



3333 K Street, NW, Suite 110  
Washington, D.C. 20007  
Tel: 202-333-3288  
Fax: 202-333-3266

July 13, 2010

The Honorable Kristi Izzo  
Secretary  
State of New Jersey  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102  
Via email: [rule.comments@bpu.state.nj.us](mailto:rule.comments@bpu.state.nj.us)

**Re: Energy Competition Rules – N.J.A.C. 14:4**

Dear Secretary Izzo:

The National Energy Marketers Association (NEM)<sup>1</sup> hereby submits comments pursuant to the Board's Notice of Opportunity to Comment on the Upcoming Readoption of the Energy Competition Rules set forth at N.J.A.C. 14:4. NEM submitted comments on previous iterations of the Energy Competition Rules and appreciates the opportunity to continue to provide input on rule changes that will allow energy marketers to more cost-effectively serve energy choice consumers while providing adequate consumer protection. NEM submits that the most effective consumer protection rules are premised on the fundamental requirement of accurate, affirmative statements from marketers that disclose the attributes of contracted-for products and services and treats all consumers with dignity and fairness. Rules that increase the costs to acquire and retain customers

---

<sup>1</sup> NEM is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

unnecessarily increase energy costs and restrict the ability of marketers to offer innovative products in response to consumer preferences. Indeed, NEM and its members recently adopted a Consumer Bill of Rights<sup>2</sup> as a foundation for consumer protection and proper marketer conduct. NEM's comments below are submitted in furtherance of these goals.

### **1. Contract Requirements Should Be Modified to Reflect Practical Market Conditions**

Section 14:4-7.6(b)(5) provides that a marketer's contract must, "provide the customer with 30 days written notice of the termination and an opportunity to remedy the termination condition." Section 14:4-7.10 reiterates this requirement. NEM submits that this requirement is onerous for marketers to comply with, particularly in the case where the marketer seeks to terminate the customer for nonpayment. By the terms of this Section, the marketer will have to retain the non-paying customer for an additional month, likely without payment for that period as well. Based on NEM member experience, this requirement is not utilized in other choice jurisdictions. It should be adequate notice from the marketer if the enrollment materials clearly state that service will be discontinued for nonpayment without requiring additional month of exposure on the part of the marketer. We request that the Board consider eliminating the requirement of 30 days written notice of termination for non-payment. Such confusion and burden could be eliminated by the BPU's statewide adoption of a non-recourse purchase of receivables (POR) program. Such programs have been highly successful in retail choice

---

<sup>2</sup> Available at [http://www.energymarketers.com/Documents/Consumer\\_Bill\\_of\\_Rightsfinal\\_formatted.pdf](http://www.energymarketers.com/Documents/Consumer_Bill_of_Rightsfinal_formatted.pdf)

programs in such states as New York, Connecticut, Ohio, Pennsylvania, and has recently been adopted in Maryland.

In the case of contract renewals, the rules provide at Section 14:4-7.6(j) that, “Where an affirmative written signature is not obtained for renewal of a residential electric generation service or gas supply service contract, the existing contract shall continue on a month-to-month basis under the current terms and condition and pricing.” NEM submits that this Section is problematic. For example, when a customer signs up for marketer service on a fixed rate they cannot renew at a new fixed rate without affirmative consent to an entirely new contract. This is problematic because if the new contract is not obtained and the original fixed rate contract continues on a month-to-month basis the customer may be paying at the original fixed rate that could be higher than the current rate. NEM suggests as a general rule that a consumer should not be required to provide affirmative consent to a renewal in the instance where the only change to the contract is the price term. In the case of a material change to any other contract term, the consumer’s affirmative consent should be obtained. NEM believes this methodology comports with consumer expectations of notice of service terms and changes and likewise provides the consumer with adequate protection. Similarly, by limiting the situations when affirmative consent is required to material changes in contract terms, it does not unnecessarily impose burdensome and expensive renewal processes on marketers.

