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August 1, 2014

Via Electronic Mail and Hand Delivery

Ms. Kristi Izzo
Board Secretary
New Jersey Board of Public Utilities
CN 350
44 South Clinton Avenue
Trenton, New Jersey 08625-0350

Re: I/M/O the Board's Review of Consumer Protection Provisions of its Rules Concerning Third-Party Energy Suppliers, N.J.A.C. 14:4-7 and I/M/O the Implementation of the Special Rule Adoption in Compliance with L.2013, c.263 BPU Docket Nos. EX14060579 and EX14060610

Dear Secretary Izzo:

Please accept these comments on behalf of the Division of Rate Counsel ("Rate Counsel") in response to the request for written comments by the Staff of the Board of Public Utilities ("Board" or "BPU") in connection with the Board's review of its Retail Choice Consumer Protection regulations, N.J.A.C. 14:4-7. We enclose one additional copy of these comments. Please stamp and date the copy as "filed" or "received" and return it in the enclosed self-addressed envelope. Thank you for your consideration and assistance.

Background

Pursuant to the Electric Discount and Energy Competition Act (“EDECA”) N.J.S.A. 48:3-39 through N.J.S.A. 48:3-98.4, effective since February 9, 1999, the Board has regulated the process by which TPSs may offer and provide retail electric generation and gas supply service to utility customers. The Board further regulates the state’s electric and gas utilities as well as third-party energy suppliers (“TPSs”) pursuant to its Energy Competition Standards rules codified under N.J.A.C. 14:4, et seq. On July 1, 2011, in response to the Board’s May 2, 2011, Notice of Publication in the New Jersey Register of its proposal to readopt with amendments the Board’s Energy Competition Standards, Rate Counsel filed comments recommending certain changes including modifications to sections of the Energy Anti-Slamming rules, N.J.A.C. 14:4-2 et seq., and the Retail Choice Consumer Protection rules, N.J.A.C. 14:4-7 et seq., to improve the effectiveness of the regulations and provide appropriate customer protections.

In our comments, Rate Counsel proposed that the Board expressly require a TPS to (1) provide a hard or electronic copy of the signed contract to every customer, including those who initiate, switch or renew TPS service by telephone, by e-mail, through the TPS website or through other electronic media under N.J.A.C. 14:4-7.6(a) and pursuant to N.J.A.C. 14:4-2, et seq.; (2) provide a 14-day rescission period after receipt of the contract under N.J.A.C. 14:4-7.6(b)(4); (3) include more specific information on customer bills under N.J.A.C. 14:4-7.7; (4) obtain prior affirmative customer consent before disseminating individual customer proprietary information under N.J.A.C. 14:4-3.4 Information Disclosure; and (5) amend the language under N.J.A.C. 14:4-2.3(b)(2) as it

pertains to “Change Orders” to add clarifying language to ensure that all enrollments, whether by written signature, electronic signature, or by telephone, comply with the Retail Choice Consumer Protection rules under N.J.A.C. 14:4-7. Rate Counsel stressed the need for these modifications in order to afford customers the consumer protections that are required and mandated pursuant to N.J.S.A. 12A:12-1 through -26. The Board adopted some of Rate Counsel’s recommendations but did not incorporate Rate Counsel’s recommendations for additional consumer protections such as requirements allowing consumers 14 days for rescission of contracts as opposed to just seven days, under N.J.A.C. 14:4-7.6(b)(4); and suggestions that would have amended the language under N.J.A.C. 14:4-2.3(b)(2), to mandate that all enrollments comply with all of the Retail Choice Consumer Protection rules enumerated under N.J.A.C. 14:4-7 or to provide a written hard copy of the contract to all customers, not just customers who enroll in writing. The Board’s readopted rules became effective April 11, 2012.

In recent months Rate Counsel has received numerous TPS customer complaints that include but are not limited to allegations that: 1) TPS contract conditions and terms of service have been misleading, ambiguous, confusing and/or may have been absent in TPS contracts; 2) individual proprietary customer information has been disseminated without prior customer knowledge and consent, contrary to Board regulations, and the Federal “Do Not Call Registry”; 3) changes in rates have occurred without advance, and/or sufficient notice to customers; and 4) their rates increased far in excess of what TPS representatives had told them to expect, with some monthly increases of well over 100%. Thus it appears that current regulations are inadequate to address the concerns and complaints of TPS

customers and require reexamination and modification. In light of these complaints and growing concern that TPS customers' interests are not being adequately protected, certain actions have been taken.

On January 17, 2014, L.2013, c.263 was signed into law, directing the Board, in consultation with the Division of Consumer Affairs, to adopt interim advertising and marketing standards within 270 days. Those rules are to prohibit certain practices, including making false or misleading advertising claims and calling potential residential customers who have no business relationship with the caller and who are listed on the State no telemarketing call list or the federal do-not-call registry. Rate Counsel supported that legislation. The Board has established a proceeding pursuant to that statute, "I/M/O the Implementation of the Special Rule Adoption in Compliance with L.2013, c.263," Docket No. EX14060610.

On May 8, 2014, Rate Counsel testified before the Assembly Telecommunications and Utilities Committee meeting concerning third-party energy suppliers. That testimony described the complaints and allegations Rate Counsel had received about TPSs, and proposed a set of regulatory reforms.

On May 22, 2014, Rate Counsel met with the Retail Energy Suppliers' Association ("RESA") to discuss Rate Counsel's proposed regulatory changes. That meeting identified several areas of agreement between Rate Counsel and the TPS industry. Primarily, both agreed that false or misleading advertising claims and unsavory marketing practices harm both ratepayers and the TPS industry and that increased disclosure of contract terms to customers is desirable.

On May 27, 2014, Rate Counsel filed a Petition for Rulemaking with the Board, asking the Board to promulgate new and amended consumer protection regulations to address the complaints and allegations that Rate Counsel has received about TPSs. Docket No. EX14050506, "I/M/O the Division of Rate Counsel's Petition Seeking a Rulemaking Proceeding to Adopt or Modify Rules Requiring Third Party Suppliers of Retail Electric and Gas Service to Provide Full, Clear and Unequivocal Disclosures of Contract Terms and Impose Certain Conditions of Service and Consumer Protections." We attach hereto as Exhibit A a copy of that Petition.

On June 4, 2014, the New Jersey Attorney General, Division of Consumer Affairs, and the Board announced that they had filed suit against three TPSs that allegedly defrauded hundreds of consumers through misrepresentations of monthly bill reductions.

On June 18, 2014, Rate Counsel wrote to Assemblymen Chivukula, McKeon, Mazzeo and Andrzejczak and Senator Van Drew, in support of A3272/S2195. That bill would require a written contract between a customer and a TPS of electricity or gas.

On July 17, 2014, the Board held a legislative type proceeding on consumer protection rules for TPSs. That meeting initiated "I/M/O Third-Party Suppliers – N.J.A.C. 14:4-7 – The Board's Review of Consumer Protection Provision of its Rules Concerning Third-Party Energy Suppliers," Docket No. EX14060579. The Board heard testimony from Rate Counsel and RESA, and invited the submission of written comments by August 1, 2014.

On July 23, 2014, the Board denied Rate Counsel's Petition for Rulemaking as duplicative of its now pending proceeding to review its TPS consumer protection rules. At

the direction of Board Staff, Rate Counsel is resubmitting its petition for inclusion and consideration in this docket. Rate Counsel concurs with Commissioner Fiordaliso's comments that "it's important that we move ahead as expeditiously as we can." (T:3-19 to 21) Rate Counsel further wishes to acknowledge Commissioner Fox's comments and Staff's commitment to specifically consider the recommendations laid out in Rate Counsel's petition. (T:4-1 to 6). We attach hereto as Exhibit B a copy of the transcript of that proceeding.

Rate Counsel respectfully submits these comments to the Board to include in the record of this rulemaking proceeding, to address consumer protection concerns relating to TPSs.

Rate Counsel Comments

Substance of Requested Rulemaking

Rate Counsel believes that the most important improvement is increased disclosure, in clear and plain language, of all material contract terms, and acknowledgement of that disclosure. This protects the consumer, and also protects legitimate TPSs who provide appropriate disclosure. In support of this goal, Rate Counsel suggests that the Board amend its current rules and promulgate new rules to:

- (1) Require that each TPS promptly send, to each customer who signs up, in writing, by internet or by telephone, a written copy of the contract setting forth all material terms and conditions of the transaction. Customers must be provided with their contract and a standard disclosure form. Rate Counsel would agree that customers may affirmatively consent to the TPS sending their contract and uniform disclosure form in electronic format. However, the customer must still be able to request and receive a hard copy at any time.

