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April 6, 2026

Via Electronic Mail board.secretary@bpu.nj.gov
Sherri L. Lewis
Secretary of the Board
44 South Clinton Avenue, 1ST Floor
P.O. Box 350
Trenton, NJ 08625-0350

Re: I/M/O the Board's Proposed Readoption with Amendments and New Rules Concerning Energy Anti-Slamming, Government Energy Aggregation Programs and Retail Choice Consumer Protection with Third-Party Energy Suppliers, N.J.A.C. 14:4

Proposed New Rules: N.J.A.C. 14:2.6A and 7.14

BPU Docket Number: EX25040201

Dear Secretary Lewis:

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 Proposed Amendments and New Rules Concerning Energy Anti-Slamming, Government Energy Aggregation Programs and Retail Choice Consumer Protection with Third-Party Energy Suppliers. In accordance with the New Jersey Register Notice, these comments are being submitted by electronic mail only. Please acknowledge receipt of these comments. Thank you for your consideration and attention to this matter.

Summary

Rate Counsel thanks the Board for the opportunity to submit these comments. Rate Counsel's comments are intended to help the Board amend and adopt rules to best protect consumers. Rate Counsel looks forward to continuing to work with the Board and other stakeholders to improve the State's energy anti-slamming, government energy aggregation and retail choice consumer protection rules going forward.

Background

Pursuant to the Electric Discount and Energy Competition Act ("EDECA") N.J.S.A. 48:3-49 through N.J.S.A. 48:3-98.5, effective since February 9, 1999, the Board has regulated the process by which third-party energy suppliers ("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, N.J.A.C. 14:4 et seq. Those Energy Competition Standards include the Board's Energy Anti-Slamming rules, N.J.A.C. 14:4-2 et seq., and Retail Choice Consumer Protection rules, N.J.A.C. 14:4-7 et seq. The TPS programs include Government Energy Aggregation Programs, under N.J.S.A. 48:3-92 through -95, and the Board rules regulating them at N.J.A.C. 14:4-6 et seq.

Rate Counsel has actively participated for many years in the Board's efforts to improve the effectiveness of those rules and provide appropriate customer protections. This participation has involved filing comments on July 1, 2011 on the Energy Anti-Slamming and Retail Choice Consumer Protection rules; expressing support for L.2013, c.263, signed into law on January 17, 2014, amending inter alia N.J.S.A. 48:3-85, and directing the adoption of advertising and

marketing standards for TPSs; testifying before the Assembly Telecommunications and Utilities Committee on May 8, 2014 concerning customer complaints Rate Counsel received about TPSs and proposing a set of regulatory reforms; meeting with the Retail Energy Suppliers' Association on May 22, 2014 to discuss Rate Counsel's proposed regulatory changes and shared concerns about preventing disreputable TPS practices; filing a Petition for Rulemaking with the Board on May 27, 2014, requesting that the Board promulgate new and amended consumer protection regulations to address the complaints that Rate Counsel received about TPSs;[1] and testifying on July 17, 2014 before the Board's legislative-type proceeding on consumer protection rules for TPSs.[2] After the Board, on July 23, 2014, denied Rate Counsel's Petition for Rulemaking as duplicative of its proceeding to review its TPS consumer protection rules, in response to the Board's invitation for public comments and at the direction of Board Staff, on August 1, 2014, Rate Counsel again submitted written comments recommending certain changes in the Board's Energy Anti-Slamming and Retail Choice Consumer Protection rules for inclusion and consideration in the Board's new proceeding.[3]

Rate Counsel proposed rule amendments to help customers obtain the information they need to understand and compare offers from competing TPSs and to ensure they receive any savings or other benefits offered. Our office anticipated that implementing these changes would help customers to be better informed when they shop for an energy supplier and not be surprised

[1] 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."
[2] That Board meeting initiated "I/M/O Third-Party Suppliers – N.J.A.C. 14:4-7 – The Board's Review of Consumer Protection Provisions of its Rules Concerning Third-Party Energy Suppliers," Docket No. EX14060579.
[3] Docket No. EX14060579.

by any fluctuations in price. Rate Counsel stressed the need for these modifications to afford customers the protections that are mandated pursuant to consumer protection law.

In response, on December 5, 2016, the Board published proposed amendments and new sections to N.J.A.C. 14:4 regarding the Energy Anti-Slamming rules, N.J.A.C. 14:4-2 et seq., the Government Energy Aggregation Program rules, N.J.A.C. 14:4-6 et seq. and the Retail Choice Consumer Protection rules, N.J.A.C. 14:4-7 et seq. that supported the need for appropriate disclosures as well as other consumer protection goals. These amendments were adopted on December 18, 2017. 49 N.J.R. 4015(a). The Board readopted these rules on February 27, 2019, at 51 N.J.R. 476(a).

