



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

IN THE MATTER OF THE PETITION OF HESS)
CORPORATION SEEKING A WAIVER OF N.J.A.C.)
14:4-2.3(C) PURSUANT TO THE WAIVER RULE,)
N.J.A.C. 14:1-1.2)
DOCKET NO. EO13080786U

Parties of Record:

Murray Bevan, Esq., on behalf of Hess Corporation

BY THE BOARD:

By this Order, the Board of Public Utilities ("Board") considers a request by Hess Corporation ("Hess") for a waiver of the N.J.A.C. 14:4-2.3 (c) which requires a Third Party Supplier ("TPS") to include within the customer verification the identification of the TPS to which the customer is being switched whenever the TPS submits an Electronic Data Interchange ("EDI") change order to a Local Distribution Company (the "TPS Identification Rule"). Petitioner is seeking expedited consideration of this petition due to the timing of the proposed transaction.

BACKGROUND

By letter dated August 28, 2013, the petitioner notified the Board that Direct Energy Business, LLC ("Direct Energy") has agreed to acquire Hess' Energy Marketing Business (the "Acquisition"), effective on or after October 1, 2013. Prior to the Acquisition, the petitioner is seeking to transfer and assign its rights and obligations under its existing energy supply contracts to a new wholly owned subsidiary, Hess Energy Marketing, LLC, ("HEM"), which is already a licensed TPS in New Jersey. The petition states that upon consummation of the Acquisition, HEM will become a wholly owned subsidiary of Direct Energy.

The petition states that upon transfer of supply service from Hess to HEM, HEM will assume all rights and obligations under existing supply contracts, and will continue to supply service under the same terms and conditions, including price. The Petitioner has already obtained customer consent to assign its contractual rights and obligations to a new entity through an assignment

clause in its existing supply contracts and has provided notice to each customer of the impending Acquisition and the proposed assignment of contracts to HEM.

Petitioner believes that the requirement that it provide customers with a positive identification of the TPS to which they are switching, in this case HEM, as required under N.J.A.C. 14:2.3(c) 2(v) and 3(v), is not only unnecessary, but is likely to result in confusion and harm to these existing Hess customers. The petitioner claims that a waiver pursuant to N.J.A.C. 14:1-1.2 (b)(1) is appropriate because compliance with the TPS Identification Rule would adversely affect Hess' customers, each of whom contracted for certain products and services at a certain price for a certain period of time.

Additionally, Petitioner claims that were these customers not to affirmatively identify the TPS to which they are switching, in this case HEM, for any reason, they would be dropped as TPS customers under the TPS Identification Rule and would lose the benefit of the contracts they entered into with Hess. Finally, the petitioner notes that all of the contracts at issue involve commercial and industrial customers, who voluntarily agreed to contract assignment as part of the deal.

DISCUSSION AND FINDINGS

In considering Hess's request to waive N.J.A.C. 14:4-2.3 (c), the Board applies the two-pronged test set forth at N.J.A.C. 14:1-1.2(b)(1): first, whether the request is in accord with the general purposes and intent of the rules; and second, whether full compliance with the rules would adversely affect ratepayers, the utility, or the public interest.

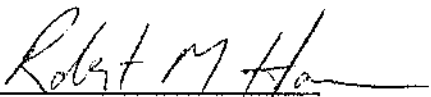
To determine the general purpose and intent of its rules, the Board looks to the policy underlying the rule in question. The goal of the rule is to ensure that a customer is not switched to another supplier without that customer's consent. As noted above, Hess has provided information demonstrating the enforcement of N.J.A.C. 14:2.3(c) 2(v) and 3(v) in this instance would be unnecessary because these commercial and industrial customers have agreed to have their contracts assigned as part of the original arrangement with Hess. Because the Board is persuaded that these larger sophisticated customers have knowingly agreed to have their services provided by another licensed TPS, even though that TPS was not named in the original contract, the Board **FINDS** that the request to waive the TPS Identification Rule accords with the general purposes and intent of the rule.