- (2) Require that each TPS contract set forth all material terms and conditions of the transaction in a single document so that the customer need not go to another website page or obtain another document to receive a full disclosure of all material terms and conditions of the transaction. This could be accomplished by requiring all TPSs to use a standard one-page form containing the same uniform pricing disclosure information from the contract. Each TPS would attach that form to the contract and the customer could acknowledge, by signing and returning the form, that the TPS has disclosed all material terms. Rate Counsel thinks that in most transactions the contract and uniform disclosure form are the most relevant documents. However, other documents may be relevant if they amend or otherwise affect the terms or conditions of the contract, or if the additional document contains a term that the TPS will seek to enforce against the customer.

Rate Counsel believes these protections should be afforded to residential and small commercial customers. In discussion with members of the industry, Rate Counsel understands the term “small commercial customer” should be defined.

- (3) Require that once the written materials have been provided, but before the contract can take effect, the customer must return a card or other acknowledgement with an ink or electronic form signature consistent with the federal “E-SIGN Act,” and New Jersey’s Uniform Electronic Transactions Act¹ confirming that he or she wants to sign up for service and/or extend the contract time period.

Many of the complaints received by Rate Counsel would have been avoided if this condition had been required. The customer needs an opportunity to review the written contract and standard disclosure form, and verify and understand the nuances of the terms and conditions.

To this end, Rate Counsel supports a rescission period running from receipt of the contract and disclosure form. This period should be of sufficient length to allow customers adequate time to review and understand the terms of the TPS contract. Rate Counsel reiterates its previously expressed position that this rescission period should be 14 days.

¹ The Electronic Signatures in Global and National Commerce (“E-SIGN”) Act, Pub.L. 106-229, 114 Stat. 464, enacted June 30, 2000, 15 U.S.C. § 7001 et seq.; New Jersey’s Uniform Electronic Transactions Act, N.J.S.A. 12A:12-1 through -26.

In discussions with the industry, Rate Counsel believes there is agreement that the TPS should provide enhanced disclosures to customers nearing the end of their contract term. The TPS should provide notice to the customer 60 days and then 45 days before the end of the contact period that the contract is about to expire and be renewed. Rate Counsel recommends that the TPS obtain the customers' affirmative consent if there is any change in material contract terms or conditions upon renewal. This would include, for example, a change in price, a change from a fixed to a variable rate structure, or a change in the range of allowable variation. These enhanced disclosures should ensure that each customer receives clear notice of the contract renewal and any change in terms or conditions, and an opportunity to affirmatively consent.

- (4) Require that information regarding price, the end of the fixed price period, cancellation fees, and other major terms be explicitly detailed on a standard disclosure form in large bold letters, not fine print. Each TPS would provide this information to each customer on a standard, one-page disclosure form developed by the Board, along with the contract. The form must provide all required information, in bold print, easily understandable by a typical reader, and available to the greatest extent possible in the language understood by the customer.

RESA provided to our office a form, reportedly used in Pennsylvania, that is a good starting point.² Rate Counsel suggests also including the mailing and e-mail addresses and a toll-free telephone number for each TPS; how much notice the customer must provide for cancellation without being subject to a fee or penalty; and the TPS's historic pricing for at least the prior 12 months.

- (5) Require that the TPS maintain the entire recorded sales call, including the marketing portion of the call, for at least three months after the end of the customer's contract period, including any extensions. This will memorialize the contract terms and conditions to which the customer agreed when enrolling by phone. Discarding the recording before the end of the contract will not help to resolve disputes that may not arise until the end of the contract period.
- (6) Establish procedures to shorten the sixty-day and/or two-billing cycle timeframe for customers to switch back to BGS or BGSS, or to another TPS, and establish a maximum time limit for doing so. Rate Counsel and RESA agree on this goal.

² We attach hereto as Exhibit C RESA's June 30, 2014 letter to Rate Counsel with its Exhibit A, the above-referenced form.

Rate Counsel will defer to the Board and the regulated electric and gas utility companies as to the shortest practical time.

- (7) Investigate claims by customers regarding the release of customer proprietary information to third parties upon termination of TPS contracts in spite of customers being on an active “do not call” list.

Rate Counsel believes these simple measures will go a long way to making sure that customers are more knowledgeable and informed about what they are signing and ensuring they get it. We are hopeful that this will ensure that they are better shoppers and will not be surprised by price spikes again.

Rate Counsel has discussed these proposals with the industry, including representatives of TPSs and the regulated electric and gas utility companies, and thinks they can be tailored to address valid concerns by all interested parties without negatively impacting legitimate TPSs.

Rate Counsel also urges the BPU to establish a website that will provide consumers with information about the various third party suppliers and the services they offer. We understand that the Board has been working on such a website but it is not yet fully up and running. We have proposed that the Board post on the website certain relevant information on the various plans offered to allow consumers to comparison shop. It appears all parties agree on the need for enhanced disclosure requirements.

Rate Counsel suggests that the Board’s website disclosures include the “Price to Compare” savings; the number of customers or percentage of the New Jersey market and customer categories the TPS serves; the types of contracts each TPS offers; the relevant terms and conditions of service under the contracts each TPS offers; and details of each

TPS's promotional offerings, such as "green" energy. The Board may select the format it considers most easily understandable by the general public, as long as each entry clearly discloses the terms and conditions offered by each TPS. Rate Counsel recognizes the industry's legitimate concern that not all TPS products are based solely on cost savings. Nonetheless, consumers need to be aware of what they are paying, what they are getting and how that compares to what else is available to the customer. We also urge that if the information is to come from the third party suppliers themselves, that the Board establish a method to check the information's accuracy. This will help educate ratepayers and allow the Board to monitor and review the composition of the retail energy market.

In order to implement the above recommendations, Rate Counsel proposes the modifications to N.J.A.C. Title 14, Chapter 4, Energy Competition set forth in our initial rulemaking petition, attached hereto as Exhibit A. Rate Counsel also requests that the Board collect data regarding retail energy shopping by residential and small business customers.

Summary of Rate Counsel's Comments

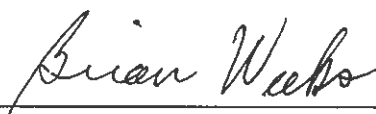
In sum, the Division of Rate Counsel believes that a lot can be done to make this system better. Retail shopping was established to give consumers choices. If we do not make these changes, consumers will not benefit and their confidence in retail shopping will disappear. This will undermine a core value of EDECA and could bring retail competition to an end. Rate Counsel will continue our discussions with the Board and other stakeholders regarding ways to improve consumers' experience with third-party energy

suppliers, and we hope our recommendations help the Board adopt rules to fix this problem.

Rate Counsel thanks the Board for this opportunity to submit these comments. We very much appreciate the Board's attention to this important issue. Rate Counsel looks forward to working with the Board and other stakeholders to improve the State's consumer protection rules for TPSs going forward.

Respectfully submitted,

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

By: 

Brian Weeks
Deputy Rate Counsel

EXHIBIT A



State of New Jersey
DIVISION OF RATE COUNSEL
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CHRIS CHRISTIE
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KIM GUADAGNO
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STEFANIE A. BRAND
Director

HAND DELIVERED

May 27, 2014

Kristi Izzo - Board Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. BOX 350
Trenton, New Jersey 08625-0350

Re: In the Matter of the Petition of the New Jersey Division of Rate Counsel,
Seeking a Rulemaking Proceeding to Adopt or Modify Rules Requiring
Third Party Suppliers of Retail Electric and Gas Service to Provide Full,
Clear and Unequivocal Disclosures of Contract Terms and Impose Certain
Conditions of Service and Consumer Protections Pursuant to the New
Jersey Board of Public Utilities' Energy Competition Standards, N.J.A.C.
14:4, et seq.
BPU Docket No.:

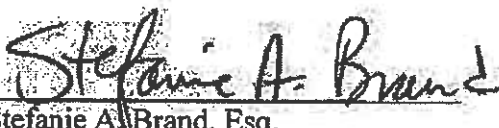
Dear Ms. Izzo:

The Division of Rate Counsel ("Rate Counsel") consistent with the public interest, convenience, and necessity respectfully files its Petition for Rulemaking for consideration by the Board of Public Utilities ("Board") in the above captioned matter. Enclosed with this original please find eleven (11) copies. Kindly return a date stamped "Received" or "Filed" copy in the enclosed self-addressed envelope for our records.

Thank you for your attention to this matter.

Very truly yours,

STEFANIE A. BRAND, DIRECTOR,
NEW JERSEY DIVISION OF RATE COUNSEL

By: 
Stefanie A. Brand, Esq.
Division of Rate Counsel

SAB/ea
w/encl.
c: Service List

I/M/O the Petition of the NJ Division of
Rate Counsel, Seeking a Rulemaking
Proceeding to Adopt or Modify Rules
Requiring Third Party Suppliers of Retail
Electric and Gas Service to Provide, *et seq.*
BPU Docket No.:

Kristi Izzo, Secretary
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BEFORE THE STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

In the Matter of the Petition of the
New Jersey Division of Rate Counsel,
Seeking a Rulemaking Proceeding to Adopt
or Modify Rules Requiring Third Party
Suppliers of Retail Electric and Gas Service
to Provide Full, Clear and Unequivocal
Disclosures of Contract Terms and Impose
Certain Conditions of Service and Consumer
Protections Pursuant to the New Jersey
Board of Public Utilities' Energy
Competition Standards, N.J.A.C. 14:4, et
seq.