On July 30, 2025, the Board initiated a stakeholder process to solicit input on the Board's proposed readoption of the energy competition rules at N.J.A.C. 14:4. On February 2, 2026 the Board published the proposed readoption to N.J.A.C. 14:4 with amendments and new sections to N.J.A.C. 14:4. In response, Rate Counsel respectfully submits these public comments.

Rate Counsel Comments

Rate Counsel's continued position is that the most important consumer protection in the process of shopping for, renewing, or switching a contract with a TPS is increased consumer disclosures, in clear and plain language. These disclosures must address all material contract terms, most importantly pricing in a manner that is clear and leaves no room for misinterpretation. The Board currently proposes several rule amendments and new rules that address this issue among others. We detail our comments on each of them below.

Social and Economic Impact Analysis

In its rule proposal, the Board notes that the readoption with amendments will have an overall positive social and economic impact "by continuing to ensure that New Jersey energy customers receive the benefits of a competitive marketplace." Although Rate Counsel agrees that there are positive benefits to be drawn from a competitive marketplace, it is important for the Board to observe and analyze whether customers, especially residential customers, are receiving those positive benefits. The Board must also be cognizant of the current trends in the marketplace as it adjusts to increasingly burdensome – and volatile – wholesale energy and capacity market costs. The Board must also take a closer look at the administrative costs associated with the Board's rule proposal before it concludes that the proposed rules will have an overall positive impact.

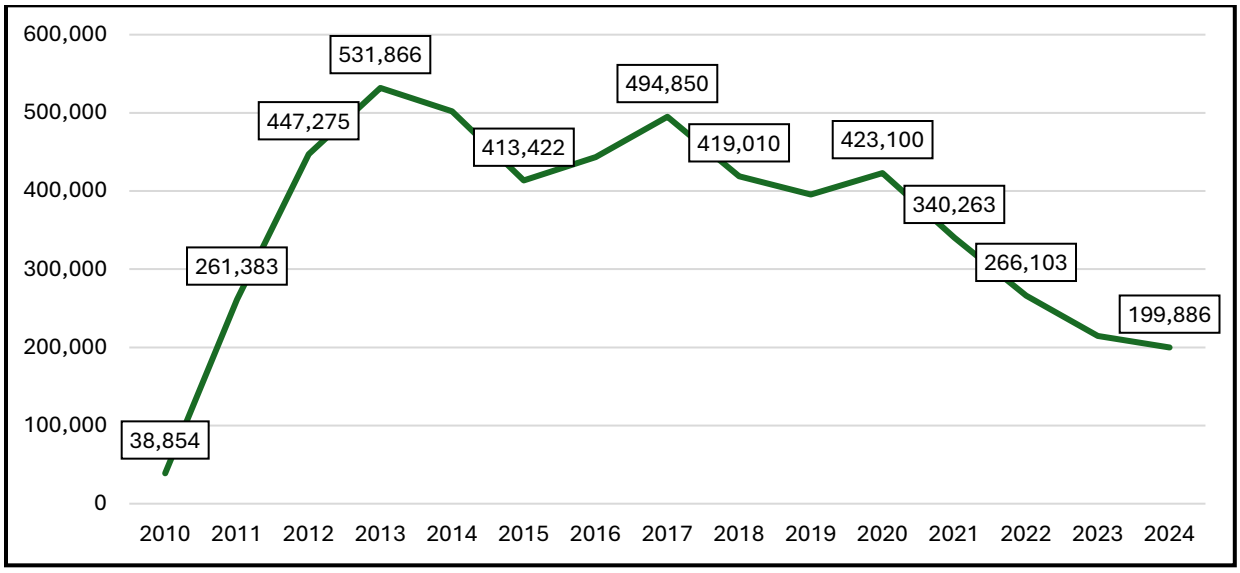
Marketplace Trends

While retail competition for residential sales of electricity[4] has been on the decline in New Jersey in recent years, that observation does not detract from the need for the BPU to continue, and even enhance, customer protections. The decline both in the number of residential customers taking their electricity from Competitive Service Providers ("CSPs"),[5] as well as the total sales being provided through such CSPs is not evidence of an any lack of competition but provides useful context. Figure 1 below documents, based on data reported by the U.S. Energy Information

[4] While the Rate Counsel acknowledges that the Board's proposed regulations apply to both electricity and natural gas service, the available data relates to electricity. It is, accordingly, that data which is discussed below.
[5] Since EIA uses the term "Competitive Service Providers" rather than the term "Third Party Suppliers" used in the Board's regulation, for purposes of this section only, these comments will also use the EIA terminology to describe the EIA data.

