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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.:

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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)	BPU Docket No.:
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, <u>N.J.A.C. 14:4</u> , <i>et</i>)	
<i>seq.</i>)	

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 I/M/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,

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