



Agenda Date: 12/6/19
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/

AUDITS

IN THE MATTER OF THE ALLEGED FAILURE OF)	ORDER ACCEPTING OFFER
WINDSTREET ENERGY, INC. TO COMPLY WITH)	OF SETTLEMENT
CERTAIN PROVISIONS OF N.J.S.A. 48:3-78 <u>ET</u>)	
<u>SEQ.</u> , AND THE NEW JERSEY ADMINISTRATIVE)	
CODE, N.J.A.C. 14:4-1.1 <u>ET SEQ.</u>)	DOCKET NO. EO19111488

Parties of Record:

Elyse Herman, Esq., Pellettieri, Rabstein and Altman, on behalf of WindStreet Energy, Inc.

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 Energy 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 and N.J.A.C. 14:4-1.1 et seq. (the "Regulations") by WindStreet Energy, Inc., ("WindStreet") who has been operating as an energy agent ("EA") and energy consultant ("EC") in New Jersey.

BACKGROUND

Pursuant to EDECA, the Board has authority and jurisdiction over all EAs and ECs in New Jersey. EDECA defines an EA as "a person that is duly registered pursuant to the provisions of [EDECA], that arranges the sale of retail electricity or electric related services, or retail gas supply or gas related services, between government aggregators or private aggregators and electric power suppliers or gas suppliers, but does not take title to the electric or gas sold." N.J.S.A. 48:3-51 (definition of "energy agent"). See also, N.J.A.C. 14:4-1.2. An EC is "an energy agent that is registered with the Board pursuant to N.J.A.C. 14:4-5.11, and is thereby authorized to receive certain customer information from an LDC through electronic data interchange (EDI)." N.J.A.C. 14:4-1.2 (definition of "energy consultant").

The Board's implementing rules are found at N.J.A.C. 14:4-1.1 et seq. (the "Regulations"). Pursuant to N.J.A.C. 14:4-5.1(f), "[a] person shall not arrange the retail sale of electricity, electric-related services, gas supply or gas-related services between an energy aggregator and a TPS without first registering as an energy agent." N.J.S.A. 48:3-78(i) specifies that "any person acting as an energy agent shall be required to register with the board . . . This registration shall be updated annually." See also, N.J.A.C. 14:4-5.8(g).

To be eligible to be an EC, a person must meet all the requirements of an EA as well as: (1) have proof that the person is a registered EA; (2) have a \$10,000 bond; and (3) documentation that the person maintains an office in New Jersey. N.J.A.C. 14:4-5.11(a)-(b).

Pursuant to N.J.A.C. 14:4-5.9(f) and N.J.A.C. 14:4-5.11(e), the term of an EA/EC certificate is valid for one year from the date of issuance unless timely renewals are filed. See also, N.J.A.C. 14:4-5.9. N.J.A.C. 14:4-5.9(a) and N.J.A.C. 14:4-5.11(a) set forth the obligation of the EA/EC to timely file a renewal application. Specifically, the EA/EC must file a complete renewal application at least thirty (30) days before the expiration date of the existing registration. If a timely renewal application is not submitted, the initial registration expires at the end of its term. In the event an EA/EC does not submit a renewal application within thirty (30) days before the end of the registration term, the Registrant must submit a new registration application.

Pursuant to EDECA, the Board, among other things, is vested with investigative powers, N.J.S.A. 48:3-80, disciplinary powers, N.J.S.A. 48:3-81, alternative disciplinary powers, N.J.S.A. 48:3-82, and with the authority to assess civil penalties, N.J.S.A. 48:3-83. Pursuant to N.J.A.C. 14:4-5.1(f) and -5.9(b)(3), a person without a valid EA or EC registration, cannot "act as, or represent themselves to others as, an energy agent . . ." In addition, the Board can deny, suspend, or revoke a registration; impose financial penalties; and prohibit acceptance of new customers. N.J.A.C. 14:4-5.13. In determining the amount of the fines, the Board may consider each day of each violation against each customer as a separate offense. N.J.A.C. 14:4-5.13(c). The Board may also consider any good faith efforts made by the company; the gravity of the violation; the number of past violations; and the appropriateness of the sanction or fine. N.J.A.C. 14:4-5.13(b).

As an EA and EC, WindStreet is subject to the jurisdiction of the Board and must comply with EDECA and the Regulations.

DISCUSSION AND FINDINGS

WindStreet's initial registrations, Registrations Nos. EA-0105 and EC-0027, were effective for an initial term of April 27, 2011 through April 26, 2012. WindStreet did not renew these registrations with the Board before they expired on April 26, 2012. WindStreet continued to arrange electric power service to commercial and industrial customers in New Jersey. In October 2016, Staff learned that WindStreet continued arranging electric power service as a Registrant in New Jersey although its original registrations had expired and it did not submit a timely renewal application for these registrations.

On November 2, 2016, WindStreet submitted a first initial application, which was found deficient. Staff advised WindStreet to file for a new initial registration application.

On November 28, 2018, WindStreet submitted an acceptable new initial registration application. On January 18, 2019, WindStreet represented that it was currently serving 53 commercial and industrial customers with significant supply needs.