Administration ("EIA"), the number of customers taking electricity through CSPs for the years 2010 through 2024. According to this EIA data, the number of New Jersey residential customers taking service from CSPs peaked in 2013 at 513,866, before declining to 413,422 in 2015. After somewhat recovering by 2017, the number of residential customers of Competitive Service Providers has been in freefall ever since. By 2024, that number had declined to fewer than 200,000.

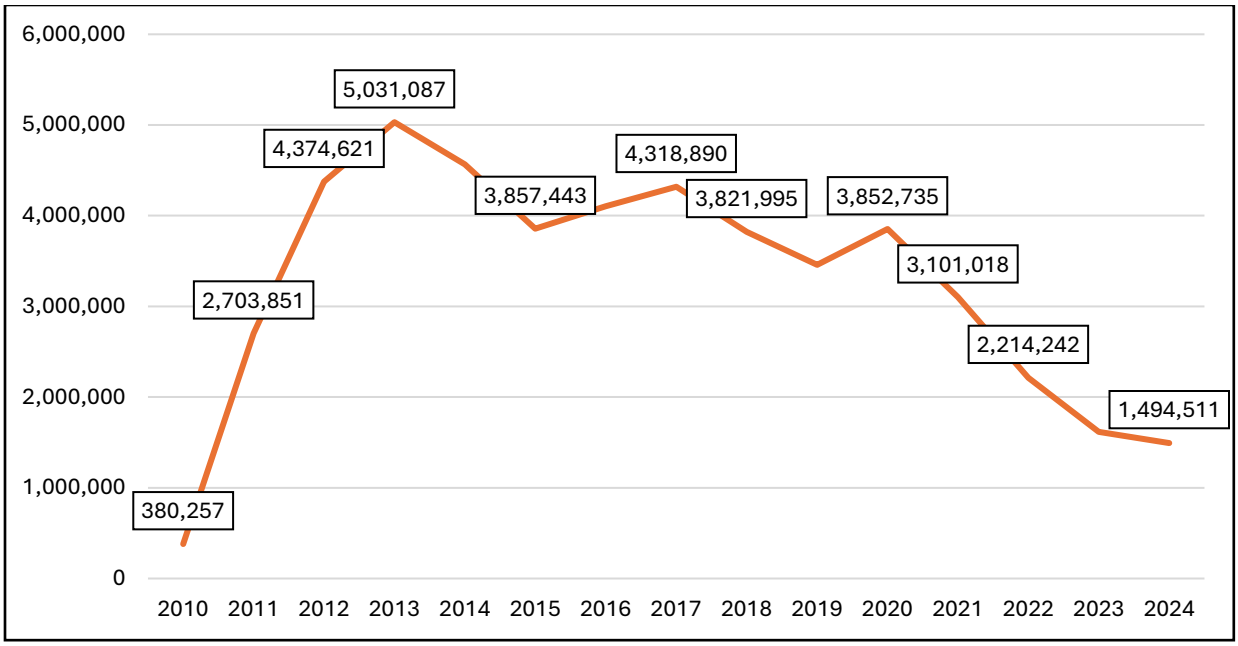
Figure 1. Number of Residential Customers Buying Electricity from Competitive Service Providers (New Jersey) (2010 – 2024)



Not surprisingly, as the number of customers choosing CSPs declined, so, too, has the amount of electricity purchased through Competitive Service Providers declined. Figure 2 documents the EIA (Form 861) data on the MWh of sales purchased through such providers for the years 2010 through 2024. The level of residential sales closely mirrors the number of residential customers taking competitive electric service. Peaking at a sale of 5.031 million MWh

in 2013, residential sales have been in decline since, reaching a low of 1.494 million MWh in 2024, roughly half of 2011 sales (2.704 million MWh).

Figure 2. Residential Sales (MWh) from Competitive Service Providers (New Jersey) (2010 – 2024)

