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VIA ELECTRONIC AND REGULAR MAIL

The Honorable Kristi Izzo
Secretary, New Jersey Board of Public Utilities
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***Re: In the Matter of Third Party Suppliers—N.J.A.C. 14:4-7 – The Board’s
Review of Consumer Protection Provision of its Rules Concerning Third
Party Suppliers, Docket No. EX14060579; and***

***In the Matter of the Implementation of the Special Rule Adoption in
Compliance with L. 2013, C.263, Docket No. EX14060610***

Dear Secretary Izzo:

This office is counsel for the NRG Retail affiliate companies¹ of NRG Energy, Inc. (“NRG Retail”), which are licensed third party suppliers (“TPSs”) serving customers in New Jersey. Please accept these comments regarding the above-referenced matter, which are based on significant problems NRG Retail has encountered over the past twelve months involving asset purchase agreements, pursuant to which the selling TPS assigns a block of customer contracts to NRG Retail. We have been advised that Board of Public Utilities (“Board”) Staff is still in the process of drafting/modifying the Energy Competition rules and we respectfully request that our proposed rule modifications stated herein be accepted for the compelling reasons set forth below.

The Board should modify its rules to clearly provide that Local Distribution Companies (“LDCs”) should not issue enrollment confirmation letters to the customers of a TPS, whose

¹ The NRG Retail affiliate companies which are licensed in New Jersey include Reliant Energy Northeast LLC d/b/a NRG Home and NRG Business, Green Mountain Energy Company, Energy Plus Holdings LLC, and Energy Plus Natural Gas LLC.

customer contracts are being assigned to another TPS pursuant to an asset purchase agreement. As currently provided, the rules requiring the LDCs to issue enrollment confirmation letters upon a switch of the customer's TPS do not distinguish between switches due to new enrollments and switches due to contract assignments.

Specifically, the Board's rules currently provide in N.J.A.C. 14:4-2.6 that:

- (a) When an LDC receives a change order from a TPS to switch a customer's energy supplier, the LDC shall notify the subject customer of the change order.
- (b) The notice required in (a) above shall be sent in writing, within one business day after the LDC receives or prepares the change order.

A "change order," in turn "means a request, submitted by a TPS to an LDC, to switch the customer from one provider of electric generation service or gas supply service to another provider," pursuant to N.J.A.C. 14:4-2.2.

NRG Retail respectfully requests that N.J.A.C. 14:4-2.6(a) be modified to provide that: "When an LDC receives a change order from a TPS to switch a customer's energy supplier, the LDC shall notify the subject customer of the change order *unless the subject customer's agreement has been assigned to the TPS submitting the change order.*" Such a rule modification would make clear that, as opposed to cases where a customer affirmatively enrolls with a new TPS, the LDCs should not issue enrollment confirmation letters to customers when one TPS acquires another and/or agrees to assume the customer contracts from another TPS. In the latter case, the customers are not new enrollees, but the LDCs have interpreted the current rule language to require the issuance of enrollment confirmation letters, such as in a recent transaction involving NRG Retail's acquisition of ResCom Energy, LLC's ("ResCom") customers. These letters caused confusion among, and attrition of, ResCom customers, despite the fact that NRG Retail was honoring the terms of the contracts they had acquired. To avoid the same unfortunate outcome in the future, NRG Retail urges the Board to add the prescribed language to the current rule language in N.J.A.C. 14:4-2.6(a).

The LDCs' issuance of enrollment confirmation letters in the case of an assignment of customers from one supplier to another, such as the ResCom transaction, is 1) misleading, and 2) inappropriate. First, the letters confirm that the customer took action to switch suppliers – an action that the customer clearly did not take and which could cause the customer to believe they were slammed. Second, the enrollment confirmation letter provides a seven-day rescission period, which is unnecessary and inappropriate since the customers already had a seven-day rescission period when they entered into the contract.

In addition to the impact on customers, the LDCs' provision of a misleading enrollment confirmation letter harms competition by driving customer attrition and by eroding the value of a TPS's acquisition. NRG Retail has engaged in several customer assignment transactions both inside and outside of New Jersey with utilities that have suppressed the utility enrollment confirmation letter, and with those that have not.² In all cases, a utility enrollment confirmation letter after TPS customer acquisition caused higher levels of attrition, directly harming competition. Based on its customer outreach, NRG Retail has determined that the enrollment confirmation letters caused customer confusion, with many customers thinking they had been slammed because, contrary to what the enrollment confirmation letters suggest, the customers had not made a selection of a new TPS. For obvious reasons, NRG Retail would like to avoid this outcome in the future.

It is not uncommon for TPSs to enter into asset purchase agreements for the acquisition of customers and NRG Retail believes the rule change is necessary to facilitate a smoother transition in these instances. TPS contracts commonly include assignment provisions that allow the customers' chosen TPS to assign its contracts to another TPS, who then assumes full responsibility for serving the assigned customers. The acquiring TPS must honor all of the terms of service the customer has agreed to as of the assignment, or if a change in terms is necessary, the acquiring TPS must follow the terms of the contract and the Board's rules regarding changes in TPSs' contracts.

In addition to modifying N.J.A.C. 14:4-2.6(a) to provide that enrollment confirmation letters should not be issued to the customers of a TPS whose customer contracts are being

² NRG Retail has acquired customers from other suppliers in various jurisdictions including Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, Ohio, and Pennsylvania. In almost all cases, NRG Retail was able to work with state commissions and utility companies to confirm the utility enrollment confirmation notices are not necessary.

assigned to another TPS pursuant to an asset purchase agreement, it would be appropriate and helpful to impose customer notice requirements on TPSs when they acquire customers of another TPS within the Energy Competition Rules. Given the nature of the transaction and the impact to customers, advance notice to assigned customers is critical, and any notice sent to customers should come from the TPSs engaged in the assignment transaction and serving the customers. Therefore, as a matter of practice, NRG Retail has sent notice to customers in New Jersey and other states when it has acquired contracts from another TPS or retail supplier.

Specifically, NRG Retail recommends that the Board add the following customer notification requirement to its Energy Competition rules, which is similar to the Guidelines adopted by the Pennsylvania Public Utility Commission:


N.J.A.C. 14:4-X Assignment of a Contract:

(a) When a customer's contract is assigned from one TPS to another, the TPSs shall jointly notify the affected customers in writing at least 30 days prior to the effective date of the assignment.

(b) The notice shall include at a minimum: the date the assignment will be effective, the name, address and telephone number for a customer representative for the new TPS, and the reason for the assignment.

NRG Retail respectfully requests that N.J.A.C. 14:4-2.6(a) be modified to provide that the LDCs should not issue enrollment confirmation letters when one TPS assigns its customer contracts to another TPS. Moreover, NRG Retail recommends that the Board include a new requirement within the Energy Competition rules regarding TPS notice to customers of a contract assignment. Please let me know should you have any questions or require further information. Thank you.

Very truly yours,



Murray E. Bevan

The Hon. K. Izzo
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cc: Kenneth Sheehan
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