BPU Docket No.:

PETITION FOR RULEMAKING

The New Jersey Division of Rate Counsel ("Rate Counsel"),¹ pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1, et seq., respectfully petitions the New Jersey Board of Public Utilities ("Board") to implement a rulemaking proceeding to amend and/or adopt rules under the Board's Energy Competition Standards, N.J.A.C. 14:4, et seq., requiring each licensed competitive third party energy supplier ("TPS/s") of retail electric and gas service in the State of New Jersey to modify or expand contracts terms and make clear and unequivocal disclosures of contract terms in TPS contracts and impose certain conditions of service and consumer protections in their contracts to include the following: (1) require that the TPS promptly send, to each customer who

¹/ Rate Counsel is a statutory party and intervenor in matters involving the regulatory oversight of utilities, pursuant to N.J.S.A. 52:27EE-48(a). As such, Rate Counsel, on behalf of New Jersey ratepayers, has the right to request and petition the New Jersey Board of Public Utilities to initiate a rulemaking proceeding.

signs up in writing, by internet or by telephone, a written copy of the contract setting forth all material terms and conditions of the transaction; (2) require that the TPS contract set forth all material terms and conditions of the transaction in a single document so that the customer need not go to another website page or obtain another document to receive a full disclosure of all material terms and conditions of the transaction. (In connection with this recommendation, Rate Counsel recommends that the Board adopt and require all TPSs to use a standard one-page form containing the same uniform pricing disclosure information. Each TPS would attach that form to the TPS contract and would require the customer to acknowledge, that the TPS has disclosed to the customer on that form all material terms of service); (3) require that the customer acknowledge with an "ink or electronic form as appropriate," consistent with the federal "E-SIGN Act," 15 U.S.C. ch. 96,² and New Jersey's Uniform Electronic Transactions Act, N.J.S.A. 12A:12-1 through -26, that he or she wants to sign up for service and/or extend the service contract time period and provide the customer with fourteen calendar days from the date of a contract for electric generation or gas supply service to rescinded the contract; (4) require prior notice and affirmative customer consent, "in ink or electronic form as appropriate," consistent with the E-SIGN Act and the Uniform Electronic Transactions Act, before a fixed price contract may revert to a variable price contract; (5) require that information regarding price, the end of the fixed price period, cancellation fees, and other major terms be explicitly detailed in large bold letters, not fine print, and made available to the greatest extent possible in the language understood by the customer; (6) require that the TPS maintain the entire recorded sales call, including the marketing portion of the call, for ninety days after the expiration of the contract term; (7) that the Board establish a website which states the relevant terms and conditions of service offered, including but not limited to the information required to be provided under new subsections (x) through (xiii) under N.J.A.C. 14:4-2.3, and new subsections (m) and (n) under N.J.A.C. 14:4-7.6, offered by all TPSs conducting business in New Jersey and, if the information is to come from the TPS, establish a procedure by which the BPU will verify that the information

² The Electronic Signatures in Global and National Commerce ("E-SIGN") Act, Pub.L. 106-229, 114 Stat. 464, enacted June 30, 2000, 15 U.S.C. § 7001 et seq.

on the website is accurate;³ (8) establish procedures that would shorten the sixty-day and/or two-billing cycle timeframe for electric customers to switch back to BGS or another TPS and establish a maximum time limit for doing so; (9) investigate claims by customers regarding the release of customer proprietary information to third parties upon ~~termination of TPS contracts in spite of customers being on an active "do not call" list;~~ (10) investigate whether additional consumer protection standards are necessary to prevent misleading or unfair consumer advertising or sales practices by TPSs; and (11) gather data regarding ratepayers who have switched to TPS service, including the number of customers who have switched, the number who have switched back, the types of plans they offer and the extent of savings they have achieved..

PROCEDURAL HISTORY

Pursuant to the Electric Discount and Energy Competition Act ("EDECA") N.J.S.A. 48:3-39 through N.J.S.A. 48:3-98.4, effective since February 9, 1999, the Board has regulated the process by which TPSs may offer and provide retail electric generation and gas supply service to utility customers. The Board further regulates the state's electric and gas utilities as well as TPSs pursuant to its Energy Competition Standards rules codified under N.J.A.C. 14:4, et seq. On July 1, 2011, in response to the Board's May 2, 2011, Notice of Publication in the New Jersey Register of its proposal to readopt with amendments the Board's Energy Competition Standards, Rate Counsel filed comments recommending certain changes including modifications to sections of the Energy Anti-Slamming rules, N.J.A.C. 14:4-2 et seq., and the Retail Choice Consumer Protection rules, N.J.A.C. 14:4-7 et seq., to improve the effectiveness of the regulations and provide appropriate customer protections.

In its comments, Rate Counsel proposed that the Board expressly require a TPS to (1) provide a hard or electronic copy of the signed contract to every customer, including those who initiate, switch or renew TPS service by telephone, by e-mail, through the TPS

^{3/} N.J.S.A. 48:3-56 (effective Jan. 13, 2014).

website or through other electronic media under N.J.A.C. 14:4-7.6(a) and pursuant to N.J.A.C. 14:4-2, et seq.; (2) provide a 14-day rescission period after receipt of the contract under N.J.A.C. 14:4-7.6(b)(4); (3) include more specific information on customer bills under N.J.A.C. 14:4-7.7; (4) obtain prior affirmative customer consent before disseminating individual customer proprietary information under N.J.A.C. 14:4-3.4 Information Disclosure; and (5) amend the language under N.J.A.C. 14:4-2.3(b)(2) as it pertains to "Change Orders" to add clarifying language to ensure that all enrollments, whether by written signature, electronic signature, or by telephone, comply with the Retail Choice Consumer Protection rules under N.J.A.C. 14:4-7.⁴ Rate Counsel stressed the need for these modifications in order to afford customers the consumer protections that are required and mandated pursuant to N.J.S.A. 12A:12-1 through -26. The Board adopted some of Rate Counsel's recommendations but did not incorporate Rate Counsel's recommendations for additional consumer protections such as requirements allowing consumers 14 days for rescission of contracts as opposed to just seven days, under N.J.A.C. 14:4-7.6(b)(4); and suggestions that would have amended the language under N.J.A.C. 14:4-2.3(b)(2), to mandate that all enrollments comply with all of the Retail Choice Consumer Protection rules enumerated under N.J.A.C. 14:4-7 or to provide a copy of the contract to all customers, not just customers who enroll in writing.

In recent months Rate Counsel has received numerous TPS customer complaints that include but are not limited to allegations that: 1) TPS contract conditions and terms of service have been misleading, ambiguous, confusing and/or may have been absent in TPS contracts; 2) individual proprietary customer information has been disseminated without prior customer knowledge and consent, contrary to Board regulations, and the Federal "Do Not Call Registry"; 3) changes in rates have occurred without advance, and/or sufficient notice to customers; and 4) their rates increased far in excess of what TPS representatives had told them to expect, with some monthly increases of well over 100%. Thus it appears that current regulations are inadequate to address the concerns and complaints of TPS customers and require reexamination and modification. In light of

⁴ See Rate Counsel's comments IM/O the Board's Proposed Readoption with Amendments of Energy Competition Standards N.J.A.C. 14:4, BPU Docket No. EX11020089, dated July 11, 2011, attached hereto as Exhibit A.

these complaints and Rate Counsel's growing concern that TPS customers' interests are not being adequately protected, Rate Counsel respectfully Petitions the Board to initiate a rulemaking proceeding to address these concerns.

LEGAL ARGUMENT

Rate Counsel submits this Petition pursuant to N.J.S.A. 52:14B-4(f), which states:

An interested person may petition an agency to adopt a new rule, or amend or repeal any existing rule. Each agency shall prescribe by rule the form for the petition and the procedure for the submission, consideration and disposition of the petition. The petition shall state clearly and concisely:

- (1) The substance or nature of the rule-making which is requested;
- (2) The reasons for the request and the petitioner's interest in the request;
- (3) References to the authority of the agency to take the requested action.

The petitioner may provide the text of the proposed new rule, amended rule or repealed rule.

Within 60 days following receipt of any such petition, the agency shall either; (i) deny the petition, giving a written statement of its reasons; (ii) grant the petition and initiate a rule-making proceeding within 90 days of granting the petition; or (iii) refer the matter for further deliberations which shall be concluded within 90 days of referring the matter for further deliberations. Upon conclusion of such further deliberations, the agency shall either deny the petition and provide a written statement of its reasons or grant the petition and initiate a rule-making proceeding within 90 days. Upon the receipt of the petition, the agency shall file a notice stating the name of the petitioner and the nature of the request with the Office of Administrative Law for publication in the New Jersey Register. Notice of formal agency action on such petition shall also be filed with the Office of Administrative Law for publication in the Register.

