

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held November 6, 2009

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Kim Pizzingrilli
Wayne E. Gardner, Absent
Robert F. Powelson

Application of Just Energy Pennsylvania Corp.
to become a licensed supplier of natural gas
services

Docket Number:
A-2009-2098011

ORDER

BY THE COMMISSION:

On March 18, 2009, Just Energy Pennsylvania Corp. (JEPC or Company), under its prior name Pennsylvania Energy Services Corp. (PESC), filed a License Application to operate as a supplier of natural gas supply services and a broker/marketer and aggregator engaged in the business of supplying natural gas services in the service territory of Columbia Gas of Pennsylvania, Inc., within the Commonwealth of Pennsylvania. This application was filed pursuant to section 2208 of the Natural Gas Choice and Competition Act (Act) and Title 52, Chapter 62, Subchapter D.

§2208 provides in pertinent part that:

Requirements for Natural Gas Suppliers.--No entity shall engage in the business of a natural gas supplier unless it holds a license issued by the

Commission. To the extent that a natural gas distribution company provides natural gas supply service outside of its chartered or certificated territory, it also must hold a license. A license shall not be required for customers who make de minimis incidental sales or resales to themselves, an affiliate or to other nonresidential retail gas customers. 66 Pa. C.S. §2208.

A natural gas supplier is defined as:

An entity other than a natural gas distribution company, but including natural gas distribution company marketing affiliates, which provides natural gas supply services to retail gas customers utilizing the jurisdictional facilities of a natural gas distribution company. The term includes a natural gas distribution company that provides natural gas supply services outside its certificated service territories. The term includes a municipal corporation, its affiliates or any joint venture, to the extent that it chooses to provide natural gas supply services to retail customers located outside of its corporate or municipal limits, as applicable, other than:

- (i) as provided prior to the effective date of this chapter, pursuant to a certificate of public convenience if required under this title;
- (ii) total natural gas supply services in de minimis amounts;
- (iii) natural gas supply services requested by, or provided with the consent of, the public utility in whose certificated territory the services are provided; or
- (iv) natural gas supply services provided to the municipal corporation itself or its tenants on land it owns or leases, or is subject to an agreement of sale or pending condemnation, as of September 1, 1999, to the extent permitted by applicable law independent of this chapter.

The term excludes an entity to the extent that it provides free gas to end-users under the terms of an oil or gas lease. Notwithstanding any other provision of this title, a natural gas supplier that is not a natural gas distribution company is not a public utility as defined in section 102 (relating to definitions) to the extent that the natural gas supplier is utilizing the jurisdictional distribution facilities of a natural gas distribution company or is providing other services authorized by the Commission. 66 Pa. C.S. §2202.

As used in the above definition of a natural gas supplier, the term natural gas supply services includes: (i) the sale or arrangement of the sale of natural gas to retail customers; and (ii) services that may be unbundled by the Commission under section 2203(3) of the Act (relating to standards for restructuring of the natural gas utility industry). Natural gas supply service does not include distribution service. 66 Pa. C.S. §2202.

JEPC has stated that upon the approval of this Application, it proposes to provide natural gas supply services to residential and commercial customers in the service territory of Columbia Gas of Pennsylvania, Inc.

JEPC has published notice of its application in the Pennsylvania newspapers as required by the Commission to provide service in the service territory of Columbia Gas of Pennsylvania, Inc.

JEPC only provided a generic disclosure statement in its application. JEPC states that it cannot prepare and provide a Pennsylvania specific disclosure statement since it does not yet have its product line finalized for Pennsylvania.

JEPC has provided the required Pennsylvania Emergency Management Agency (PEMA) contact information.

Section 2208(c) (1), 66 Pa. C.S. §2208(c) (1), provides that a natural gas supplier license shall not be issued unless the applicant furnishes a bond or other security in a form and amount to ensure its financial responsibility. The criteria used to establish the form and amount of the bond or other security is set forth in the natural gas distribution company's tariff. The amount and form of the bond or other security may also be mutually agreed to between the natural gas distribution company and the natural gas supplier.

Section 2208 also provides that should the parties fail to achieve an agreement, then the form and amount of bond or other financial security “shall be determined by criteria approved by the Commission.” JEPC has provided documentation to evidence its compliance with the Section 2208(c) bonding requirement for the following natural gas distribution company: Columbia Gas of Pennsylvania, Inc.

As of September 15, 2009, no protests have been filed.

JEPC is a foreign corporation, organized on February 25, 2009 in the State of Delaware under its prior name PESC, and registered to do business in the Commonwealth of Pennsylvania as of March 6, 2009. PESC amended its certificate of authority in Pennsylvania on June 15, 2009 to reflect the change in its name to JEPC. JEPC proposes to act as a supplier of natural gas supply services and a broker/marketer and aggregator engaged in the business of supplying natural gas services to residential and commercial customers in the service territory of Columbia Gas of Pennsylvania, Inc., within the Commonwealth of Pennsylvania. JEPC is one of several affiliates/subsidiaries (collectively Energy Savings Group) of Energy Savings Income Fund (Fund). The Fund is an open-ended limited purpose trust established by a Declaration of Trust, dated April 18, 2001, as amended and restated from time to time, and governed by the laws of the Canadian Province of Ontario.

