

NEW JERSEY BOARD OF PUBLIC UTILITIES

Re-adoption of the Board’s Energy Competition Rules – N.J.A.C. 14:4

INITIAL COMMENTS OF GATEWAY ENERGY SERVICES CORPORATION

Introduction

These initial comments are submitted by Gateway Energy Services Corporation (“Gateway Energy” or “the Company”) regarding the possible re-adoption of the New Jersey Board of Public Utilities’ (“the Board’s) Energy Competition Rules (N.J.A.C. 14:4).

Gateway Energy, based in Rockland County, N.Y., is one of the largest independent retail energy suppliers of natural gas and electricity to residential and business customers in 35 markets across eight states, the District of Columbia, and Ontario, Canada. We operate as Gateway Power Services in Texas and as Gateway Energy Services Ltd. in Canada. Gateway Energy has been serving customers in New Jersey since 1999.

Gateway Energy suggests the following clarifications or changes to the rules in New Jersey.

§14:4-2.3 Change order required for switch

§14:4-2.3(c)2 states that a change order shall be verified through “... an audio recording of third-party verification, performed verbally over the telephone by an independent third party.” Gateway Energy maintains that the use of a third-party verifier is costly and not necessarily more effective. While Gateway Energy supports the use of voice verification (which is required

in all states where it does business), the Company has found that its internally developed voice verification system (“AVV”) is as reliable and more cost effective for customers. Third-party voice verification costs can be more than \$6 per sale on average, which get passed along to consumers as part of their rates. Additionally, Gateway Energy has less control over the entire verification process when using an independent third party. As a result, the Company becomes more dependent on the third party’s quality processes instead of our own.

Gateway Energy requests that §14:4-2.3 (c) 2 be removed or modified to include a process by which a third-party supplier can request permission to use an alternative means of voice verification.

The Company also requests modification of §14.4-2.3(c)3.ii, which requires that the person asking for the switch is the customer of record or is authorized to make the change, to automatically include a spouse as an authorized individual on the account. Gateway Energy believes that adding this provision would benefit customers by simplifying the enrollment process, since many change orders come from the spouse of the customer of record. Gateway customers have experienced greater ease of enrollment in states where a spouse is allowed to make changes to an account, including choosing a new supplier.

§14:4-2.4 Signing up or switching customers electronically

Gateway Energy believes that §14:4-2.4(c)2, requiring a third-party supplier to separately state the hardware and software necessary for access and retention of electronic records made on the Web site, is no longer necessary. All documents are accessible for download via Adobe Reader, a free application available to anyone wishing to use it.

§14:4-2.4(c)3 requires a mechanism to obtain the customer's acknowledgement of his/her obligation to provide the third-party supplier with e-mail address changes or any withdrawal of his/her consent. Gateway Energy does not believe this requirement is necessary since e-mail would be undeliverable to a customer's outdated e-mail address and the Company would be notified immediately. Gateway Energy reviews such undeliverable e-mails and contacts the customer either by telephone or letter to obtain the updated information. Gateway supports the requirement that customers are notified that they should contact us if their e-mail addresses change, but finds the requirement to capture affirmative consent unnecessary. Third-party suppliers have no method to monitor and have no recourse when a customer agrees to this provision and then neglects to notify them.

§14:4-2.4(j) requires that third-party suppliers provide a cancellation number to the customer and the Local Distribution Company ("LDC"). Gateway Energy would like to request the removal of the requirement to supply the cancellation number to the LDC, since the LDC will receive notification via EDI transaction.

§14:4-2.5 Recordkeeping

§14:4-2.5(b)1 requires that the third-party supplier maintain the date and time of a customer's acceptance of service. Gateway Energy requests that the section be modified to apply to telephonic enrollments only. A system-generated time/date stamp would not be accurate in the case of a written wet signature contract.

§14:4-5.2 Basic requirements for an electric power supplier, gas supplier or clean power marketer license

§14:4-5.2(b) requires that third-party suppliers maintain an office in New Jersey. Gateway Energy does not believe that maintaining an office in New Jersey is necessary and notes that

most other states do not have such a requirement. Gateway Energy employs sales people in New Jersey who are geographically situated across the entire state. Maintaining an office is not practical since our staff is spread out in multiple locations and our headquarters are located close by in Montebello, N.Y. In addition, most customers contact a third-party supplier via telephone or e-mail and do not visit the office for customer service. Gateway Energy's customer service process allows customers to contact us by phone 9 a.m. – 8 p.m. Monday through Thursday and 9 a.m. – 6 p.m. Friday. They are able to contact us at any time via e-mail at customerservice@gesc.com.