Rate Counsel, as a statutory interested party, and pursuant to these statutory requirements and in support of its Petition submits the following:

I. Substance of Requested Rulemaking

Rate Counsel is requesting that the Board modify existing rules and adopt new rules requiring TPSs of retail electric and gas supply service to modify or expand contract

terms and make clear and unequivocal disclosures of contract terms in TPS contracts and marketing materials. Rate Counsel proposes the following modifications to N.J.A.C. Title 14, Chapter 4, Energy Competition.⁵ Rate Counsel also requests, as discussed below, that the Board collect data regarding retail shoppers by residential and small business customers.

Subchapter 4.

Section 14:4-2.3, Change order required for switch

Delete the last sentence of subsection (ix) under §14:4-2.3(c)(2)

(ix) Include a recording of the entire duration of the call, from the first contact with the customer to the disconnection of the call. [This requirement may be waived with the customer's consent;]

Add new subsections (x) through (xiii) under §14:4-2.3(c)(2)

(x) For residential and small commercial customers all transactions shall be followed by the TPS providing written copies of all relevant documents to the customer. Internet/phone sign ups shall be followed by the TPS supplying written copies of all relevant documents in paper form to the customer unless the customer requests by an affirmative acknowledgement to receive materials only in electronic format. For customers who have requested electronic materials the TPS shall then provide written copies of all relevant documents electronically. The TPS shall also provide the customer with the option to cancel their request to receive documents electronically. The TPS shall maintain proof of a customer's request to receive documents electronically for no less than 90 days after termination of the contract period.

(xi) Written materials shall include all relevant documents, including a one-page uniform summary and pricing disclosure form, disclosing all material terms of the agreement so that the customer is not required to go to or obtain other website pages or documents to receive a full disclosure of the terms and conditions in compliance with § 14:4-7.6(m).⁶

(xii) Written prior notice shall be provided to the customer consistent with and in compliance with the notice requirement under N.J.A.C. 14:4-7.6(k) at sixty days and thereafter at forty-five days before a fixed rate contract may change to a variable rate contract for electric generation service or gas supply service informing the customer of the date upon which the fixed rate service contract term ends. A contract shall be

⁵/ Rate Counsel proposes new language underlined and proposes language for deletion [in brackets].

⁶/ See Rate Counsel's recommended addition of new subsections (m) and (n) under § 14:4-7.6, discussed further below.

affirmatively entered into through an acknowledgement in ink or electronic form as appropriate, consistent with the federal "E-SIGN Act," 15 U.S.C. ch. 96, and the Uniform Electronic Transactions Act, N.J.S.A. 12A:12-1 through -26, before the end of each term and before such change may occur in compliance with N.J.A.C. 14:4-7.12; If the TPS is unable to obtain an affirmative acknowledgement from the customer the TPS may continue to serve the customer on a month to month basis under the new variable rate but the variable rate must not exceed the "variable rate cap" noticed in the terms and conditions of contract contained in the original contract entered into by the customer.

(xiii) Information regarding the contract price shall comply with the requirements under N.J.A.C. 14:4-7.6, Contracts.

Section 14:4-2.4, Signing up or switching customers electronically
Modify the language under § 14:4-2.4(i)

(i) [Upon request by the customer, t]The TPS shall [make available] provide to the customer a written copy in paper form of the contract, including all terms and conditions, [of the contract version number] that the customer has signed, without the customer having to request said written contract, and provide a means for the customer to consistent with the federal "E-SIGN Act," 15 U.S.C. ch. 96, and the Uniform Electronic Transactions Act, N.J.S.A. 12A:12-1 through -26, to confirm the customer signed the contract or agrees to extend the contract time period. The TPS also shall provide to the customer a toll-free telephone number, Internet means or an e-mail address for the customer to request this information throughout the duration of the contract.

Section 14:4-2.5, Recordkeeping
Add new subsection 3. under §14:4-2.5(b)

3. A customer's acknowledgement with an "ink or electronic form as appropriate," consistent with the federal "E-SIGN Act," 15 U.S.C. ch. 96, and the Uniform Electronic Transactions Act, N.J.S.A. 12A:12-1 through -26, which confirms the customer signed up for service and/or extended the service contract time period.

Modify the language under §14:4-2.5(c)

(c) [Notwithstanding (a) above,] The TPS shall retain the recording[s] of the entire sales call, including the marketing portion of the call that results in a contract [s may be disposed of six months], for no less than 90 days after the end of the contract term after the call was recorded [and need not be retained for three years].

Section 14:4-2.6, LDC notice to customer of a change order
Add new subsections (i) and (ii) under §14:4-2.6(d)

(i) The Board shall establish procedures that would shorten the sixty-day and/or two-billing cycle timeframe for customers to switch back to another electric power supplier;

(ii) The Board shall establish a maximum time of ten days within which the electric LDC must read the TPS electric customer's meter and return the customer to BGS service within 30 days after the customer contacts the TPS to cancel service. The Board shall establish a maximum time period of thirty days within which the local gas utility company must read the TPS gas customer's meter and return the customer to BGSS service within 60 days after the customer contacts the TPS to cancel service.

Section 14:4-2.7 Slamming complaints and investigation
Add new subsection (g) under §14:4-2.7

(g) The Board shall investigate all claims by customers alleging the release of customer proprietary information to a TPS upon termination of a TPS contract without the customer's prior knowledge and signed consent, "in ink or electronic form as appropriate," consistent with the federal "E-SIGN Act," 15 U.S.C. ch. 96, and the Uniform Electronic Transactions Act, N.J.S.A. 12A:12-1 through -26/ in violation of N.J.A.C. 14:4-7.8, Customer information, and in violation of the National Do Not Call Registry, 15 U.S.C. § 6101 et seq.⁷

Section 14:4-7.4, Marketing standards
Add new subsections (n) and (o) under §14:4-7.4

(n) The TPS shall obtain affirmative customer consent, "in ink or electronic form as appropriate," consistent with the federal "E-SIGN Act," 15 U.S.C. ch. 96, and the Uniform Electronic Transactions Act, N.J.S.A. 12A:12-1 through -26, prior to dissemination of a customer's proprietary customer information to other TPS providers in compliance with N.J.S.A. 48:3-85(b)(1) and N.J.A.C. 14:4-3.4, Information disclosure, and other applicable law;

(o) The TPS shall not engage in unsolicited telemarketing calls and advertisement where the telemarketer does not have an existing business relationship with the potential residential customer and the residential customer's telephone number appears on the no

^{7/} In compliance with the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227, 47 C.F.R. § 64.1200, which regulates telephone solicitations (i.e., telemarketing) and the use of automated telephone equipment in such solicitations.

telemarketing call list established and maintained by the Division of Consumer Affairs, pursuant to the provisions of section 9 of P.L.2003, c.76 (C.56:8-127), or the national do-not-call registry as maintained by the Federal Trade Commission, in compliance with N.J.S.A. 48:3-51, and N.J.S.A. 48:3-85(f)(1)(a) and (b).

Section 14:4-7.6, Contracts

Modify Subsection (b)(4) under §14:4-7.6

4. A statement of the residential and small commercial customer's rights, which shall provide that the customer will receive a confirmation notice of its choice of supplier and that, at a minimum, the customer will have fourteen [seven] calendar days from the date of the confirmation notice to contact its LDC and rescind its selection. Furthermore, that a contract for electric generation or gas supply service shall not be legally binding upon the residential and small commercial customer until the fourteen-day [seven-day] confirmation period has expired, and the customer has not, directly or indirectly, rescinded his or her selection;

Add new subsections (m) and (n) under § 14:4-7.6

(k) The TPS shall provide written notice to the customer at sixty days and thereafter at forty-five days [at least 30 days] prior to the end of the electric generation service or gas supply service contract, informing the customer of the date upon which the service contract term ends.

(m) Consistent with N.J.A.C. 14:4-7.6(k), the Board shall establish and require a TPS to use and annex to the top of its contract with residential and small commercial customers, a standard one-page uniform pricing disclosure form⁸ which summarizes and contains the following information: 1) the price per kWh (electric) or therm (gas); 2) whether the price is fixed or variable; 3) the BGS and BGSS prices to compare; 4) how often the variable price may change; 5) the variable pricing formula; 6) the maximum variable price increase (or decrease); 7) whether the customer is automatically subject to a variable price increase, and if so when and how often; 8) the length of the contract; 9) any fees or penalties for early cancellation; 10) the length of time from cancellation to return to BGS or BGSS service, as applicable; 11) how much notice the customer must provide for cancellation without being subject to a fee or penalty; 12) the TPS's historic pricing for at least the prior 12 months; and 13) a toll-free phone number with contact name, email address and mailing address for customers to contact with questions, for problems, or to cancel the contract.