JEPC states that Energy Savings Group employed 674 persons as of March 31, 2008 and that it was also utilizing approximately 560 independent contractors in the door-to-door marketing of gas contracts and electricity contracts in the Canadian provinces of Ontario, Alberta, Manitoba and British Columbia and the states of Illinois, Indiana, New York and Texas.

The Commission's regulations at 52 Pa. Code §62.102 states that a marketing services consultant is not required to obtain an NGS license. 52 Pa. Code §62.102 defines a marketing services consultant to include an entity that under contract to a licensee may act as an agent to market natural gas supply services to retail gas customers for the licensee; as long the marketing services consultant does not collect natural gas supply costs directly from retail customers, is not responsible for the scheduling of natural gas supplies and is not responsible for the payment of costs of the natural gas to suppliers, producers, or natural gas distribution companies. Assuming that the independent contractors do not perform any of the above tasks, it appears that JEPC's proposed use of independent contractors, that do not hold a current NGS license to market JEPC's contracts, does not violate the Commission's regulations at 52 Pa. Code §§62.101-62.114. Additionally, we note that per 52 Pa. Code §62.102, the NGS is responsible for violations of 66 Pa. C.S. and applicable regulations committed by the marketing services consultants and fraudulent deceptive or other unlawful marketing or billing acts committed by the marketing services consultants, which could result in fines and/or the suspension or revocation of JEPC's NGS license.

Although we believe that our regulations permit JEPC to utilize the proposed agents, we do have concerns from a consumer protection perspective about JEPC's use of independent contractors, as well as, its fitness to be a licensed NGS, based on information provided by the company in its application. JEPC states that in late 2007 Energy Savings Group began seeing dramatically elevated complaints levels in its Chicago and Buffalo markets, and that on February 7, 2008 the attorney general of Illinois filed a complaint for damages, civil penalties and injunctive relief against Illinois Energy Savings Corp, an affiliate of JEPC. (The People of the State of Illinois v. Illinois Energy Savings Corporation d/b/a U.S. Energy Savings Corp., 08-CH 4918 (Circuit Court of Cook County, Illinois County Department – Chancery Division)). JEPC states that the Illinois complaint alleges that independent sales agents used deceptive practices in their

sale of contracts to Illinois customers. JEPC also notes the following complaints or lawsuits: Citizens Utility Board, Citizen Action/Illinois and AARP's v. Illinois Energy Savings Corp. d/b/a U.S. Energy Savings Corp., Illinois Commerce Commission Docket No. 08-00175 and Pamela Tillman v. U.S. Energy Savings Corporation, 1:08-cv-01641 (United States District Court, Northern District of Illinois, Eastern Division).

Questions were directed to JEPC by the Commission regarding its use of independent contractors, in light of Energy Savings Group's business history in Illinois and New York.

The Company submits that Energy Savings Group has made changes to its business practices and states that the significant improvements implemented to its marketing processes in the first quarter of 2008 and changes executed in management's oversight and control of independent contractors have resolved any deficiencies that existed and have mitigated any potential recurrence of those issues. However, we believe that the conduct of the Company's affiliates in other states, particularly Illinois and New York, lead us to question the Company's overall fitness, since they provide insight into JEPC's potential conduct as a licensee in Pennsylvania.

First, and most significant, is the conduct of Illinois Energy Savings Corp d/b/a U.S. Energy Savings Corp. (IESC) as a gas supplier. JEPC notes in supplemental information submitted in its filing for a natural gas supplier license, at A-2009-209811, that a settlement was recently reached in the lawsuit filed by the attorney general of Illinois, in which JEPC's affiliate admitted no wrongdoing. However, we note a May 14, 2009 press release, available at the following web link: <http://www.illinoisattorneygeneral.gov/pressroom/2009_05/index.html>, which states: "Attorney General Lisa Madigan today announce an agreement with U.S. Energy Savings Corp. that will allow hundreds of Illinois consumers to terminate contracts and receive \$1

million in restitution as a result of a lawsuit filed last year alleging that the alternative gas supplier sold fixed-rate gas contracts using misleading sales tactics that falsely promised significant consumer savings.”

JEPC notes that the other Illinois complaints remain open, including the filing before the Illinois Commerce Commission (ICC), at Docket No. 08-00175 (2008 Filing), which was filed March 3, 2008, and is now on its fifth Stipulated Agreement for an extension of time. In the 2008 Filing, the Citizens Utility Board (CUB) and the other complainants alleged that IESC had violated the Alternative Gas Supplier Law, 220 ILCS 5/19-100 et seq. and other Illinois acts.