§14:4-5.2(b)1 also requires that the third-party supplier lease or own space in a building in New Jersey that is sufficient to house all customer records required to be kept under this subchapter. The Company maintains that since the records may be kept in electronic form, it is more secure to store them in our corporate facility, with redundancy at our disaster recovery site. It is impractical to ship paperwork to a remote office when we also store all document images electronically. Similar to the rule above, most other states where Gateway Energy conducts business do not require suppliers to lease or own office space for recordkeeping in the state.

§14:4-5.4 Processing of an application for an electric power supplier, gas supplier or clean power marketer initial license or renewal

Gateway Energy requests that Rule §14:4-5.4(f)1, which requires a \$250,000 surety bond be posted with the BPU for each commodity, be revisited. This requirement increases the cost to do business in New Jersey and can deter some companies from entering the market, resulting in a decrease in options for New Jersey's consumers. Third-party suppliers already have security arrangements directly with the utilities, which protect consumers and insure uninterrupted service. Additionally, since the LDC is collecting the payments under consolidated billing, which include sales tax, such monies will be remitted to the State even if a

third-party supplier were to cease existence. Gateway questions why the BPU needs a separate bond and what additional protections would be afforded by suppliers posting a separate bond with the BPU in addition to the collateral posted with each utility.

14:4-5.6 Term and expiration of an electric power supplier, gas supplier or clean power marketer license

Gateway Energy requests the extension of the license period to two years, believing that the time for processing a renewal could be better spent on quality practices and customer satisfaction. Also, while we understand that a license is not transferable, the Company requests that provisions be made to allow an entity that is merging or purchasing an existing third-party supplier to continue to operate in the state. An update provision should be added to the application instead of requiring a new application.

14:4-5.7 Application for renewal of an electric power supplier, gas supplier or clean power marketer license

Gateway Energy recommends that instead of providing ZIP+4, as stated in §14:4-5.7(d)3, providing the number of customers by utility service territory should be adequate.

Gateway also suggests a change to §14:4-5.7(d)10, which requires documentation that a notice has been sent, via the U.S. Postal Service return receipt requested, to all LDCs stating that the application has been submitted to the Board. Gateway Energy suggests utilizing e-mail, which is faster, to send this information instead of through the mail.

General comments on Advertising and Marketing Standards

Gateway Energy requests that these sections be revised. Gateway Energy already states many of the requirements for marketing/advertising materials in our terms and conditions. Therefore,

the Company believes it is redundant to require them to be listed in every marketing piece. Two examples of such duplication include the requirement to state that switching to a third-party supplier is not mandatory and the requirement to state whether budget billing is available.

§14:4-7.3 Advertising standards

Gateway Energy requests a change to §14:4-7.3(c)2, requiring that third-party suppliers list all territories in which a particular offer is available. The rule also states that the offer must include the message if it is available in all territories. Gateway Energy recommends that if an offer is available in all territories, then the supplier should not have to state anything. The supplier should only have to disclaim the offer if it is available in limited areas.

§14:4-7.4 Marketing standards

Gateway Energy interprets that the purpose of these standards is to provide customers with adequate information about the product being offered. Gateway believes these standards do the exact opposite. They are not only a barrier to offering different types of products (fixed rate, capped rate, etc.), but are also misleading to customers and create frustration and confusion. Gateway has the following specific comments on this section:

§14:4-7.4(a)4 requires suppliers to project LDC rates throughout the term of the contract. Since LDCs may change their rates several times per year, it is impossible for a third-party supplier to estimate a reliable indication of a customer's price savings. This again causes undue confusion and frustration for customers.

§14:4-7.4(a)6. Gateway Energy recommends that if an offer is available in all territories, then the supplier should not have to state anything. It should only have to disclaim the offer if it is available in limited areas. See section §14:4-7.3(c)2.

§14:4-7.4(b)1 and 2 require suppliers to provide a detailed customer bill comparison, including projected savings for their variable rate at different usage levels and for any fixed rates being offered. One of Gateway's primary offerings is a variable-rate product, which most likely changes month to month based on market conditions. An estimation of the same variable rate for a one-year or two-year term will almost certainly not be the actual price. The practice of estimating future costs leaves third-party suppliers open to customer claims of misinformation when estimates do not match actual fees. If third-party suppliers are mandated to continue to provide these variable-rate estimates regardless of Gateway Energy's comments to the contrary, suppliers may choose to artificially raise prices in order to protect themselves from customer claims. This may result in a disadvantage, rather than a benefit, to the customer.