⁸/ Rate Counsel suggests that the Board adopt this proposed form with a memorable name, such as a "BPU TPS 1" form, to support its widespread use. Other memorably named consumer disclosure forms include the former "HUD-1" residential mortgage disclosure form and the "Schumer" box on credit card bills (named for U.S. Senator Charles Schumer of New York).

(n) All contract disclosures and material terms, including but not limited to the information provided under subsection (m) herein, shall be displayed in prominent and bold print and made available to the greatest extent possible in the language understood by the customer.

Create New Section 14:4-7.13, Board Website

(a) The Board shall establish and maintain a website detailing the information received from TPSs on a quarterly basis, which will include for each TPS, data in the aggregate for residential and small commercial customers on:

1. The "Price to Compare" savings;
2. The number of customers and customer categories the TPS serves;
3. The types of contracts the TPS provides;
4. The relevant terms, and conditions of service under existing contracts;
5. Details on the TPSs' promotional offerings, including but not limited marketing information on all contracts offered with or without promotions in addition to the information required to be provided under new subsections (x) through (xii) under N.J.A.C. 14:4-2.3, and new subsections (m) and (n) under N.J.A.C. 14:4-7.6, and establish a mechanism to ascertain the accuracy of the information received by the TPSs and posted on the website.

(b) The Board shall establish and maintain a website detailing information supplied by each TPS under subsection (a) above, that conducts business in New Jersey, which states the material terms and conditions of service offered, including but not limited to the information required to be provided under new subsections (x) through (xii) under N.J.A.C. 14:4-2.3, and new subsections (m) and (n) under N.J.A.C. 14:4-7.6, and establish a mechanism to ascertain that the information received by the TPSs and posted on the website is accurate.

II. Rate Counsel's Reason and Interest for the Rulemaking Request

Rate Counsel's interest in requesting that the Board initiate a rulemaking proceeding are consistent with our overarching mission to represent and protect the interests of all utility consumers, including residential, business, commercial, and industrial entities. As such it is part of our mandate to provide our expertise and assistance to pursue vigorous and effective policy and legal development that protects consumers' interests and ensures that ratepayers pay just and reasonable rates and receive safe, reliable and proper service.

We believe these principles are essential to the functioning of retail competition for electric and gas service in New Jersey. Our office is aware of the recent increases in energy prices that are having a profound impact on all classes of TPS ratepayers. We have also received numerous complaints alleging potentially anti-competitive and deceptive business practices under existing TPS contracts. Therefore, as a consumer protection agency we are compelled to address the issues that concern and affect New Jersey ratepayers in these matters.

Rate Counsel also requests, that the Board require the TPSs to report on a quarterly basis to the Board and to Rate Counsel data in the aggregate on 1) the "Price to Compare" savings; 2) the number of customers and customer categories the TPS serves; 3) the types of contracts the TPS provides; 4) the relevant terms, and conditions of service under existing contracts; and 5) details on the TPSs' promotional offerings, including but not limited to marketing information on all contracts offered with promotions or without promotions, in addition to the information required to be provided under Rate Counsel's proposed new subsections (x) through (xii) under Section 14:4-2.3, and new subsections (m) and (n) under Section 14:4-7.6, to enable the Board and Rate Counsel to ascertain the accuracy of the information provided to customers by TPSs and monitor the the extent of savings for ratepayers who switched from BGS and BGSS service to TPS electric generation and gas supply service. This office is not aware of any data on the extent of cost savings to ratepayers resulting from energy competition in New Jersey since deregulation in 1999. We are aware of only two such studies, of the electric and gas retail markets in one utility's service area in New York State⁹ and of the electric

⁹ State of New York, Public Service Commission, Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets in New York State, Case 12-M-0476, Memorandum of Public Utility Law Project of New York, Inc. in Opposition to Motion of Direct Energy for Protective Order, filed March 12, 2013, available at:

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7BEA51054E-C238-4FBF-B9F2-BF425A2108E7%7D>

(viewed 5/9/14); Public Utility Law Project, "ALJs Rule that Differences between ESCO Charges and Niagara Mohawk Charges are Not Trade Secrets Requiring Confidential Treatment," Sept. 7, 2012, available at <http://pulpnetwork.blogspot.com/2012/09/in-ruling-issued-september-7-2012.html> (viewed 5/9/14); PULP Initial comments, Attachment 1: Direct Testimony and exhibits of William D. Yates, C.P.A., on behalf of the Public Utility Law Project of New York, Inc., before the New York Public Service Commission, Proceeding for Niagara Mohawk Power Co. for natural gas and electric rates, Case No.12-G-0202 and Case No. 12-E-0201 (August 31, 2012) (unredacted, filing #73), available at:

<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/B428BB2B680CD9B485257687006F3890?OpenDocument>

retail market in two utilities' service areas in Connecticut.¹⁰ The requested aggregate data will provide facts to help evaluate the functioning of the competitive energy marketplace in New Jersey and determine whether additional ratepayer safeguards are necessary.

Rate Counsel believes that providing better consumer protections will enhance retail competition as it will provide customers with the confidence to shop with less fear of potentially unscrupulous commercial practices. As such, the modifications to the Board's regulations requested by Rate Counsel herein are narrowly tailored to address only the areas of gravest concern. Rate Counsel believes that the requested modifications would reduce the potential for anti-competitive and deceptive practices, and may restore consumer confidence that is necessary for the growth of competition and the continued provision of safe and reliable energy services in New Jersey.

III. Authority of the Board to take the Requested Action

The Board has the authority under Section 37 of EDECA to implement a rulemaking proceeding amending or modifying its current regulations. N.J.S.A. 48:3-86. EDECA authorized the Board to set standards of conduct for TPSs such as the prevention of "unauthorized changes of a consumer's electric power supplier or gas supplier, a practice commonly known as 'slamming,'" under N.J.S.A. 48:3-86(a), as well as other measures to ensure that TPSs protect consumers' rights while providing their services.

As directed by EDECA, the Board has previously invoked this authority by promulgating and modifying the rules that regulate the standards of conduct of TPSs in the provision of their retail energy services to customers in New Jersey under the Board's Energy Competition rules, N.J.A.C. 14:4 et seq., and New Jersey consumer protection

(search case number) (viewed 5/9/14); Larry Rulison, "Choice Offers Cost," Times Union, Oct. 3, 2012, available at www.timesunion.com/business/article/Choice-offers-higher-cost-3913852.php (viewed 5/9/14).

¹⁰/ State of Connecticut, Public Utilities Regulatory Authority, PURA Establishment of Rules for Electric Suppliers and EDCs Concerning Operations and Marketing in the Electric Retail Market, Docket No. 13-07-18, Testimony and Exhibits of Susan M. Baldwin and Helen E. Golding on behalf of the Connecticut Office of Consumer Counsel, filed March 10, 2014, available at:

<http://www.dpuc.state.ct.us/SearchDB.nsf/MenuForm?Openform>

(viewed 5/9/14) (search docket number then either witness name).

laws. The Board has authority to require TPSs to provide further information in their marketing materials if it would provide customers with more accurate information on TPS offers as authorized under N.J.A.C. 14:4-7.4(c), in compliance with N.J.S.A. 48:3-85b.(5)(f)(1)(a) and (b). Moreover, the Board has the authority, under N.J.S.A. 48:3-80(a), to use a broad range of methods to investigate a TPS,

[w]henver it shall appear to the board that an electric power supplier or a gas supplier has engaged in, is engaging in, or is about to engage in any act or practice that is in violation of this act, or when the board shall deem it to be in the public interest to inquire whether any such violation may exist. (emphasis added).

In this regard, the Board has the authority, pursuant to N.J.S.A. 48:2-16 and N.J.S.A. 48:2-40, to issue orders to TPSs to comply with Board Rules. Therefore, the Board has the authority to initiate an enforcement action for any violation found under EDECA and N.J.A.C. 14:4, et seq., and may also apply to the Superior Court for relief in the event of non-compliance.

In summary, the Board is empowered as per N.J.S.A. 48:2-23, to ensure that regulated public utilities provide safe, adequate and proper services to New Jersey citizens; and is vested by the Legislature with the general supervision and regulation of and jurisdiction and control over all public utilities, "so far as may be necessary for the purpose of carrying out the provisions of [Title 48]." N.J.S.A. 48:2-13. The Board also has specific authority under EDECA to regulate and gather data on TPS activities in New Jersey. Therefore, the Board has adequate statutory and regulatory authority to act, and take the actions requested by Rate Counsel herein to ensure TPS customers receive adequate consumer protections under the Board's statutory authority and regulations.

CONCLUSION

For the reasons stated above, Rate Counsel respectfully requests that the Board approve this Petition for a rulemaking proceeding to modify the Board's existing regulations requiring Third-Party Suppliers of retail energy services to meet certain requirements to ensure consumer protections, and to determine the extent of cost savings to ratepayers who switched to TPS service, as proposed by Rate Counsel above.

