



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF THE ALLEGED FAILURE OF )  
AGGRESSIVE ENERGY 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. EO17030187

**Party of Record:**

**Kenneth W. Irvin, Esq.**, Sidley Austin, LLP, on behalf of Aggressive Energy 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 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.S.A. 48:3-79, and N.J.A.C. 14:4-1.1 et seq. (the "Regulations") by Aggressive Energy LLC ("Aggressive"), who has been operating as a third party supplier to provide electric power and natural gas supply services to commercial and industrial customers in New Jersey.

**BACKGROUND**

Pursuant to EDECA, the Board has authority and jurisdiction over all electric power suppliers and gas suppliers (collectively, "third party suppliers" or "TPS") in New Jersey. Among other things, the Board licenses third party suppliers. N.J.S.A. 48:3-78(a) and N.J.S.A. 48:3-79(a) require that a person obtain electric and gas supplier licenses before providing electric and gas supply services to retail customers in this State. See also, N.J.A.C. 14:4-5.1(d)(1). Moreover, pursuant to N.J.S.A. 48:3-78(b) and N.J.S.A. 48:3-79(b), electric and gas supplier licenses are only valid for one year from the date of issuance unless timely renewals are filed. See also, N.J.A.C. 14:4-5.6 and N.J.A.C. 14:4-5.7.

In addition, pursuant to EDECA, the Board requires that a TPS provide evidence of financial integrity, meet all reliability standards, and maintain a surety bond. See N.J.S.A. 48:3-78(c), N.J.S.A. 48:3-79(c), N.J.S.A. 48:3-79(f), N.J.A.C. 14:4-5.2, and N.J.A.C. 14:4-5.4. Pursuant to the Act, the Board, among other things, is vested with investigative power, N.J.S.A. 48:3-81, alternative disciplinary power, N.J.S.A. 48:3-82, and authority to assess civil penalties, N.J.S.A. 48:3-83.

Pursuant to N.J.A.C. 14:4-5.1(d), a person without an electric and/or gas supplier license cannot: (1) provide electric and/or gas supply service or offer to provide electric and/or gas supply service; (2) advertise or market electric and/or gas supply service; (3) enroll customers for electric and/or gas supply service; or (4) contract or otherwise assume legal responsibility for electric and/or gas supply service. Moreover, no TPS may submit a change order to a local distribution company ("LDC") unless the change order is transmitted through an EDI system. See N.J.A.C. 14:4-2.3(g) and N.J.A.C. 14:2-3(b).

N.J.A.C. 14:4-5.6(a) and N.J.A.C. 14:4-5.7(a) set forth the obligation of the TPS licensee to timely file a renewal application. Specifically, the licensee must file a complete renewal application at least thirty (30) days before the expiration date of the existing license. If a timely renewal application is not submitted, the initial license expires at the end of its term. N.J.A.C. 14:4-5.7(b). In the event a licensee does not submit a renewal application within thirty (30) days before the end of the license term, pursuant to N.J.A.C. 14:4-5.6(b)-(d), the licensee must submit a new license application within forty-five (45) days after the end of the licensee's initial term, or request an extension of the forty-five (45)-day time period based on extraordinary hardship, during which time the licensee must continue servicing existing customers until directed otherwise by Board Staff of the Division of Audit ("Staff").

As a TPS, Aggressive is subject to the jurisdiction of the Board and must comply with EDECA and the Regulations.

### **DISCUSSION AND FINDINGS**

Aggressive's initial TPS licenses, License Nos. GSL-0140 and ESL-0159, were effective for an initial term of October 22, 2014 through October 21, 2015. Aggressive did not renew these licenses with the Board before they expired on October 21, 2015. Aggressive continued to provide electric and gas service to commercial and industrial customers in New Jersey. In December 2016, Staff learned that Aggressive was providing gas and electric service as a TPS in New Jersey and, following a review of its records and other communication, met with the principals of Aggressive on February 2, 2017 regarding Aggressive's compliance with the Board's license renewal requirements. Aggressive submitted a license renewal application on February 2, 2017. However, because Aggressive's original licenses expired on October 21, 2015, and Aggressive did not timely submit a renewal application for these licenses, Staff directed Aggressive to file a new initial license application, as required, rather than a renewal license application.

