and to secure just and expeditious determination of issues presented to the Board. The Board may relax or permit deviations from its rules where, as here, full compliance with the rules will adversely affect the ratepayers. N.J.A.C. 14:1-1.2.

Accordingly, the Board **ACCEPTS**, as within time, Good Energy's submission of its draft and final GEA documents for the GEA Program, despite Good Energy's failure to do so in accordance with the time frames set forth in the regulatory scheme. Further, the Board **HEREBY GRANTS** a waiver of N.J.A.C. 14:4-6.4(j) and N.J.A.C. 14:4-6.6 (a), (i), (l), (n), (s), and (t) for Good Energy, subject to the below conditions:

1. This waiver applies only to this Petition. Any other failure to comply with the statutory and regulatory requirements applicable to any GEA program by Good Energy or any other entity, shall be subject to the enforcement 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. Good Energy shall comply with all statutory and regulatory requirements applicable to any GEA program for which it serves as a licensed energy agent.
3. Good Energy 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 Good Energy'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 Good Energy, ESCNJ, or any GEA program.

This Order shall be effective on May 30, 2020.

DATED: May 20, 2020

BOARD OF PUBLIC UTILITIES
BY:



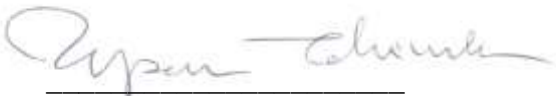
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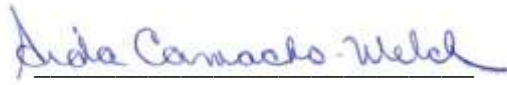


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE PETITION OF GOOD ENERGY, L.P.: REQUEST FOR WAIVER RELATED
TO GOVERNMENT ENERGY AGGREGATION SUBMITTALS FOR THE TOWNSHIP OF SOMERDALE
PURSUANT TO N.J.A.C. 14:1-1.2(b) - DOCKET NO. EW19121538
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