Unfortunately, the 2008 lawsuit by the Illinois Attorney General and the CUB complaint against IESC are not the first time misleading sales tactics have been alleged against IESC and its agents in Illinois. Previously, on April 24, 2006, CUB filed a complaint, at Docket No. 06-0337, alleging that the marketing practices of U.S. Energy Savings Corp violated the Alternative Gas Supplier Act. The Illinois Attorney General was a party to the proceeding. The docket was settled in December 2006 pursuant to a confidential settlement agreement and release.¹

Finally, the ICC issues annual reports which include data regarding the number of contacts (inquiries and complaints) that the Commission receives from residential customers regarding alternative gas suppliers. While IESC had the most contacts in 2005 (221), there were other companies with significant totals (179 and 188). However, while the annual statistics for other suppliers have only ranged from 2 to 95 a year during the period 2006 – 2008, IESC’s contact totals have ranged from 418 to 654.

¹ Commission Staff has not requested this information because it is a confidential settlement.

Second, is the conduct of JEPC's affiliate, New York Energy Savings Corp. (NYESC). JEPC's application did note that there were elevated complaints in the Buffalo, New York area in late 2007. However, the Commission further notes that the Attorney General of the State of New York (NYAG) caused an inquiry to be made into NYESC, at AOD #08-84, and that in an agreement between the NYAG and NYESC, signed by the NYAG on July 14, 2008, NYESC agreed to pay \$200,000 to the State of New York to settle the NYAG's investigation of NYESC, without NYESC admitting or denying the NYAG's findings.

We also note that the New York Public Service Commission issues a Monthly Report on Consumer Complaint Activity. While NYESC has consistently had a very high number of complaints, it is not unique among energy service companies in New York.

Third, we note that JEPC has an affiliate, Just Energy Texas, LP, (JET) licensed as Retail Electric Provider in Texas since August 14, 2002. JET is an active provider to consumers in Texas, including residential customers. The Public Utility Commission of Texas maintains a *Residential Retail Electric Provider Complaint Scorecard*. The scorecard groups the 33 to 34 retail electric providers into five groupings of approximately equal size based on a 6-month rolling average of complaint rates per 1,000 customers relative to other companies. Scorecards are available from September 1, 2008. JET consistently tracks in the fourth group, the 'higher than average rate of complaints' group.

Regarding the financial and technical requirements of the license application, JEPC submitted the 2008 annual report for Energy Savings Income Fund, a Canadian Trust. The report includes consolidated statements of Cash Flows, Operations, Unitholders' Equity and Balance Sheets audited by KPMG, LLP, in accordance with

auditing standards generally accepted in Canada. JEPC has also supplied resume data for its principal officers.

However, we do not believe that JEPC has sufficiently demonstrated that it has the necessary technical fitness to be granted a natural gas supplier license. We note that JEPC's business model and top management is the same or very similar to its affiliates in other states. JEPC has not provided sufficient information to demonstrate that its conduct would not replicate the history of its affiliates, some fairly recent. JEPC's affiliates tend to have high complaint levels in other states. Two of the company's affiliates have agreed to pay large fines or make significant restitution to customers. Of particular concern is the track record of JEPC's affiliate, IESC, in Illinois. IESC settled CUB's 2006 complaint before the ICC in late 2006. However, slightly more than a year later, CUB once again filed a complaint before the ICC, with similar allegations, which we note is still not resolved. In the same timeframe, the Illinois Attorney General, a party to the 2006 complaint, filed a lawsuit alleging similar violations, resulting in a May 2009 settlement involving restitution of \$1 million to customers. JEPC states that changes have been made to the business practices of the company and affiliates. However, based on the repetition of events in Illinois and the lack of a resolution in the most recent complaint in Illinois, it is not apparent that the issues have been resolved and that similar issues will not arise in Pennsylvania.

We find that Just Energy Pennsylvania Corp.:

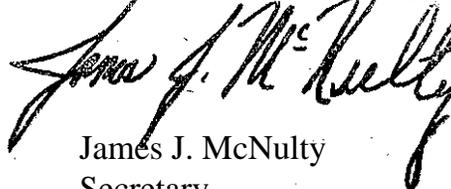
Is not fit and able to properly perform the service proposed in conformance with applicable provisions of the Public Utility Code and the Commission orders and regulations, specifically including 52 Pa. Code Chapter 56 (relating to Standards and Billing Practices for Residential Utility Service).

Upon full consideration of all matters of record, we find that approval of this application is contrary to the public interest and that the application should be denied, without prejudice; **THEREFORE,**

IT IS ORDERED:

1. That the application of Just Energy Pennsylvania Corp. is hereby denied, without prejudice, consistent with this Order.
2. That this proceeding, at Docket No. A-2009-2098011, be closed.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 6, 2009

ORDER ENTERED: November 9, 2009