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**Remarks of Stefanie A. Brand,  
Director, Division of Rate Counsel,  
Regarding Third-Party Energy Suppliers, Variable Rate Contracts  
and Rising Costs of Utility Rates Presented at the Assembly  
Telecommunications and Utilities Committee Meeting on  
May 8, 2014**

Good morning. My name is Stefanie Brand, I am the Director of the Division of Rate Counsel. I would like to thank Chairman Chivukula and members of the committee for the opportunity to testify today regarding third-party energy suppliers, variable rate contracts and the rising cost of utility bills.

As you are aware, the Division of Rate Counsel represents and protects the interest of all utility consumers—residential customers, small business customers, small and large industrial customers, schools, libraries and other institutions in our communities. Rate Counsel is a party in cases where New Jersey utilities seek changes in their rates and/or services. Rate Counsel also gives consumers a voice in setting energy, water and telecommunications policy that will affect the rendering of utility services well into the future.

The topic of variable contract rates offered by third-party energy suppliers (“TPS”) and the high utility bills experienced by many customers is of great concern for the Division of Rate Counsel. Rate Counsel received many calls and emails over the last several months from ratepayers who had signed up with third-party energy suppliers and received alarmingly high bills and sudden rate increases this winter. My testimony today comes in two parts. First, I would like to share with you what the Division of Rate Counsel has heard from consumers who have contacted our office about sharp increases in their bills from third party energy suppliers, and some problems that we have identified as a result of our conversations with those consumers. Secondly, I would like to share what the Division has been doing to try and help improve consumer protections for ratepayers who want to use third-party suppliers and what we believe needs to happen going forward to prevent the problems that we have seen.

As everyone in this room knows, we had an exceptionally cold winter. The decrease in temperature caused an increase in electricity usage and in the demand for natural gas. The PJM energy markets saw all-time high winter peaks which raised prices in the energy spot market.

The situation was exacerbated by a failure of some peaking units in our regional grid, PJM, to start when called upon, which sent prices even higher. Some third-party suppliers had locked-in sufficient capacity in advance so that they did not need to buy while prices were high and they were able to protect their customers from these price spikes. This was also the case for our BGS suppliers, who have three-year contracts so they are able to purchase over a longer term. Other suppliers, however, did not hedge sufficiently and they were forced to purchase gas and energy at these extraordinarily high prices. Where their customers had signed contracts that allowed for variable rates, the suppliers passed these high prices on to their customers.

If that was the end of the story, I would be sitting here today telling you about the need for customer education and a review of PJM's policies regarding the obligations of peaking units to deliver at peak times. However, as we started to talk to consumers about their bills and their contracts, we learned that there are clearly some fundamental problems in how we oversee retail electricity and gas shopping. Many of the consumers we heard from said that they did not sign up for variable rates and complained that they were not fully informed about the terms of their contracts. While some ratepayers knew generally what they were signing

up for, they found that the written terms – if they got them at all – did not match the pitch they were given in the sales calls. Many admitted that the fine print of their contracts allowed the third party supplier to pass through these higher rates but that this had never been disclosed to them and could not be easily ascertained from the documents they were given.

One customer who was referred to us by a legislator gave us her contract which stated clearly that she was signing up for a fixed rate, not a variable rate. When we dug deeper into the documents she gave us, we found that in a document referenced in the contract that was available online, but not provided to the consumer, it said that after a certain period of time the fixed rate would become variable. Several ratepayers complained that when they tried to cancel these contracts they were told they could not switch back for at least two billing cycles. Others mentioned that when they did go to switch back they were then bombarded with calls and mail from other energy suppliers trying to sign them up.

Rate Counsel believes that there is a real problem here with the oversight we give to third party suppliers. While most third party suppliers are reputable and follow the rules, there are some bad actors out there and they need to be reined in. Otherwise, customers will lose faith in

retail shopping and the competitive advantages we hoped shopping would foster will be lost. Rate Counsel therefore recommends a three-pronged approach to addressing these problems.

First, we believe the state needs to investigate and bring appropriate enforcement action against those companies that are engaging in false advertising, slamming, and unconscionable marketing practices. To this end, Rate Counsel has shared with the Attorney General's office, Division of Consumer Affairs, the names of the customers who have contacted us. It is my understanding that the Division has also received a number of complaints and intends to investigate them and, if warranted, bring enforcement action. These actions would have an important deterrent effect on those who would prey on consumers.

Second, we need to improve the process going forward. The Division of Rate Counsel supported recent legislation, P.L. 2013, c. 263 (A3422), which was signed into law on January 17, 2014. The law prohibits energy suppliers from making false and misleading claims to potential customers and prohibits suppliers' calls to customers where no business relationships exist. We have also initiated discussions with the BPU and with the Retail Suppliers Association regarding changes to the

current regulations and policies that we believe will provide greater protections to ratepayers going forward.

We are proposing the following basic changes:

- (1) require that the 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;
- (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. This could be accomplished by requiring all TPSs to use a standard one-page form containing the same uniform pricing disclosure information. 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;
- (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 Act<sup>1</sup> confirming that he or she wants to sign up for service and/or extend the contract time period;
- (4) require prior notice and affirmative customer consent, in ink or electronic form consistent with the E-SIGN Act and the Uniform Electronic Transactions Act, before a fixed price contract may revert to a variable price contract;

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<sup>1</sup> 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.

- (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;
- (6) require that the TPS maintain the entire recorded sales call, including the marketing portion of the call, for three years;
- (7) establish procedures that would shorten the sixty-day and/or two-billing cycle timeframe for customers to switch back to BGS, or to another TPS and establish a maximum time limit for doing so; and
- (8) 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.

We believe these simple measures will go a long way to making sure that customers are more knowledgeable and informed about what they are signing and what they are getting. We are hopeful that this will ensure that they are better shoppers and won't be surprised by price spikes again.

This leaves the third prong of our strategy, which is customer education. Rate Counsel has been actively involved in trying to educate consumers about how to shop. Rate Counsel has been out in the press talking about what customers should be looking for when shopping. In March, the Division of Rate Counsel participated in a Star-Ledger online

chat about this subject in which we responded to readers' questions and provided them with tips about what they should look for before signing a contract.

We have published our Consumer Assistance Handbook, which is available on our website and can be obtained for free by mail. There is a chapter in the handbook that offers tips for shopping for a third-party energy supplier and it is always my warning that buyers should beware and should ask lots of questions just as they would before signing any contract.

The Division of Rate Counsel also offers workshops to community groups and legislators for their constituents who want to know what they should be aware of when choosing a third-party-energy supplier. I would be happy to do a workshop for any of the committee members or any legislator who wants one as I believe it helps make ratepayers think more about what they are getting into when choosing a supplier

We are also urging the BPU to establish a website that will provide consumers with information about the various third party suppliers and the services they offer. The Board has been working on such a website but it is not yet up and running. The website could provide relevant information on the various plans offered to allow consumers to comparison shop. 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.

In sum, the Division of Rate Counsel believes there is a lot that can be done to make this system better. Retail shopping was established to give consumers choices. If we don't make these changes, consumers won't benefit and their confidence will disappear. This will undermine the very purpose of EDECA and could bring retail competition to an end. Rate Counsel will continue its discussions with the Board of Public Utilities and other stakeholders regarding ways to improve consumers' experience with third-party energy suppliers, and we hope that a consensus can be built to fix this problem.

I thank you very much for the opportunity to testify today, and we very much appreciate the Committee's attention to this important issue. I am available to answer any questions.