Respectfully Submitted,

STEFANIE A. BRAND, DIRECTOR
NEW JERSEY DIVISION OF RATE COUNSEL

Dated: May 27, 2014



Stefanie A. Brand, Director
Brian Lipman, Deputy Rate Counsel
Ami Morita, Deputy Rate Counsel
Felicia Thomas-Friel, Deputy Rate Counsel
Brian Weeks, Deputy Rate Counsel
Maria T. Novas-Ruiz, Assist. Deputy Rate Counsel

EXHIBIT B

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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
TRENTON, NEW JERSEY

BOARD AGENDA

DATE: WEDNESDAY, JULY 23, 2014

ITEM 7E
CUSTOMER ASSISTANCE

DOCKET NO.: EX14050506

IN THE MATTER OF THE DIVISION OF
RATE COUNSEL'S PETITION
SEEKING A RULEMAKING PROCEEDING
TO ADOPT OR MODIFY RULES
REQUIRING THIRD PARTY SUPPLIERS
OF RETAIL ELECTRIC AND GAS
SERVICE TO PROVIDE FULL, CLEAR
AND UNEQUIVOCAL DISCLOSURES OF
CONTRACT TERMS AND IMPOSE
CERTAIN CONDITIONS OF SERVICE
AND CONSUMER PROTECTIONS -
NOTICE OF ACTION.

BEFORE: PRESIDENT DIANNE SOLOMON
COMMISSIONER JEANNE M. FOX
COMMISSIONER JOSEPH L. FIORDALISO
COMMISSIONER MARY-ANNA HOLDEN

J.H. BUEHRER & ASSOCIATES
1613 BEAVER DAM ROAD
POINT PLEASANT BORO, NJ 08742
(732) 295-1975

1 PRESIDENT SOLOMON: 7E is the next item.
2 MR. GERTSMAN: Good afternoon,

3 Commissioners.

4 On May 27th the board received a petition
5 for rulemaking from the Division of Rate Counsel
6 concerning the board's third party supplier rules. Rate
7 counsel states in the petition that the current rules
8 are inadequate to address the concerns of third party
9 supplier customers and requires re-examination and
10 modification.

11 When receiving a petition for rulemaking,
12 the board is required within 60 days to act in one of
13 three ways. First would be to grant the petition and
14 issue a rulemaking proceeding; second would be to deny
15 the petition; and third would be refer the matter for 30
16 days for further deliberation.

17 As you are aware, on June 24th the Board
18 formally announced a stakeholder process to solicit
19 input from all interested parties for the special
20 adoption of rules concerning interim advertising and
21 marketing standards and review of all consumer
22 protection provisions of the board's third party
23 supplier rules at N.J.A.C. 14:4-7.

24 Staff believes that these two rulemaking
25 proceedings are sufficient and are the proper venue for

3

1 the petitioner and all interested parties to provide
2 their comments as the board reviews its rules concerning
3 third party supplier practices; and the granting of this
4 petition and the commencement of a separate rulemaking
5 process to address the specific issues raised in the
6 petition would attract and inform local review; and,
7 therefore, staff is recommending that the board deny

8 this petition of rulemaking.

9 COMMISSIONER FIORDALISO: So moved.

10 COMMISSIONER FOX: Second.

11 PRESIDENT SOLOMON: Okay. I had the
12 opportunity at the board stakeholder meeting regarding
13 these rules last week. And I thank rate counsel for
14 participating in this process and fully expect the staff
15 will be convening work groups to review this issue with
16 the stakeholders and look forward to the written
17 comments and staff's recommendations on this matter.

18 COMMISSIONER FIORDALISO: Yes. And I agree
19 with, obviously, your recommendation and so on. And I
20 think it's important that we move ahead as expeditiously
21 as we can because the third party supplier environment
22 is growing. And we're seeing more and more things -- as
23 things grow, we're seeing more and more areas that may
24 need attention and I think by initiating this we're
25 certainly moving in the right direction.

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1 COMMISSIONER FOX: Yeah, I agree. And I
2 think what rate counsel laid out in the petition were
3 really good recommendations. And from what you told me,
4 Jake, those things will be specifically considered in
5 the proceeding. Correct?

6 MR. GERTSMAN: That's correct.

7 COMMISSIONER FOX: So what I just wanted to
8 point out is the board website. We've been trying for
9 many many years now, decades probably, to get the BPU
10 into an IT proper situation. There has been
11 improvement. But one of them is our web page. And the

12 petition talks about the board website. And I think we
13 are moving ahead on that as painfully as it can be in
14 state government. But that's one of the requirements.
15 I think that is something that is really important, not
16 just for third party suppliers, but for a lot of what we
17 do, we talked about the connections from the utility
18 into our website.

19 So I'm really happy. And I assume from what
20 you told me, you expect to submit this almost as is from
21 comments in your proceeding.

22 MR. GERTSMAN: Well, I wouldn't want to
23 presume what rate counsel would submit by August 1st,
24 but any comment -- this petition would end if you all
25 agree with staff's recommendations. So any comments

5

1 that rate counsel or anybody else has, that would have
2 to be resubmitted as part of the stakeholder process.

3 SECRETARY IZZO: On the motion to approve
4 staff's recommendation,

5 Commissioner Fox?

6 COMMISSIONER FOX: Yes.

7 SECRETARY IZZO: Commissioner Fiordaliso?

8 COMMISSIONER FIORDALISO: Yes.

9 SECRETARY IZZO: Commissioner Holden?

10 COMMISSIONER HOLDEN: Yes.

11 SECRETARY IZZO: President Solomon?

12 PRESIDENT SOLOMON: Yes.

13 (Whereupon recommendation of staff was
14 approved.)

15 PRESIDENT SOLOMON: Thank you.

16 (Item 7E - Customer Assistance Concluded.)
Page 4

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1 CERTIFICATE

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3 I, Lorin Thompson, a Notary Public and
4 Shorthand Reporter of the State of New Jersey, do hereby
5 certify as follows:

6 I DO FURTHER CERTIFY that the foregoing is a
7 true and accurate transcript of the testimony as taken
8 stenographically by and before me at the time, place and
9 on the date hereinbefore set forth.

10 I DO FURTHER CERTIFY that I am neither a
11 relative nor employee nor attorney nor counsel of any of
12 the parties to this action, and that I am neither a
13 relative nor employee of such attorney or counsel, and
14 that I am not financially interested in the action.

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20 Notary Public of the State of New Jersey
My commission expires July 26, 2016

7E July 23 2014.txt

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Dated: July 23, 2014

EXHIBIT C

MURRAY E. BEVAN
mbevan@bmgzlaw.com

June 30, 2014

VIA ELECTRONIC AND REGULAR MAIL

Stefanie Brand, Director
Division of Rate Counsel
140 East Front Street 4th Floor
P.O. Box 003
Trenton, N.J. 08625

Re: Rate Counsel Petition for Rulemaking

Dear Ms. Brand:

The Retail Energy Supply Association (“RESA”)¹ has closely analyzed the Petition for Rulemaking (the “Petition”) filed by your office on May 27, 2014, and would like to offer comments and suggestions for an effective rulemaking that advances the interests of customers and protects retail suppliers from onerous obligations which do not enhance consumer protections and only serve to stymie retail competition. RESA supports effective and workable Energy Competition Rules that provide adequate consumer protections and are practically implementable by competitive suppliers. RESA will limit its comments to those proposed rules which RESA believes would be benefitted by additional changes.

¹ RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

Comments on additions to “Change Order Required for Switch” Section of the Energy Competition Rules:

Add new subsections (x) through (xiii) under §14:4-2.3(c)(2)

(x) For residential and small commercial customers all transactions shall be followed by the TPS providing written copies of all relevant documents to the customer. Internet/phone sign ups shall be followed by the TPS supplying written copies of all relevant documents in paper form to the customer unless the customer requests by an affirmative acknowledgement to receive materials only in electronic format. For customers who have requested electronic materials the TPS shall then provide written copies of all relevant documents electronically. The TPS shall also provide the customer with the option to cancel their request to receive documents electronically. The TPS shall maintain proof of a customer's request to receive documents electronically for no less than 90 days after termination of the contract period.

RESA does not object to language which would require that third party suppliers (“TPSs”) must provide written contracts to residential and small commercial customers. RESA further believes that if customers wish to receive electronic versions of their contracts, rather than hard paper copies, the customer should have the ability to receive electronic versions and not have to receive paper contracts. However, RESA has concerns with the overly prescriptive nature of the proposed language. A customer signing up for TPS service via the internet should be presumed to be comfortable with electronic transactions. A separate form of affirmative acknowledgement should not be required to show electronic delivery of written contracts for internet enrollments. The consent for electronic delivery should be permitted in the overall TPS supply contract. Accordingly, RESA recommends the following change:

Internet/phone sign ups shall be followed by the TPS supplying written copies of all relevant documents [in paper form] to the customer unless the customer consents [requests by an affirmative acknowledgement] to receive materials only in electronic format.