Additionally, other states in which Gateway Energy operates simply require a supplier to disclose the current rate, how often it can change and potential reasons for the rate change. Such estimated price details (as required in § 14:4-7.4(b)2) are confusing to the customer and should be modified.

Comparisons of a fluctuating LDC rate to a third-party supplier's fixed rate are inaccurate and misleading and create customer confusion. While Gateway Energy supports an LDC-to-third-party-supplier price comparison, we submit that a simpler "apples-to-apples" comparison of supply charges should be included so that customers have a true picture of their choices.

Lastly, the percentage savings of the total bill will differ from the percentage savings of the supply portion. See the following example:

If Gateway's supply rate is \$0.11100 per kWh, the minimum percentage savings a customer will receive is 10%.

	Average Monthly Summer Usage	Rate
Gateway Variable	1500 kWh	\$ 0.11100
JCP&L		
First 600 kWh	600 kWh	\$ 0.12340
over 600 kWh	900 kWh	\$ 0.13260
	1500 kWh	\$ 0.12892
		Minimum per kWh Savings
		\$ 0.01240
	Savings %	10%

For illustrative purposes only. Comparison based on JCP&L's published Price to Compare not including BGS Reconciliation Charges

However, if the required comparison formula is used, an average customer appears to only realize 8.8% savings because the delivery charges from the utility are factored in to the total percentage savings.

This point is further illustrated: If Gateway's supply charges for the month are \$90 and JCP&L's supply charges are \$100, there is a difference of \$10 or 10%. But, if delivery charges are included (for example \$100), then the percentage savings is calculated as \$190 (Gateway Energy) vs. \$200 (JCP&L), the percentage savings drops to 5%. This misleads the customer and does a disservice to third-party suppliers. Because delivery charges are identical regardless of whether the customer is with the utility or a supplier, Gateway Energy requests that the percentage savings be calculated solely on the supply portion.

The price-comparison rule also requires that suppliers provide a separate summary for each utility service territory. Gateway Energy offers multiple products within each LDC. Due to the

amount of detail required on the summary, the Company often makes several different summaries for each LDC (one for each product). This increases our programming and operational costs. Gateway Energy suggests that the format be shortened so that all products for a specific LDC territory can fit on a one page summary.

§14:4-7.6 Contracts

Gateway Energy requests a shortening of the rescission period under §14:4-7.6(b)4. The 14-day right of rescission is problematic because customers experience a lengthy delay in enrollment. Additionally, since many customers sign up on fixed-rate contracts, suppliers immediately hedge that product. If the customer takes a full two weeks and then rescinds, the supplier is left with the hedge position without a buyer.

Gateway Energy believes that the decrease in the rescission period would not hamper consumer protection since New Jersey already has strong rules that govern business practices. We understand that it is the responsibility of third-party suppliers to ensure that the customer has a clear understanding of the product being offered. The customer receives hard copies of all sales information and has the right to change his/her mind after reading them. Were this period to be reduced to similar rescission periods of other states where we do business (three to seven days), we could send enrollments 15 days prior to the end of a month instead of 30, thus cutting the enrollment delay in half.

Gateway Energy believes that §14: 4-7.6(f) should be modified. The ruling states that a new contract must be executed if a customer relocates within the same utility territory. Gateway Energy requests that the customer be able to continue on his/her existing contract and should not be given the right to terminate without penalty. As described above in the rescission section, suppliers selling fixed contracts have committed to buying the energy on the customer's

behalf and should not be left with potential losses on a hedged position when the customer is capable of continuing the agreement.

Gateway Energy requests a modification to 14:4-7.6(i), reducing the timeframe for notice of termination to 15 days from 30. Thirty days is much longer than the industry standard and can result in as many as 90 days of uncollectible debt. Suppliers must wait 30 days before submitting a drop, which can then take an additional 30-60 days, depending on the processing time of each utility.

Gateway Energy has recommendations regarding residential customer renewals (§14:4-7.6 (j) and several other sections).

1. Contracts should be able to automatically renew on month-to-month variable rates without early termination fees. The existing rule forces customers to remain on their fixed rate unless a new contract is signed.
2. Customers who wish to change their rate should have three options: voice verification, electronic transaction or a written and signed contract.

Conclusion

Gateway Energy has been supplying energy to New Jersey consumers since 1999. The Company values its relationships with all its customers and believes that the modifications requested in this document reflect best practices that continue to protect consumers and encourage competition in New Jersey.

Thank you for the opportunity to provide comments on the proposed rulemaking. If you require additional information or clarification, please contact me directly.

Sincerely,

Angela Schorr

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