On February 7, 2017, Aggressive submitted a new initial license application and requested an extension of the forty-five (45) day period required to submit the application, pursuant to N.J.A.C. 14:4-5.6(d). Aggressive represents that it is currently serving 350 commercial and industrial customers with significant supply needs, including several municipalities. Aggressive alleges that it would cause extraordinary hardship and be disruptive to those commercial, industrial and municipal customers if Aggressive were to stop providing them with natural gas supply and electric power services. Thus, Aggressive alleges that denying the extension under N.J.A.C. 14:4-5.6(d) would not serve the public interest.

Staff has conducted an investigation regarding Aggressive's compliance with the Act and the Regulations. Staff has alleged that Aggressive failed to comply with the licensing and renewal requirements under the Act and the Regulations, including N.J.S.A. 48:3-78, N.J.S.A. 48:3-79, N.J.A.C. 14:4-5.1, N.J.A.C. 14:4-5.6, and N.J.A.C. 14:4-5.7.

Aggressive has responded promptly and effectively to all Staff requests during the investigation. Aggressive serves only commercial, industrial and municipal customers in New Jersey. Staff has determined that no complaints have been filed with the Board or the Division of Consumer Affairs against Aggressive by any of its New Jersey customers since Aggressive obtained its TPS licenses in 2014, and Staff has determined that Aggressive has remained EDI compliant since it licensure. In addition, Aggressive has at all times, since becoming licensed in New Jersey in 2014, maintained surety bonds as required by the BPU, from the period of April 22, 2014 to April 22, 2018 for gas supply service and from May 20, 2014 to May 20, 2018 for electric supply service. Aggressive also represents that it: (1) has made all sales tax payments to the State of New Jersey since 2014; (2) has submitted its required Renewable Portfolio Standards Report on October 18, 2016; (3) has an effective Certificate of Authority from the New Jersey State Treasurer to do business in the State; and (4) has amended its internal processes and retained external legal and regulatory counsel to assist with its regulatory filings.

As a result of correspondence, telephone conversations, and meetings with Aggressive, Aggressive submitted an Offer of Settlement ("Offer") (attached) regarding its alleged violations. In the Offer of Settlement, Aggressive did not admit to any violations and made a monetary offer in the amount of \$7,500.00 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 Aggressive. The Board **FURTHER GRANTS** Aggressive's request to extend the 45-day deadline for filing an initial application pursuant to N.J.A.C. 14:4-5.6(d) as it has shown, among other things and as expressed herein, that it would be in the public interest for Aggressive's customers to continue to receive service. The Board will **CONSIDER** under a separate docket number the initial application filed by Aggressive on February 7, 2017. The Offer of Settlement is accepted subject to the following conditions:

1. Aggressive will pay to the State of New Jersey the sum of Seven Thousand, Five Hundred Dollars (\$7,500.00) 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 Aggressive, up to and including February 23, 2017.
2. This Offer of Settlement shall not relieve Aggressive 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 February 23, 2017.
3. Any future repeated violation(s) of the Act, the Regulations, or Board Orders by Aggressive 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 provisions of N.J.S.A. 48:3-83.
4. Aggressive will comply with all provisions of the Act and Regulations regarding TPS licensing renewal requirements as set forth at N.J.S.A. 48:3-78, N.J.S.A. 48:3-79, and N.J.A.C. 14:4-5.6.
5. The execution of this Offer of Settlement shall not be relied upon by Aggressive 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 five (5) days from the Effective Date of this Order, Aggressive shall pay the Settlement Payment of Seven Thousand, Five Hundred Dollars (\$7,500.00). 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, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
Attn: Division of Audits

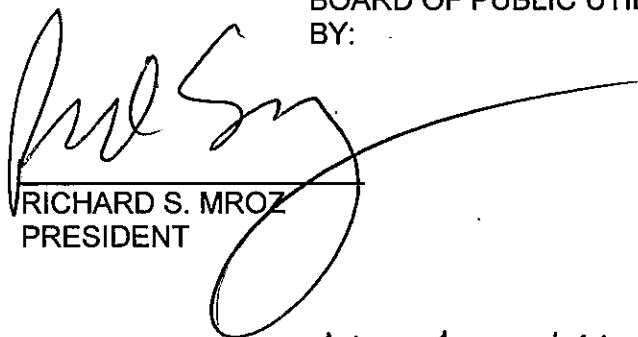
\*Aggressive must include a copy of this order with their check.