RESA also believes additional clarification is needed regarding the definition of a “small commercial” customer. Currently, there is no definition in the Energy Competition rules. In other states with restructured electric markets, small electric commercial customers are those non-residential, commercial entities with a cumulative peak load demand of 25 kW or lower as measured across all of a customer’s facilities and meters. For small commercial gas customers, other states generally categorize commercial entities with a cumulative 5,000 or fewer therms per year as small commercial customers. RESA would support the inclusion of the following definition of “small commercial customer” consistent with other states:

“Small commercial customer” shall mean either (1) for electric, a commercial customer utilizing 25 kilowatt peak load demand or less on a cumulative basis across all of the commercial customer’s meters and facilities; or (2) for gas, a commercial customer utilizing 5,000 or fewer therms of natural gas during the previous year on a cumulative basis across all of the commercial customer’s meters and facilities.

In addition, RESA requests clarification on the phrase “relevant documents.” While RESA presumes that “relevant documents” includes a customer’s contract, without clarifying language, this provision is difficult to understand, and therefore, would be difficult to implement if adopted. RESA believes “relevant documents” should be defined as the contract and the standard one-page uniform pricing disclosure form described later in the Petition. RESA believes these documents include all of the necessary information for a customer to make an informed decision about switching energy suppliers.

(xi) Written materials shall include all relevant documents, including a one-page uniform summary and pricing disclosure form, disclosing all material terms of the agreement so that the customer is not required to go to or obtain other website pages or documents to receive a full disclosure of the terms and conditions in compliance with § 14:4-7.6(m);

Again, RESA reiterates the need for clarifying language so that all TPSs and customers understand what is included in the term “relevant documents.” RESA supports the requirement to include a “summary document” which discloses all of the material terms of the agreement. Assuming “material terms” includes the specific items discussed in proposed new rule §14:4-7.6(m), RESA will address those proposed new requirements later in this document. If, however, there is a different intended definition of “material terms,” RESA again requests clarification regarding what constitutes “material terms.”

Subject to important revisions discussed below, RESA does not object to Rate Counsel’s suggested amendments to N.J.A.C. § 14:4-2.4(i), which more explicitly require TPSs to provide copies of contracts to customers.

(xii) Written prior notice shall be provided to the customer consistent with and in compliance with the notice requirement under N.J.A.C. 14:4-7.6(k) at sixty days and thereafter at forty-five days before a fixed rate contract may change to a variable rate contract for electric generation service or gas supply service informing the customer of the date upon which the fixed rate service contract term ends. A contract shall be affirmatively entered into through an acknowledgment in ink or electronic form as appropriate, consistent with the federal “E-SIGN

Act," 15 U.S.C. ch. 96, and the Uniform Electronic Transactions Act, N.J.S.A. 12A:12-1 through -26, before the end of each term and before such change may occur in compliance with N.J.A.C. 14:4-7.12; If the TPS is unable to obtain an affirmative acknowledgement from the customer the TPS may continue to serve the customer on a month to month basis under the new variable rate but the variable rate must not exceed the "variable rate cap" noticed in the terms and conditions of contract contained in the original contract entered into by the customer.

RESA supports providing enhanced disclosures to customers nearing the end of their contract term, coupled with accelerated switching. However, requiring the customer to *again* consent to the terms of a contract (in the above scenario, a fixed rate product which reverts to a variable rate after a specified period of time) is an onerous requirement, both for customers and for retail suppliers. RESA believes the enhanced disclosure requirements will provide ample notice to customers automatically renewing into a new fixed price period at the end of their initial contract term, switch to another TPS, or revert to BGS or BGSS service from their utility, and that there is no need to have a customer again consent to terms of a contract they freely entered into at an earlier point in time. The language proposed in the Petition would remove options for customers instead of adding consumer protections. Customers who have selected a TPS have already made an affirmative choice for their generation service provider. It should not be presumed that the customer wishes to return to BGS/BGSS service at the end of an initial fixed price period. Moreover, this section highlights the competitive disparity between TPS supply and BGS/BGSS supply, as the utilities are not required to receive contractual customer consent to change their rates. RESA strongly objects to any provision that would effectively eliminate the option for customers to enter into an automatically renewing agreement with their chosen TPS.

RESA also requests clarification on the concept of a "variable rate cap," as this term is undefined. Would this cap be set by the supplier in their contracting agreement with the customer, or would this be a product of Board design? Conceptually, RESA supports a "variable rate cap" provided that the structure and level of the cap is determined voluntarily by the supplier and consented to by the customer.

Comments to New Section on Recordkeeping

Add new subsection 3. under § 14:4-2.5(b)

3. A customer's acknowledgement with an "ink or electronic form as appropriate." consistent with the federal "E-SIGN Act." 15 U.S.C. ch. 96. and the Uniform Electronic Transactions Act, N.J.S.A. 12A:12-1 through -26. which confirms the customer signed up for service and/or extended the service contract time period.

RESA opposes the inclusion of this new requirement in the Energy Competition Rules. This requirement would eviscerate contractual agreements reached between TPSs and customers in a telephonic enrollment. The current third party verification requirements allow a customer to affirmatively enter into an agreement with a TPS. The proposal here adds an additional, unnecessary layer of paperwork, which benefits neither customers nor third party suppliers. RESA believes the current regulations, when properly enforced, provide the necessary protection for customers who sign up for service with a TPS utilizing telephonic means.

It should also be noted that telephonic enrollments, properly confirmed through a valid third party verification ("TPV") process, are among the most transparent and easily verifiable methods of enrollment. This is because the actual customer authorizing the transaction is recorded accepting the terms and conditions of the contract. The enrollment authorization and TPV record can be traced back to the telephone number for the customer, adding an additional layer of verification if there are future concerns about the validity of the enrollment. This proposal will only serve to increase costs and burden those TPSs who are already complying with existing laws and regulations.

Modify the language under S14:4-2.5(c)

(c) [Notwithstanding (a) above,] The TPS shall retain the recording[s] of the entire sales call, including the marketing portion of the call that results in a contract [s may be disposed of six months], for no less than 90 days after the end of the contract term after the call was recorded [and need not be retained for three years].

RESA acknowledges Rate Counsel's willingness to accommodate supplier administrative concerns over storage and technical capabilities regarding this proposed rule. After discussion with RESA members, RESA supports a requirement to record and retain customer calls for a period of one year. Given the manner in which many telephonic recording systems operate, the easiest manner in which to mark the one year term is one year from the recording of the call. Various suppliers have implemented different means of complying with various state regulatory requirements regarding recording of customer calls.

Comments on LDC notice to customer of a change order

Add new subsections (ii) and (iii) under § 14:4-2.6(d)

(i) The Board shall establish procedures that would shorten the sixty-day and/or two-billing cycle timeframe for customers to switch back to another electric power supplier;

(ii) The Board shall establish a maximum time of ten days within which the electric LDC must read the TPS electric customer's meter and return the customer to BGS service within 30 days after the customer contacts the TPS to cancel service. The Board shall establish a maximum time period of thirty days within which the local gas utility company must read the TPS gas customer's meter and return the customer to BGSS service within 60 days after the customer contacts the TPS to cancel service.

RESA believes accelerated switching, to TPS service from BGS or BGSS service, between TPSs, and from TPS to BGS or BGSS, is an important and much needed market reform in New Jersey. RESA is concerned that the proposed new rules in the Petition may actually lengthen switching time in New Jersey, rather than shorten it. RESA believes that requiring the utilities to shorten the number of days before a meter read to process a switch would be more effective in shortening switching times, as the current 20 day wait is needlessly onerous.² It appears the proposed language in this section of the Petition only contemplates a customer switch from a TPS to BGS or BGSS, and RESA believes that in a fully developed competitive market, there should be enhanced switching procedures for all customers and all types of switches.

RESA would prefer to see more accelerated switching times for shopping customers, and believes that a time frame of five (5) days to process a switch should be implemented in New Jersey. Pennsylvania recently shortened its switching time from five (5) days to three (3) days and eliminated the operational limitation of switching only on a scheduled meter read date. Connecticut also has a three (3) day switching requirement. Moreover, RESA believes that the seven (7) day rescission period should be tied to the receipt of the customer's contract and standard one-page contract disclosure form, rather than the receipt of the enrollment confirmation from the utility. Tying the rescission period to the receipt of the customer's contract allows the customer to fully enjoy the seven (7) day rescission period, and further incentivizes TPSs to provide customer contracts in a timely manner. RESA believes shortened switching times enhance the shopping experience for customers and allow customers to take advantage of TPS offerings as soon as possible.