The Board also considers whether full compliance with the rule would adversely affect the interest of the public. See N.J.A.C. 14:1-1.2(b)(1). The petitioner has provided ample demonstration that the enforcement of N.J.A.C. 14:2.3(c) 2(v) and 3(v) could result in these customers being dropped to Basic Generation Service ("BGS") thereby losing the benefit of the service negotiated with Hess, and therefore, given the nature of these commercial and industrial customers, the Board **FINDS** that the rigid application of its rules would be contrary to the public interest under the facts presented to the Board in this matter. Therefore, the Board **HEREBY FINDS** that approving the waiver of the TPS Identification Rule under the circumstances described will further the public interest.

Therefore, based on the above, the Board **HEREBY WAIVES** the requirement of N.J.A.C. 14:2.3(c) 2(v) and 3(v) requiring that Hess obtain specific authorization to switch its current commercial and industrial customers to HEM where the current contracts contain an assignment clause and HEM has committed to respecting all of the terms and conditions of those contracts.

DATED: 9/18/13

BOARD OF PUBLIC UTILITIES
BY:



ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER

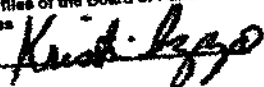

JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER

ATTEST: 
KRISTI IZZO
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 PETITION OF HESS CORPORATION SEEKING A WAIVER OF
N.J.A.C. 14:4-2.3(C) PURSUANT TO THE WAIVER RULE, N.J.A.C. 14:1-1.2
 DOCKET NO. EO13080786U

SERVICE LIST

<p>Tracey Thayer, Esq. New Jersey Natural Gas 1415 Wyckoff Avenue Post Office Box 1464 Wall, NJ 07719 tthayer@njng.com</p> <p>Jay Kooper Director of Regulatory Affairs Hess Energy, Inc. 1 Hess Plaza Woodbridge, NJ 07095 jkooper@hess.com</p> <p>Philip J. Passanante, Esq. Atlantic City Electric Company 92DC42 500 N. Wakefield Drive Newark, DE 19702 Philip.passanante@pepcoholdings.com</p> <p>Alexander C. Stern, Esq. Public Service Electric and Gas Company 80 Park Plaza – T5G Newark, NJ 07102 Alexander.stern@pseg.com</p> <p>John F. Stanziola South Jersey Gas Company 1 South Jersey Plaza Folsom, NJ 08037 istanziola@sjindustries.com</p> <p>Murray E. Bevan, Esq. Bevan, Mosca, Giuditta & Zarillo 222 Mount Airy Road, Suite 200 Basking Ridge, NJ 07920-2335 mbevan@bmqzlaw.com</p> <p>John L. Carley, Esq. Rockland Electric Company 4 Irving Place Room 1815-S New York, NY 10003-0987 carleyj@coned.com</p>	<p>M. Patricia Keefe, Esq. Elizabethtown Gas Company 300 Connell Drive, Suite 300 Berkeley Heights, NJ 07922 mkeefe@agresources.com</p> <p>Lauren M. Lepkowski Jersey Central Power and Light Company 2800 Pottsville Pike Post Office Box 16001 Reading, PA 19612-6001 llepkowski@firstenergycorp.com</p> <p>Stefanie A. Brand, Esq., Director Division of Rate Counsel 150 East Front Street, 4th Floor Post Office Box 003 Trenton, NJ 08625-0003 sbrand@rpa.state.nj.us</p> <p>Babette Tenzer, DAG Division of Law Department of Law & Public Safety 124 Halsey Street Post Office Box 45029 Newark, NJ 07101-45029 Babette.tenzer@bpu.state.nj.us</p> <p>Eric Hartsfield, Director Division of Customer Assistance Board of Public Utilities 44 South Clinton Avenue, 9th Floor Post Office Box 350 Trenton, NJ 08625-0350 Eric.hartsfield@bpu.state.nj.us</p> <p>Jerome May, Director Division of Energy Board of Public Utilities 44 South Clinton Avenue, 9th Floor Post Office Box 350 Trenton, NJ 08625-0350 Jerome.may@bpu.state.nj.us</p>
---	---

Alice Bator, Chief
Division of Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
Alice.bator@bpu.state.nj.us

Jacqueline Galka
Division of Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
Jacqueline.galka@bpu.state.nj.us

Jake Gertsman
Counsel's Office
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
Jake.gertzman@bpu.state.nj.us

Anna Procopio
Division of Audits
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
Anna.propopio@bpu.state.nj.us