



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

IN THE MATTER OF THE ALLEGED FAILURE OF )  
ENERGY AUCTION EXCHANGE, 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. EO20050353 )

**Party of Record:**

**Kelly Curtis, C.F.O**, Energy Auction Exchange, 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 and N.J.A.C. 14:4-1.1 et seq. (the “Regulations”) by Energy Auction Exchange, LLC, (“EAX” or “the company”) who has been operating as an energy agent (“EA”) and private aggregator (“PA”) in New Jersey.

**BACKGROUND**

Pursuant to EDECA, the Board has authority and jurisdiction over all EAs and PAs 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. A PA is “a non-government aggregator that is a duly-organized business or non-profit organization authorized to do business in this State that enters into a contract with a duly licensed electric power supplier for the purchase of electric energy and capacity, or with a duly licensed gas supplier for the purchase of gas supply service, on behalf of multiple end-use customers by combining the loads of those customers.” See also, N.J.A.C. 14:4-1.2.

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).

Pursuant to N.J.A.C. 14:4-5.8(g) and N.J.A.C. 14:4-5.11(e), the term of an EA or PA, registration 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 or PA to timely file a renewal application. Specifically, the EA or PA 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 or PA 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, disciplinary powers, alternative disciplinary powers, and with the authority to assess civil penalties. See N.J.S.A. 48:3-80 et seq. Pursuant to N.J.A.C. 14:4-5.1(f) and -5.9(b)(3), a person without a valid EA or PA 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 PA, EAX is subject to the jurisdiction of the Board and must comply with EDECA and the Regulations.

### **DISCUSSION AND FINDINGS**

Energy Auction Exchange, LLC’s renewal registrations, Registrations Nos. EA-0185 and PA-0113, were effective for a renewed term of August 19, 2015 through August 18, 2016. EAX did not renew these registrations with the Board before they expired on August 18, 2016. The company continued to arrange energy procurement to customers in New Jersey after expiration. On November 18, 2019, an initial application from EAX was received by the Board.

Staff has conducted an investigation regarding EAX’s compliance with the Act and the Regulations. Staff has alleged that EAX 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. 14:4-5.9, and N.J.A.C. 14:4-5.11.

EAX has responded promptly and effectively to all Staff requests during the investigation. The company serves commercial and industrial customers in New Jersey. Staff has determined that no complaints have been filed with the Board and/or the Division of Consumer Affairs against EAX by any of its New Jersey customers in the past 12 months ending February 20, 2020.

As a result of correspondence and telephone conversations, EAX has submitted an Offer of Settlement (“Offer”), which is attached hereto, regarding its alleged violations. In the Offer, EAX made a monetary offer in the amount of One Thousand Seven Hundred and Seventy One Dollars (\$1,771.00) 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 EAX.

The Board will **CONSIDER** under a separate docket number the initial application filed by EAX on November 18, 2019. The Offer of Settlement is accepted subject to the following conditions:

1. EAX will pay to the State of New Jersey the sum of One Thousand Seven Hundred and Seventy One Dollars (\$1,771.00) 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 EAX, up to and including May 11, 2020.
2. This Offer of Settlement shall not relieve EAX 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 11, 2020.
3. Any future repeated violation(s) of the Act, the Regulations, or Board Orders by EAX 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. EAX 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 EAX 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, EAX shall pay the Settlement Payment of One Thousand Seven Hundred and Seventy One Dollars (\$1,771.00). 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  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
Attn: Audits

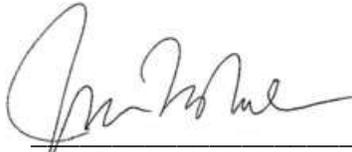
A copy of this Order must be included with the settlement check.

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 Energy Auction Exchange, LLC or a successor company.

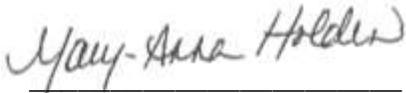
This Order shall be effective on June 20, 2020.

DATED: June 10, 2020

BOARD OF PUBLIC UTILITIES BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER

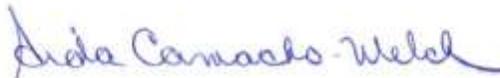


UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH  
SECRETARY

**IN THE MATTER OF THE ALLEGED FAILURE OF ENERGY AUCTION EXCHANGE, 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. EO20050353**

**SERVICE LIST**

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Upendra Chivukula  
Commissioner

Bob Gordon  
Commissioner

June 10, 2020

Margo Dalinga  
Compliance Officer  
Energy Auction Exchange LLC  
893 W. Baxter DR.  
South Jordan, Utah 84095

Re: **Energy Agent and Private Aggregator Initial Registrations**  
Docket Nos. EE19111472L and GE19111473L

Dear Margo Dalinga:

In accordance with the Electric Discount and Energy Competition Act of 1999, N.J.S.A. 48:3-49 et seq., at its June 10, 2020 Agenda meeting, the New Jersey Board of Public Utilities issued the **REGISTRATIONS** as an Energy Agent and Private Aggregator to Energy Auction Exchange LLC. Your registration numbers are EA-0625 & PA-0260.

These registrations are effective June 10, 2020 and will expire on June 9, 2021. 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 blue ink that reads "Aida Camacho-Welch".

Aida Camacho-Welch  
Secretary of the Board

ACW/dec