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 Aggressive or a successor company.


This Order shall be effective on April 3, 2017.

DATED: 3/27/17

BOARD OF PUBLIC UTILITIES  
BY:



RICHARD S. MROZ  
PRESIDENT



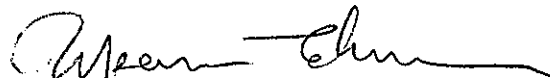
JOSEPH L. FIORDALISO  
COMMISSIONER



MARY-ANNA HOLDEN  
COMMISSIONER

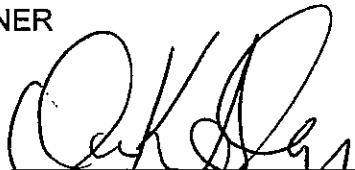


DIANNE SOLOMON  
COMMISSIONER



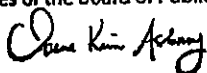
UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:



IRENE KIM ASBURY  
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 AGGRESSIVE ENERGY 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. EO17030187**

**SERVICE LIST**

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BOARD OF PUBLIC UTILITIES  
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SHANGHAI  
SINGAPORE  
SYDNEY  
TOKYO  
WASHINGTON, D.C.  
MAY 8 2017  
DIVISION OF AUDITS

RECEIVED

March 7, 2017

MAR 08 2017

BOARD OF PUBLIC UTILITIES  
MAIL ROOM

**By Federal Express**

Alice Bator  
Division of Audits  
New Jersey Board of Public Utilities  
44 South Clinton Avenue  
Trenton, NJ 08625

Re: Signed Offer of Settlement - Aggressive Energy LLC

Dear Ms Bator:

Attached please find the original Offer of Settlement signed on behalf of Aggressive Energy LLC. Please contact us with any questions or follow-up.

Best regards,

Sharon A. Rose

SAR:ac

Enclosure

**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES  
DIVISION OF AUDITS**

SIDLEY AUSTIN LLP  
1501 K Street, NW  
Washington, D.C. 20005  
Telephone: (202) 736-8256

Attorneys for Aggressive Energy LLC

IN THE MATTER OF THE ALLEGED FAILURE OF AGGRESSIVE ENERGY LLC TO COMPLY WITH CERTAIN PROVISIONS OF <u>N.J.S.A. 48:3-78 ET SEQ.</u> AND THE NEW JERSEY ADMINISTRATIVE CODE, <u>N.J.A.C. 14:4-1.1 ET SEQ.</u>	OFFER OF SETTLEMENT  BPU Docket No. EO17030187
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WHEREAS, Aggressive Energy LLC (“Aggressive Energy”) is a third party supplier (“TPS”) in New Jersey, pursuant to the New Jersey Administrative Code, N.J.A.C. 14:4-5.1 and 14:4-5.2, and provides electric power and natural gas service to commercial and industrial customers in New Jersey. Aggressive Energy’s License Nos. GSL-0140 and ESL-0159, were made effective for an initial term of October 22, 2014 through October 21, 2015; and

WHEREAS, as a TPS, Aggressive Energy is subject to the jurisdiction of the Board of Public Utilities (the “Board” or “BPU”) pursuant to the Energy Discount and Energy Competition Act, N.J.S.A. 48:3-78 et seq. (the “Act”), and N.J.A.C. 14:4-1.1 et seq. (the “Regulations”); and

WHEREAS, N.J.A.C. 14:4-5.6(a) requires a licensee to timely submit any necessary license renewal applications in accordance with N.J.A.C. 14:4-5.6 et seq.; and