Staff has conducted an investigation regarding WindStreet's compliance with the Act and the Regulations. Staff has alleged that WindStreet failed to comply with the registration and renewal requirements under the Act and the Regulations, including N.J.S.A. 48:3-78, N.J.A.C. 14:4-5.1(a)(3), N.J.A.C. 14:4-5.8, N.J.A.C. 14:4-5.9, and N.J.A.C. 14:4-5.11.

WindStreet has responded promptly and effectively to all Staff requests during the investigation. WindStreet serves only commercial and industrial customers in New Jersey. Staff has determined that no complaints had been filed with the Board or the Division of Consumer Affairs against WindStreet by any of its New Jersey customers in the past twelve months ending in November 19, 2019. In addition, WindStreet has maintained a surety bond for years 2016, 2017, 2018, 2019, and up to October 31, 2020. WindStreet also represents that it has filed a New Jersey Corporation Business Tax Return for 2017 and an effective registration certificate dated August 24, 2007 as a New Jersey Domestic Profit Corporation from the State of New Jersey Department of Treasury.

As a result of correspondence and telephone conversations with WindStreet, WindStreet submitted an Offer of Settlement ("Offer"), which is attached hereto, regarding its alleged violations. In the Offer, WindStreet did not admit to any violations and made a monetary offer in the amount of \$3,000.00 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 WindStreet.

The Board will **CONSIDER** under a separate docket number the initial application filed by WindStreet on November 28, 2018. The Offer of Settlement is accepted subject to the following conditions:

1. WindStreet will pay to the State of New Jersey the sum of Three Thousand Dollars (\$3,000.00) 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 WindStreet, up to and including May 8, 2019.

2. This Offer of Settlement shall not relieve WindStreet 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 May 8, 2019.

3. Any future repeated violation(s) of the Act, the Regulations, or Board Orders by WindStreet or its parents, affiliates, subsidiaries, or successors that may now or in the future arranges 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. WindStreet will comply with all provisions of the Act and Regulations regarding registration renewal requirements as set forth at N.J.S.A. 48:3-78, N.J.A.C. 14:4-5.8 and N.J.A.C. 14:4-5.9.

5. The execution of this Offer of Settlement shall not be relied upon by WindStreet or its affiliates, subsidiaries or successors in an 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, WindStreet shall pay the Settlement Payment of Three Thousand Dollars (\$3,000.00).

Payment must be made out to the **TREASURER, STATE OF NEW JERSEY** and

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

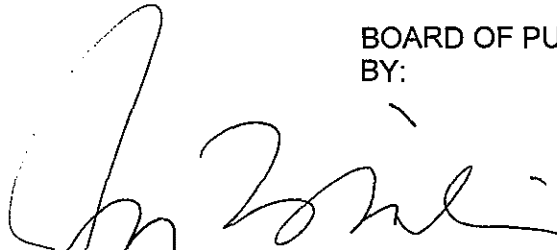
A copy of this Order must be included with the settlement check.

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 WindStreet Energy, Inc. or a successor company.

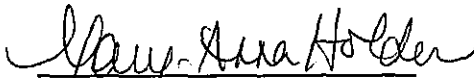
This Order shall be effective on December 16, 2019.

DATED: 12/6/19

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



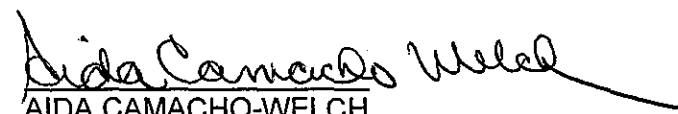
DIANNE SOLOMON
COMMISSIONER



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 OF WINDSTREET ENERGY, INC. 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. EO19111488**

SERVICE LIST

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Paul.youchack@law.njoag.gov

aggregators or private aggregators and electric power suppliers or gas suppliers, but does not take title to the electric or gas sold”; and

WHEREAS, N.J.S.A. 48:3-78(i) and N.J.A.C. 14:4-5(f) require that any person acting as an EA register with the New Jersey Board of Public Utilities (“Board”) annually; and

WHEREAS, in the event an EA does not submit a renewal application within thirty (30) days before the end of the registration term, pursuant to N.J.A.C. 14:4-5.9(b)-(d), the company must submit a new registration application with Board Staff of the Division of Audit (“Staff”) and cease acting as an EA; and

WHEREAS, in 2011, WindStreet held an EA registration in the State of New Jersey; and

WHEREAS, on April 26, 2012, WindStreet chose to leave the New Jersey market and let its New Jersey EA registration lapse; and

WHEREAS, on November 2, 2016, WindStreet submitted the first Initial Application to the Board to renew its EA registration; and

WHEREAS, Board Staff notified WindStreet that the Initial Application was deficient; and

WHEREAS, WindStreet did submit another Initial Application on November 23, 2018;

WHEREAS, Staff investigated WindStreet’s compliance with the Act and the Regulations; and

WHEREAS, as a result of said investigation, Staff has alleged that WindStreet has continued to operate without a valid EA registration and WindStreet failed to comply with:

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

WHEREAS, WindStreet 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 WindStreet by any of its New Jersey customers; and

WHEREAS, Board Staff has reviewed the initial registration application filed by WindStreet; and

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

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

1. WindStreet will pay to the State of New Jersey the sum of Three Thousand Dollars (\$3,000.00) in full and final settlement of any and all potential violations under the Act and/or Regulations which have been or could have been alleged by the Board or the Staff against WindStreet, up to and including May 8, 2019.
2. At the next regularly scheduled Board agenda meeting, subject to scheduling considerations, Staff agrees to accept this Offer of Settlement and present the EA initial registration applications of WindStreet to the Board for review.
3. This Offer of Settlement shall not relieve the WindStreet 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 May 8, 2019.
4. Any future repeated violation(s) of the Act, the Regulations, or Board Orders by the WindStreet or its parents, 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 the provisions of N.J.S.A. 48:3-83.

5. WindStreet will comply with all provisions of the Act and Regulations regarding registration renewal requirements as set forth at N.J.S.A. 48:3-78 and N.J.A.C. 14:4-5.8 and -9.
6. The parties agree that the Three Thousand Dollar (\$3,000.00) payment will be made within ten (10) days of the effective date of the Board Order adopting the terms of this Offer of Settlement.
7. The execution of this Offer of Settlement shall neither be deemed an admission by WindStreet or its officers, directors, affiliates, subsidiaries or successors of an 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.
8. The execution of this Offer of Settlement shall not be relied upon by WindStreet or its affiliates, subsidiaries or successors in an 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.

WINDSTREET ENERGY, INC.

BY: 

Edward Jones,
Vice President

Dated: June 27, 2019



Philip D. Murphy
Governor

Sheila Y. Oliver
Lt. Governor

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

Aida Camacho-Welch
Secretary of the Board
(609) 292-1599

December 6, 2019

Edward Jones
Vice President
WindStreet Energy, Inc.
242 Route 156
Yardville, New Jersey 08620

Re: **Energy Agent, Private Aggregator and Energy Consultant Initial Registrations**
Docket Nos. EE18111245L and GE18111246L

Dear Mr. Jones:

In accordance with the Electric Discount and Energy Competition Act of 1999, N.J.S.A. 48:3-49 et seq., at its December 6, 2019 Agenda meeting, the New Jersey Board of Public Utilities voted to issue the **REGISTRATIONS** as an Energy Agent, Private Aggregator, and Energy Consultant to WindStreet Energy, Inc. The company's registration numbers are EA-0535, PA-0225, and EC-0173.

The enclosed registrations are effective December 6, 2019 and will expire on December 5, 2020. These registrations 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 registrant. Registrants shall comply with all applicable law, 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 Dante Cusi at (609) 292-1356.

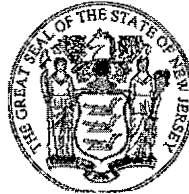
Sincerely,

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

Aida Camacho-Welch
Secretary of the Board

ACW/dec
Encl. (s)

State of New Jersey



Board of Public Utilities

44 South Clinton Avenue, 9th Floor, Trenton, New Jersey 08625-0350

HEREBY LICENSES

WindStreet Energy, Inc.

242 Route 156
Yardville, NJ 08620

To conduct business in the State of New Jersey as a

Private Aggregator



Aida Camacho-Welch

Secretary to the Board

License No.	PA-0225
Effective Date:	December 6, 2019
Expiration Date:	December 5, 2020

State of New Jersey



Board of Public Utilities

44 South Clinton Avenue, 9th Floor, Trenton, New Jersey 08625-0350

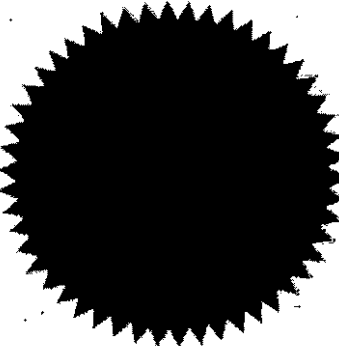
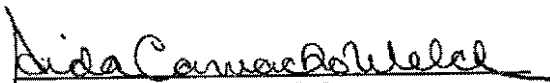
HEREBY REGISTERS

WindStreet Energy, Inc.

242 Route 156
Yardville, NJ 08620

To conduct business in the State of New Jersey as an

Energy Consultant



Aida Camacho-Welch
Secretary to the Board

Registration No. EC-0173
Effective Date: December 6, 2019
Expiration Date: December 5, 2020

State of New Jersey



Board of Public Utilities

44 South Clinton Avenue, 9th Floor, Trenton, New Jersey 08625-0350

HEREBY REGISTERS

WindStreet Energy, Inc.

242 Route 156
Yardville, NJ 08620

To conduct business in the State of New Jersey as an

Energy Agent



Aida Camacho-Welch

Aida Camacho-Welch
Secretary of the Board

Registration No. EA-0535
Effective Date: December 6, 2019
Expiration Date: December 5, 2020