² RESA acknowledges that this is a current topic of discussion on the NJ EDI calls, and that there appears to be a discrepancy between the 20 day switch window cited in the EDCs tariffs and the current EDI documents, some of which call for 15 days rather than 20. As of this writing, this issue has not been resolved.

Comments on Contracts

Modify Subsection (b)(4) under § 14:4-7.6

4. A statement of the residential and small commercial customer's rights, which shall provide that the customer will receive a confirmation notice of its choice of supplier and that, at a minimum, the customer will have fourteen [seven] calendar days from the date of the confirmation notice to contact its LDC and rescind its selection. Furthermore, that a contract for electric generation or gas supply service shall not be legally binding upon the residential and small commercial customer until the fourteen-day [seven-day] confirmation period has expired, and the customer has not, directly or indirectly, rescinded his or her selection;

RESA again reiterates the need for a firm definition of a "small commercial customer," and believes that, consistent with other restructured states, a "small commercial customer" should be considered one with a cumulative peak load of 25 kW for electric customers, and 5,000 therms for gas customers.

RESA opposes the proposal to change the rescission period from seven (7) days to fourteen (14) days. This is a step in the wrong direction. Please recall that this rule was amended in the most recent adoption of the Energy Competition rules in order to shorten the rescission period from fourteen days to seven days. Most restructured markets have even shorter rescission periods than New Jersey – Pennsylvania has a three (3) day rescission period, for example. Providing an additional week further lengthens the switching time for customers, mitigating many of the strides New Jersey has taken to enhance energy competition, and further frustrating the experience of shopping customers. RESA believes a seven day right of rescission is more than adequate.

Add new subsections (m) and (n) under ~ 14:4-7.6

(k) The TPS shall provide written notice to the customer at sixty days and thereafter at forty-five days [at least 30 days] prior to the end of the electric generation service or gas supply service contract, informing the customer of the date upon which the service contract term ends.

(m) Consistent with N.J.A.C. 14:4-7.6(k), the Board shall establish and require a TPS to use and annex to the top of its contract with residential and small commercial customers, a standard one-page uniform pricing disclosure form which summarizes and contains the following information: 1) the price per kWh (electric) or therm (gas); 2) whether the price is fixed or variable; 3) the BGS and BGSS prices to compare; 4) how often the variable price may change; 5) the variable pricing formula; 6) the maximum variable price increase (or decrease); 7) whether the customer is automatically subject to a variable price increase, and

if so when and how often; 8) the length of the contract; 9) any fees or penalties for early cancellation; 10) the length of time from cancellation to return to BGS or BGSS service, as applicable; 11) how much notice the customer must provide for cancellation without being subject to a fee or penalty; 12) the TPS's historic pricing for at least the prior 12 months; and 13) a toll-free phone number with contact name, email address and mailing address for customers to contact with questions, for problems, or to cancel the contract.

(n) All contract disclosures and material terms, including but not limited to the information provided under subsection (m) herein, shall be displayed in prominent and bold print and made available to the greatest extent possible in the language understood by the customer.

RESA firmly supports enhanced disclosure requirements for shopping customers. However, rather than codify the specific items which should be included in the "standard" one page document, RESA believes New Jersey should adopt an approach similar to Pennsylvania's, which also recently modified its regulations for electric and gas suppliers to require a similar one-page disclosure document. The language adopted in Pennsylvania is as follows:

(I) THE EGS³ SHALL PROVIDE, WITH THE DISCLOSURE STATEMENT, A SEPARATE EGS CONTRACT SUMMARY IN A FORMAT PROVIDED BY THE COMMISSION.⁴

A copy of the format provided by the Commission is attached hereto as Exhibit A. This language allows for flexibility in implementation of the one-page disclosure requirement – rather than locking the necessary items into regulation, the Commission is free to change the items to be included in the one-page disclosure document as changes in the market become apparent and new products are designed by suppliers. RESA notes that many of the items Rate Counsel would like to see on the standard one-page disclosure are included on the form proposed by Pennsylvania. RESA believes the Pennsylvania approach strikes the correct balance between providing all necessary information to residential and small commercial customers, and providing regulatory certainty for suppliers.

Create New Section § 14-7.13, Board Website

(a) The Board shall establish and maintain a website detailing the information received from TPSs on a quarterly basis, which will include for each TPS, data in the aggregate for residential and small commercial customers on:

³ The term "EGS" is the equivalent of a "TPS" in New Jersey.

⁴ This section will be codified at Pennsylvania Regulation § 54.5. Disclosure statement for residential and small business customers.

1. The "Price to Compare" savings:
2. The number of customers and customer categories the TPS serves:
3. The types of contracts the TPS provides:
4. The relevant terms, and conditions of service under existing contracts:
5. Details on the TPSs' promotional offerings, including but not limited marketing information on all contracts offered with or without promotions in addition to the information required to be provided under new subsections (x) through (xii) under N.J.A.C. 14:4-2.3, and new subsections (m) and (n) under N.J.A.C. 14:4-7.6. and establish a mechanism to ascertain the accuracy of the information received by the TPSs and posted on the website.

(b) The Board shall establish and maintain a website detailing information supplied by each TPS under subsection (a) above, that conducts business in New Jersey, which states the material terms and conditions of service offered, including but not limited to the information required to be provided under new subsections (x) through (xii) under N.J.A.C. 14:4-2.3, and new subsections (m) and (n) under N.J.A.C. 14:4-7.6. and establish a mechanism to ascertain that the information received by the TPSs and posted on the website is accurate.

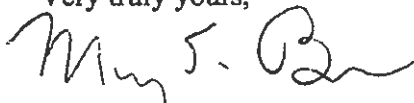
RESA is in agreement with Rate Counsel's call for a Board established retail shopping web site, but RESA also believes the information required under this proposed section creates a perverse incentive for suppliers to exaggerate claims of cost savings under their contracts. Not every TPS offers financial "savings." Customers choose to sign up for TPS service for a multitude of reasons – while cost savings is certainly one of them, many customers appreciate the financial certainty offered in a fixed price product. Other customers are looking for other value-added products offered by TPSs. To reduce the benefits offered by TPSs to customers to mere financial savings suggests that this is the only thing a TPS can offer to a customer. This is simply not true.

Moreover, TPSs simply cannot provide the information required by this paragraph. For certain utilities in New Jersey, the price to compare ("PTC") is completely unknown to the supplier, and is only provided on the customer's bill. Furthermore, since PTC is not currently calculated on a forward looking basis, as is the case in many other states, but rather reflects what would have been charged for the previous month of service, a TPS simply is not capable of providing this information. In short, for certain utilities in this state, such information is impossible to disclose.

In addition, many TPSs consider the number of customers they serve to be proprietary information. While they are required to disclose this information to the Board in their annual license renewal filings, many suppliers choose to file this information and request confidential treatment of same. RESA believes it would be more beneficial to have the Board compile this information on a percentage basis, rather than individually force TPSs to disclose proprietary information.

RESA would like to establish a meaningful dialogue with the Division of Rate Counsel and Board Staff by creating a stakeholder process and scheduling an initial meeting in the very near future in order to bring in additional suppliers and address the comments and concerns raised in this letter. We hope that this letter serves to provide you and your office with a better picture of our position on improving consumer protection for retail supply customers in New Jersey and providing meaningful choice for New Jersey's gas and electric supply customers.

Very truly yours,



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EXHIBIT A

Electric Generation Supplier Contract Summary

Electric Generation Supplier Information	<i>Name, telephone number, website, etc. Plain language statement that EGS is responsible for generation charges.</i>
Price Structure	<i>Fixed or variable. If variable, based on what? If variable, how often is the rate expected to vary? If variable, give any applicable ranges/ceilings. If no ranges/ceilings, a plain language statement indicating this fact. If variable, describe when the customer will receive notification of price changes in relation to time of month, final monthly meter read, billing cycle or when the price takes effect.</i>
Generation/Supply Price	<i>\$/kWh or ¢/kWh. If variable rate, the first billing cycle's rate. Any introductory rate with length of term.</i>
Statement Regarding Savings	<i>Plain language that the supply price may not always provide savings to the customer</i>
Deposit Requirements	<i>Any deposit requirements necessary for a customer and any terms associated with that deposit, in plain language.</i>
Incentives	<i>Any bonuses, discounts, cashback, etc. offers and any associated terms, in plain language.</i>
Contract Start Date	<i>Plain language regarding start of EGS service (meter reads/billing cycles/etc.)</i>
Contract Term/Length	<i>In months, billing cycles, etc.</i>
Cancellation/Early Termination Fees	<i>Yes or no. If yes, describe the amount of the fee and how to avoid that fee, if possible.</i>
Renewal Terms	<i>Treatment of customer at end of contract. Timing of notices. No cancellation/early termination fees. In plain language.</i>
Electric Distribution Company Information	<i>Name, telephone number, website, etc. Plain language statement that EDC is responsible for distribution charges, as well as any emergencies/outages/etc.</i>