## **2. Marketing Standards Should Be Modified to Better Achieve the Goal of Price Transparency**

In previous comments to the Board on the Energy Competition Rules, NEM expressed concern about the language in Sections 14:4-7.3 and 14:4-7.4(b) pertaining to the content

of marketer advertisements and marketing materials and the focus on “savings” as the sole, or predominant, value proposition to be derived by the consumer. NEM urged that the rules be modified to accommodate marketer offerings of innovative products and services. We suggested that marketing and advertising standards should not discourage innovation through the institution of a price disclosure paradigm that places innovation at a competitive disadvantage by falsely making a superior product offering look like a higher priced commodity. Moreover, we were concerned it may be impossible to capture and express the value-added component of some competitive offerings. The Board made certain modifications to these sections in its last readoption of the rules.<sup>3</sup> These changes clarified in Section 14:4-7.4(c) the ability of a marketer to petition the Board to utilize different information to describe its product offering and also added to Section 14:4-7.4(a)(1) the requirement to provide a toll free number to disclose the average price of energy over the term of a contract. This was intended to better accommodate variable price offerings whose absolute value could not be determined at the start of a contract. Unfortunately, such requirement is highly confusing and is unlikely to provide the consumer with any useful information in order to make a decision and therefore should be eliminated.

Notwithstanding the changes made by the Board intended to provide marketers with the ability to better convey the value of their offerings, NEM remains concerned that the language in Section 14:4-7.4(b) could be further improved to allow marketers to provide consumers with the price transparency and accuracy that they deserve. We continue to believe that the alternatives in Section 14:4-7.4(b) for describing products in marketing

---

<sup>3</sup> NJBPU Final Readoption With Amendments, N.J.A.C. 14:4, Energy Competition Standards, N.J.A.C. 14:8, Renewable Energy and Energy Efficiency, Effective May 19, 2008 at pages 14-15.

materials do not satisfactorily accomplish the goal of communicating the value of energy choices in a clear and understandable manner. We also believe that further clarification of the instances when a marketer should employ Section 14:4-7.4(b)(1) versus Section 14:4-7.4(b)(2) would be helpful to the market participants.

For example, the requirement to provide the marketer rate, the utility commodity rate and an all-in comparison with the utility delivery rate to compute consumer savings can mislead consumers. By providing a savings calculation that includes the utility delivery rate it acts to artificially dilute the commodity savings the consumer would realize. And, since the only portion of the bill the consumer can shop for is commodity, it is misleading to require an all-in rate computation that includes utility delivery.

We reiterate our concerns that the manner in which variable products must be described can be misleading to consumers. For instance, if a marketer offers a variable rate product, it is inaccurate to provide an upfront savings guarantee. Actual savings achieved can vary over the course of the year due to a number of circumstances. We maintain that rather than achieving the goal of price transparency, the approach currently required under the rules can in fact be misleading. There is no question that consumers require and deserve full and accurate descriptions of contracted-for energy products. NEM's suggestions are intended to better allow marketers to perform this function.

### **3. The Third Party Verification Should be an Option to Document Customer Switching and Not a Requirement**

The requirements for documentation of customer switching are set forth in Section 14:4-2.3. In particular, the rules currently require an "audio recording of a third-party verification, performed verbally over the telephone by an independent third party."

(Section 14:4-2.3(c)(2)). NEM previously requested that the Board eliminate the independent third party requirement. In its consideration of that request the Board noted that, “the Legislature provides for the use of telephone calls for switching only with conditions clearly designed to protect the consumer. The commenter is correct that the statutory provision authorizes the Board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, to permit alternative forms of verification. However, the Board shares the Legislature’s caution, and has determined not to authorize alternative forms of verification at this time. Third party verification ensures protection of customers from the types of pressure and confusion that may result in slamming.”<sup>4</sup> NEM agrees with the Board that consumers must be fully informed about and understand the terms of products that they contract for. We believe that these goals can be accomplished without requiring independent third party verification. Indeed, marketers utilize different methods for enrolling customers consistent with the Board’s rules, and those that want to perform this function with in-house personnel can do so in a manner that meets or exceeds consumer protection standards. Some may want to utilize a third party and some may perform this function more effectively in-house and both should be permitted to do so consistent with their business model. Marketers must maintain records of change orders and customer authorization for three years under Section 14:4-2.5, and the rules currently provide consequences for non-compliance with customer switching. See Section 14:4-2.3(e). This is adequate to protect consumers as the marketer will have documented proof of the consumer’s voluntary assent to the contract, the same as can be achieved with an independent third party. However,

---

<sup>4</sup> NJBPU Final Readoption With Amendments, N.J.A.C. 14:4, Energy Competition Standards, N.J.A.C. 14:8, Renewable Energy and Energy Efficiency, Effective May 19, 2008 at page 7.

requiring third party verification unnecessarily imposes an additional expense in the choice process that ultimately increases the cost of rendering energy service to New Jersey consumers.

