



Agenda Date: 2/5/2020  
Agenda Item: 1C

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

ENERGY

IN THE MATTER OF THE ALLEGED FAILURE OF )  
AVIDXCHANGE, 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. ) ORDER ACCEPTING OFFER  
OF SETTLEMENT  
DOCKET NO. EO20010021

**Parties of Record:**

**Alfonso McMillian, Jr., Vice President, AvidXchange, 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 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 AvidXchange, Inc., (“AvidXchange” or “the Company”), which has been operating as an energy agent (“EA”) in New Jersey.

**BACKGROUND**

Pursuant to EDECA, the Board has authority and jurisdiction over all EAs 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.

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), the term of an EA 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) set forth the obligation of the EA to timely file a renewal application. Specifically, the EA

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 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 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, AvidXchange is subject to the jurisdiction of the Board and must comply with EDECA and the Regulations.

### **DISCUSSION AND FINDINGS**

AvidXchange’s initial registration, Registration No. EA-0394, was effective for an renewed term of July 25, 2018 through July 24, 2019. AvidXchange did not renew this registration with the Board before it expired on July 24, 2019. The Company continued to arrange energy procurement to customers in New Jersey. Staff notified the Company on August 1, 2019 of the registration expiration. On August 9, 2019, an initial application from AvidXchange was received by the Board.

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

AvidXchange 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 or the Division of Consumer Affairs against AvidXchange by any of its New Jersey customers in the past 12 months, ending September 3, 2019.

As a result of correspondence and telephone conversations, AvidXchange has submitted an Offer of Settlement (“Offer”), which is attached hereto, regarding its alleged violations. In the Offer, AvidXchange made a monetary offer in the amount of \$500.00 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 AvidXchange.

The Board will **CONSIDER** under a separate docket number the initial application filed by AvidXchange on August 9, 2019. The Offer of Settlement is accepted subject to the following conditions:

1. AvidXchange will pay to the State of New Jersey the sum of Five Hundred Dollars (\$500.00) 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 AvidXchange, up to and including January 8, 2020.
2. This Offer of Settlement shall not relieve AvidXchange 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 January 8, 2020.
3. Any future repeated violation(s) of the Act, the Regulations, or Board Orders by AvidXchange 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. AvidXchange 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 AvidXchange 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, AvidXchange shall pay the Settlement Payment of Five Hundred Dollars (\$500.00). 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  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Trenton, New Jersey 08625-0350  
Attn: Audits

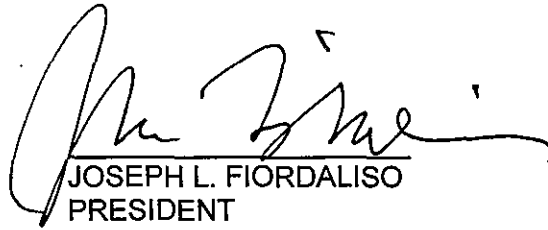
A copy of this Order must be included with the settlement check.

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 AvidXchange, Inc. or a successor company.

This Order shall be effective on February 15, 2020.

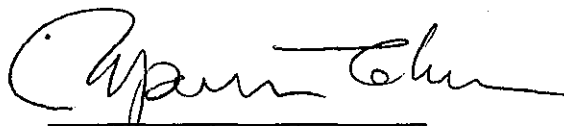
DATED: 2/5/20

BOARD OF PUBLIC UTILITIES  
BY:

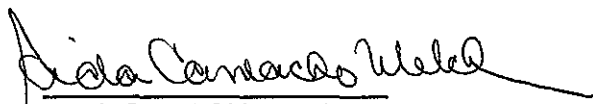
  
JOSEPH L. FIORDALISO  
PRESIDENT

  
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 AVIDXCHANGE, 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. EO20010021**

**SERVICE LIST**

**Board of Public Utilities**

44 South Clinton Avenue, 9<sup>th</sup> Floor  
Trenton, NJ 08625-0350

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Office of the Chief Counsel

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Richard J. Hughes Justice Complex

Public Utilities Section

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Trenton, NJ 08625

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IN THE MATTER OF	:	STATE OF NEW JERSEY BOARD OF
AVIDXCHANGE, INC.	:	PUBLIC UTILITIES
	:	DOCKET NO.
	:	
	:	<b>OFFER OF SETTLEMENT</b>
	:	
	:	