WHEREAS, in the event a licensee does not submit a renewal application within thirty (30) days before the end of the license term, pursuant to N.J.A.C. 14:4-5.6(b)-(d), the licensee must submit a new license application within forty-five (45) days after the end of the licensee's initial term, or request an extension of the forty-five (45)-day time period based on hardship, during which time the licensee must continue servicing existing customers until directed otherwise by Board Staff of the Division of Audit ("Staff"); and

WHEREAS, Staff was notified on December 6, 2016 that Aggressive Energy was allegedly providing gas and electric services without valid electric or gas supplier licenses; and

WHEREAS, following Staff's review of the matter, Staff met with the principals of Aggressive Energy on February 2, 2017, regarding Aggressive Energy's compliance with the license renewal requirements; and

WHEREAS, Aggressive Energy submitted to Staff a renewal application on February 2, 2017; and

WHEREAS, Staff determined that Aggressive Energy had not timely submitted a renewal application for License Nos. GSL-0140 and ESL-0159 and directed Aggressive Energy to file a new license application; and

WHEREAS, Aggressive Energy submitted to Staff an initial license application on February 7, 2017, and requested an extension of the forty-five (45) day period required to submit the application, pursuant to N.J.A.C. 14:4-5.6(d); and

WHEREAS, Staff has conducted an investigation with regard to Aggressive Energy's compliance with the Act and the Regulations; and



**WHEREAS, as a result of said investigation, Staff has alleged that Aggressive Energy has failed to comply with:**

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

**WHEREAS, Aggressive Energy has continued to provide gas and electric power services to its customers at Staff's direction during the period its application was under review; and**

**WHEREAS, Aggressive Energy has responded promptly and effectively to all Staff requests; and**

**WHEREAS, Aggressive Energy serves only commercial and industrial customers and no complaints have been filed with the Board or with the Division of Consumer Affairs against Aggressive Energy by any of its New Jersey customers since Aggressive Energy obtained its TPS licenses in 2014; and**

**WHEREAS, Aggressive Energy has at all times since becoming licensed maintained surety bonds as required by the BPU, from the period April 22, 2014 to April 22, 2018 for gas supply service and May 20, 2014 to May 20, 2018 for electric generation service; and**

**WHEREAS, Board Staff has reviewed the initial application filed by Aggressive Energy on February 7, 2017, in which Aggressive Energy represented that it has made all sales tax payments to the State of New Jersey since it obtained its TPS licenses; and**

**WHEREAS, Aggressive Energy wishes to amicably resolve the issues raised by Staff without the need for time-consuming and expensive litigation;**

NOW, THEREFORE, Aggressive Energy submits this Offer of Settlement, as follows:

1. Aggressive Energy will pay to the State of New Jersey the sum of Seven Thousand, Five Hundred Dollars (\$7,500.00) 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 Aggressive Energy, up to and including February 23, 2017.

2. At the next regularly scheduled Board agenda meeting, subject to scheduling considerations, Staff agrees to recommend that the Board 1) accept this Offer of Settlement, 2) grant Aggressive Energy's request to extend the 45 day deadline for filing an initial application pursuant to N.J.A.C. 14:4-5.6(d), and 3) approve the initial application filed by Aggressive Energy on February 7, 2017.

3. This Offer of Settlement shall not relieve Aggressive Energy 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 February 23, 2017.

4. Any future repeated violation(s) of the Act, the Regulations, or Board Orders by Aggressive Energy 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 provisions of N.J.S.A. 48:3-83.

5. Aggressive Energy will comply with all provisions of the Act and Regulations regarding TPS licensing renewal requirements as set forth at N.J.S.A. 48:3-78, N.J.S.A. 48:3-79, and N.J.A.C. 14:4-5.6.

6. The execution of this Offer of Settlement shall neither be deemed an admission by Aggressive Energy or its 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.

7. The execution of this Offer of Settlement shall not be relied upon by Aggressive Energy 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.

**AGGRESSIVE ENERGY LLC**

By:



Kenneth W. Irvin, Esq.

Sidley Austin LLP

Attorney for Aggressive Energy LLC

Dated: March 7, 2017