#### **4. Seamless Moves Allow Consumers to Retain the Benefit of Their Contracts**

By the terms of Section 14:4-7.6(f), marketers must explicitly allow residential customers, “to terminate the contract, with 48 hours notice without penalty, as a result of relocation within or outside the LDC’s franchise area, disability that renders the customer of record unable to pay for the TPS’s service, and/or the customer of record’s death.” NEM previously suggested that the rules be modified to explicitly accommodate seamless customer moves. Upon its review, the Board declined to make the change finding in the case of a new residence with different commodity service, the customer should not be penalized for breaking the contract. The Board also said it was unlikely that customers would move in order to game a contract.<sup>5</sup> NEM submits that this misapprehends our proposal. NEM suggests that in the case of consumer relocation, the rules should explicitly recognize that if it is commercially practicable for the marketer (i.e., it currently provides service at the new location) and it is personally practicable for the consumer (i.e., the new service location accommodates the same type of energy supply), that the contract should continue to be valid. This benefits the consumer and the marketer because the consumer may derive value from maintaining the contract. At the same time, the marketer has procured supplies in reliance on the contract and would be unnecessarily harmed if the contract were terminated without penalty, particularly if the contract could have been honored in practical terms at the new location.

## **5. Enrollment Procedures and Utility Billing Need to be Modernized to Accommodate the Needs of Retail Choice Customers**

Standardized customer enrollment procedures should be adopted by the utilities to facilitate the TPS' ability to enroll customers in an efficient and timely manner. Under Section 14:4-2.3: "Change order required for switch" certain requirements have to be met in order for customers to be enrolled with a TPS. Under subsection (g) specific customer information is required to be transmitted to the utility in order for the customer to be enrolled. Unfortunately, in at least one New Jersey gas utility, a TPS attempting to enroll a customer is being required to submit unnecessary additional data fields that slow down the enrollment process, such as usage and peak demand data (which the utility already has), certain capacity release information, rate code and price information, and other information that might possibly be related to the commercial and industrial market segment, but by no means is relevant to retail customer choice for the residential and small commercial mass market. Only relevant information should be required for customer enrollments.

Under Section 14:4-7.7 "Customer bills" (d) the current language states: "LDC bills shall comply with the Board's rules for all public utility bills at N.J.A.C. 14:3-7.5 and 7.6." In addition, a successful retail choice program needs to accommodate the needs of consumers, particularly residential and small commercial entities. One method would be to adopt budget billing by the utilities for customers who wish to purchase their energy supplies from a TPS, whether utilizing a rate ready or bill ready platform, with payments made to the TPS based on actual billed amounts.

---

<sup>5</sup> NJBPU Final Readoption With Amendments, N.J.A.C. 14:4, Energy Competition Standards, N.J.A.C. 14:8, Renewable Energy and Energy Efficiency, Effective May 19, 2008 at page17.

A second enhancement would be the adoption by the utilities of a standardized bill format that would be printed in an easy-to-read format. For example, one New Jersey utility prints its account number at the top of the first page of the customer's bill, but this number is useless to the consumer if he wishes to switch to a TPS. Instead, the number that is required by the utility for the consumer to switch to a TPS is buried in the middle of the third page of his bill as a 20-digit number with rate code in small print and is referred to as the "Customer Number." The difficulty in finding this number has proven frustrating to many consumers and is harmful to the development of customer choice. Instead, it is recommended that this critical number be printed in #14 size font at the top of each page of the consumer's bill. An alternative to using a 20-digit number would be for the utilities to create a surrogate or proxy number for each consumer that could be released to licensed TPS in lieu of release of the actual Customer Number. There is evidence in other states to indicate that customer enrollments could be increased by 15-20 percent if either the actual number or a proxy number is adopted and used to facilitate timely customer enrollments with far fewer errors, enrollment delays, and customer dissatisfaction.

## **6. Conclusion**

NEM appreciates the Board's on-going efforts to refine the Energy Competition Rules to allow for the continued development of energy choice in New Jersey.

Respectfully submitted,

Craig G. Goodman  
President  
Stacey Rantala  
Director, Regulatory Services  
National Energy Marketers Association  
3333 K Street, NW, Suite 110  
Washington, DC 20007  
Email: cgoodman@energymarketers.com;  
srantala@energymarketers.com  
Tel: 202-333-3288  
Fax: 202-333-3266