WHEREAS, AvidXchange, Inc. (“AvidXchange”) is a Delaware corporation that provides services as an energy agent (“EA”), pursuant to the New Jersey Administrative Code, N.J.A.C. 14:4-5.8; and

WHEREAS, as an EA, AvidXchange is subject to the jurisdiction of the Board of Public Utilities (the “Board”) pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. (the “Act”) and specifically N.J.S.A. 48:3-78, and the administrative regulations promulgated thereunder at N.J.A.C. 14:4-1.1 et seq. (the “Regulations”); and

WHEREAS, N.J.S.A. 48:3-51 defines an “energy agent” as “a person that is duly registered pursuant to the provisions of [the Act], 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”; and

WHEREAS, N.J.S.A. 48:3-78(i) and N.J.A.C. 14:4-5(f) require that any person acting 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 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 2018, AvidXchange held an EA registration (EA-0394) in the State of New Jersey; and

WHEREAS, AvidXchange’s registration expired on July 24, 2019; and

WHEREAS, AvidXchange submitted a new application with Board Staff of the Division of Audits on August 9, 2019 and responded to Board Staff inquires on November 18, 2019; and

WHEREAS, Board Staff investigated AvidXchange's compliance with the Act and the Regulations; and

WHEREAS, as a result of said investigation, Board Staff has alleged that AvidXchange has continued to operate without a valid EA registration since July 24, 2019 and AvidXchange failed to comply with:

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

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

WHEREAS, Board Staff has reviewed AvidXchange's registration application filed August 9, 2019 and as supplemented November 18, 2019; and

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

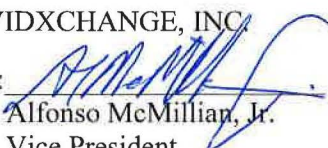
NOW, THEREFORE, AvidXchange submits this Offer of Settlement, as follows:

1. AvidXchange will pay to the State of New Jersey the sum of FIVE HUNDRED US DOLLARS (\$500.00) in full and final settlement of any and all potential violations under the Act or Regulations, which have been or could have been alleged by the Board or Board Staff against AvidXchange up to and including the date of this Offer of Settlement.
2. At the next regularly scheduled Board agenda meeting, subject to scheduling considerations, Board Staff agrees to accept this Offer of Settlement and present the EA registration application of AvidXchange to the Board for review.

3. This Offer of Settlement shall not relieve AvidXchange, Inc. or its affiliates, subsidiaries or successors, from any liability for violations, if any, of the Act, the Regulations or Board Orders that may occur after the date of this Offer of Settlement.
4. Any future repeated violation(s) of the Act, the Regulations or Board Orders by AvidXchange or its 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. AvidXchange 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 FIVE HUNDRED DOLLARS (\$500.00) 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 AvidXchange or its officers, directors, affiliates, subsidiaries or successors of any 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 AvidXchange 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.

AVIDXCHANGE, INC.

By:

  
Alfonso McMillian, Jr.  
Vice President

Dated: January 8, 2020





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  
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**Joseph L. Fiordaliso**  
President

Mary-Anna Holden  
Commissioner

Dianne Solomon  
Commissioner

Upendra Chivukula  
Commissioner

Bob Gordon  
Commissioner

February 5, 2020

Robert Macksoud, Director  
AvidXchange, Inc.  
1210 AvidXchange Lane  
Charlotte, NC 28206

Re: **Energy Agent Initial Registration**  
Docket No. EE19080906L

Dear Mr. Macksoud:

In accordance with the Electric Discount and Energy Competition Act of 1999, N.J.S.A. 48:3-49 et seq., at its February 5, 2020 Agenda meeting, the New Jersey Board of Public Utilities voted to issue the **REGISTRATION** as an Energy Agent to AvidXchange, Inc. The company's registration number is EA-0621.

This registration is effective February 5, 2020 and will expire on February 4, 2021. This registration 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 Darren Erbe at (609) 292-1406.

Sincerely,

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

Aida Camacho-Welch  
Secretary of the Board

ACW/dee