



Agenda Date: 5/20/20
Agenda Item: 1B

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/

ENERGY

IN THE MATTER OF THE ALLEGED FAILURE OF)
MAKE THE SWITCH USA, 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.) DOCKET NO. EO20040322

Party of Record:

Michelle Erca, Owner, Make the Switch USA, 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 Make The Switch USA, LLC, (“MTSU” or “the Company”), which has been operating as an energy agent (“EA”) and energy consultant (“EC”) in New Jersey.

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, or, alternatively, provide all of the information required under this subchapter to register as an energy agent; (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. 14:4-5.8(g) and N.J.A.C. 14:4-5.11(e), the term of an EA or EC 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/EC to timely file a renewal application. Specifically, the EA or 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 or 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, 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 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, MTSU is subject to the jurisdiction of the Board and must comply with EDECA and the Regulations.

DISCUSSION AND FINDINGS

MTSU’s initial registrations, Registrations Nos. EA-0368 and EC-0120, were effective for an initial term of February 24, 2016 through February 23, 2017. MTSU did not renew these registrations with the Board before they expired on February 23, 2017. MTSU submitted a late renewal application on November 24, 2017. MTSU continued to arrange energy procurement to customers in New Jersey prior to November 24, 2017 and added customers until June 18, 2018 when MTSU submitted the initial application to the Board.

Staff has conducted an investigation regarding MTSU’s compliance with the Act and the Regulations. Staff has alleged that MTSU 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.

MTSU 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 the Division of Consumer Affairs against MTSU by any of its New Jersey customers from the last twelve months ending January 23, 2020 and February 4, 2020, respectively. In addition, MTSU has continued to maintain a surety bond through May 1, 2021.

As a result of correspondence and telephone conversations, MTSU has submitted an Offer of Settlement (“Offer”), which is attached hereto, regarding its alleged violations. In the Offer, MTSU

made a monetary offer in the amount of \$1,200.00 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 MTSU.

The Board will **CONSIDER** under a separate docket number the initial application filed by MTSU on June 18, 2018. The Offer of Settlement is accepted subject to the following conditions:

1. MTSU will pay to the State of New Jersey the sum of One Thousand Two Hundred Dollars (\$1,200.00) 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 MTSU, up to and including April 22, 2020.
2. This Offer of Settlement shall not relieve MTSU 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 April 22, 2020.
3. Any future repeated violation(s) of the Act, the Regulations, or Board Orders by MTSU 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. MTSU 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 MTSU 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, MTSU shall pay the Settlement Payment of One Thousand Two Hundred Dollars (\$1,200.00). 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

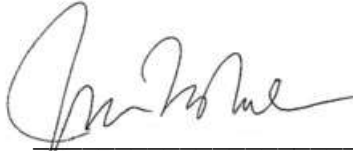
A copy of this Order must be included with the settlement check.

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 Make The Switch USA, LLC or a successor company.

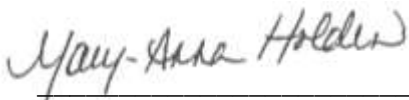
This Order shall be effective on May 30, 2020.

DATED: May 20, 2020

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

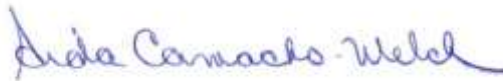


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

**IN THE MATTER OF THE ALLEGED FAILURE OF MAKE THE SWITCH USA, 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. EO20040322

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Dianne Solomon
Commissioner

Upendra Chivukula
Commissioner

Bob Gordon
Commissioner

May 20, 2020

Michelle Erca Owner
Make the Switch USA, LLC
1200 Route 22 East, Suite 2000-20016
Bridgewater, NJ 08807

Re: Energy Agent and Energy Consultant Initial Registrations
Docket Nos. EE17121256L and GE17121257L

Dear Ms. Erca:

In accordance with the Electric Discount and Energy Competition Act of 1999, N.J.S.A. 48:3-49 et seq., at its May 20, 2020 Agenda meeting, the New Jersey Board of Public Utilities issued the **REGISTRATIONS**, numbers EA-0501 and EC-0163, as an Energy Agent and Energy Consultant issued to Make the Switch USA, LLC.

These registrations are effective May 20, 2020 and will expire on May 19, 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