



## State of New Jersey

DIVISION OF RATE COUNSEL 140 EAST FRONT STREET, 4TH FL P. O. Box 003

**CHRIS CHRISTIE** 

Governor

TRENTON, NEW JERSEY 08625

KIM GUADAGNO Lt. Governor

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

SAB/ea w/encl.

c: Service List

Stefanie All Brand, Esq. Division of Rate Counsel

Tel: (609) 984-1460 • Fax: (609) 292-2923 • Fax: (609) 292-2954 http://www.ni.gov/rpa E-Mail: niratepayer@rpa.state.ni.us

## 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"), 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

<sup>&</sup>lt;sup>1</sup>/ 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.

on the website is accurate;<sup>3</sup> (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

<sup>&</sup>lt;sup>3</sup>/ N.J.S.A. 48:3-56 (effective Jan. 13, 2014).

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.

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.<sup>5</sup> 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);
- (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

<sup>&</sup>lt;sup>5</sup>/ Rate Counsel proposes new language <u>underlined</u> and proposes language for deletion [in brackets].

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

# 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

<sup>&</sup>lt;sup>7</sup>/ In compliance with the Telephone Consumer Protection Act of 1991, 47 <u>U.S.C.</u> § 227, 47 <u>C.F.R.</u> § 64.1200, which regulates telephone solicitations (i.e., telemarketing) and the use of automated telephone equipment in such solicitations.

(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.

retail market in two utilities' service areas in Connecticut.<sup>10</sup> 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

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

<sup>&</sup>lt;sup>10</sup>/ State of Connecticut, Public Utilities Regulatory Authority, <u>PURA Establishment of Rules for Electric Suppliers and EDCs Concerning Operations and Marketing in the Electric Retail Market</u>, 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

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

#### 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



| 1  | STATE OF NEW JERSEY  |   |  |  |
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| 2  | BOARD OF PUBLIC UTILITIES TRENTON, NEW JERSEY  |   |  |  |
| 3  | BOARD AGENDA   |   |  |  |
| 4  | DATE: WEDNESDAY, JULY 23, 2014   |   |  |  |
| 5  | ITEM 7E  |   |  |  |
| 6  |  |   |  |  |
| 7  | CUSTOMER ASSISTANCE  |   |  |  |
| 8  | DOCKET NO.: EX14050506   |   |  |  |
| 9  | 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   |   |  |  |
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| 14 | AND CONSUMER PROTECTIONS -   |   |  |  |
| 15 | NOTICE OF ACTION.  |   |  |  |
| 16 | DESCRIPTION OF THE PROPERTY DE |   |  |  |
| 17 | BEFORE: PRESIDENT DIANNE SOLOMON COMMISSIONER JEANNE M. FOX  |   |  |  |
| 18 | COMMISSIONER JOSEPH L. FIORDALISO<br>COMMISSIONER MARY-ANNA HOLDEN   |   |  |  |
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| 23 | J. H. PUFUPER & ACCOCTATES   |   |  |  |
| 24 | J.H. BUEHRER & ASSOCIATES 1613 BEAVER DAM ROAD   |   |  |  |
| 25 | POINT PLEASANT BORO, NJ 08742<br>(732) 295-1975  |   |  |  |
|    |  | 2 |  |  |
|    |  |   |  |  |
| 1  | PRESIDENT SOLOMON: 7E is the next item.  |   |  |  |
| 2  | MR. GERTSMAN: Good afternoon,  |   |  |  |
|    |  |   |  |  |

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#### 7E July 23 2014.txt

- 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 will be convening work groups to review this issue with 15 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

things grow, we're seeing more and more areas that may

need attention and I think by initiating this we're

1 COMMISSIONER FOX: Yeah, I agree. And I

certainly moving in the right direction.

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?

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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

## 7E July 23 2014.txt

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| 1  | CERTIFICATE  |
| 2  |  |
| 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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| 19 | Notary Public of the State of New Jersey                 |
| 20 | My commission expires July 26, 2016                      |
|    |  |

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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")<sup>1</sup> 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 stymic 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.

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.

"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"

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#### 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 perification if there are future concerns about the validity of the enrollment. This proposal vill 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.

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#### **Comments on Contracts**

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

4. A statement of the residential <u>and small commercial</u> 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 <u>fourteen</u> [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 <u>and small commercial</u> customer until the <u>fourteen-day</u> [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

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- 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.

# EXHIBIT A Electric Generation Supplier Contract Summary

| Electric Generation Supplier Information  | Name, telephone number, website, etc. Plain language statement that EGS is responsible for generation charges.   |
|---|--|
| Price Structure                           | 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. |
| Generation/Supply Price                   | \$/kWh or \$\psi/kWh. If variable rate, the first billing cycle's rate. Any introductory rate with length of term.   |
| Statement Regarding Savings               | Plain language that the supply price may not always provide savings to the customer  |
| Deposit Requirements                      | Any deposit requirements necessary for a customer and any terms associated with that deposit, in plain language.   |
| Incentives                                | Any bonuses, discounts, cashback, etc. offers and any associated terms, in plain language.   |
| Contract Start Date                       | Plain language regarding start of EGS service (meter reads/billing cycles/etc.)  |
| Contract Term/Length                      | In months, billing cycles, etc.  |
| Cancellation/Early Termination Fees       | Yes or no. If yes, describe the amount of the fee and how to avoid that fee, if possible.  |
| Renewal Terms                             | Treatment of customer at end of contract.  Timing of notices. No cancellation/early termination fees. In plain language.   |
| Electric Distribution Company Information | Name, telephone number, website, etc. Plain language statement that EDC is responsible for distribution charges, as well as any emergencies/outages/etc.   |