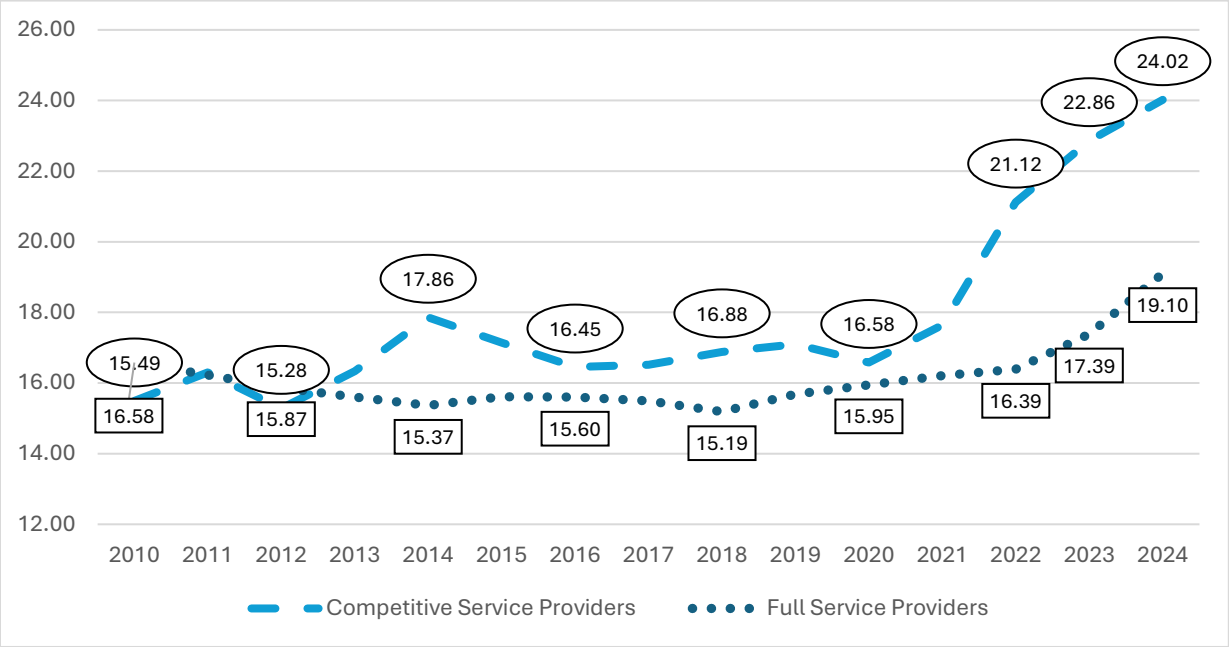


While the purpose of these comments is not to render judgment on whether retail competition for residential electricity sales is either "good" or "bad," the decline in the use of CSPs as a source of retail electricity in New Jersey is not irrational. Figure 3 compares the average price-per-kWh for CSPs to the average price for "Full Service Providers" (also known as "Default Service Providers") for the same time period. While the two types of providers closely mirrored each other's average price for 2010 through 2012, since that time, the average price for residential customers of CSPs has been noticeably higher, with the gap between CSPs and Full Service Providers becoming increasingly pronounced since 2021. The price of electricity (in cents per kWh) from CSPs was lower than Full Service Providers in both 2010 (15.49 vs. 16.48) and 2012

(15.28 vs. 15.87). In 2022, however, the gap between the two types of providers (with CSPs being more expensive) reached 4.73 cents per kWh, while in 2023, the gap was 5.4 cents per kWh, and in 2024, the gap remained at nearly 5 cents per kWh.

Figure 3. Average Residential Price per kWh (New Jersey) (2010 – 2024)

Competitive Service Providers vs. Full Service Providers



A retail customer may choose a competitive electricity option for any number of reasons, not solely based on cost, however it is a significant variable that must be openly disclosed. Thus, Rate Counsel concludes that, while it is important to *allow* residential customers the option to shop for competitive electricity (and natural gas) supply, it is also critical that residential customers who choose *not* to switch to a competitive supplier are not, by design or by inadvertence, transferred to a CSP.

Administrative Costs

In addition to the trends in the competitive marketplace, Rate Counsel urges the Board to more closely analyze the rate impact of the rule proposal. Specifically, the rule places additional administrative responsibilities on each Electric and Gas Distribution Company including, requirements to notify customers of change orders, track notices of preferred supplier freezes, and provide communications and notifications regarding these freezes. During the stakeholder comment period, at least one distribution company noted "there are costs associated with the changes proposed in the regulations. The rules should include language clarifying that all costs incurred to put these changes in place are subject to deferred accounting and recovery in a future rate case, subject to normal prudence review by the Board."[6] As noted above, the Board should analyze these costs versus the benefits of the new rule proposal in its economic impact statement. Further, the Board should determine that additional costs be split 50/50 between shareholders and the beneficiaries of those actions, i.e. the default or third-party suppliers. Requiring this 50/50 sharing between BGS or BGSS charges and utility shareholders ensures that any charges associated with carrying out this freeze will be minimal and will not be an additional burden placed solely on ratepayers. Allowing the utilities to defer these costs for inclusion in a future base rate case to be collected in rates applicable to all distribution customers could encourage unnecessary spending. The costs associated with the preferred supplier freeze should be equitably applied to the supply portion of the bill for default and shopping customers alike, based on the suppliers' load ratio share or some other methodology. Rather than through distribution rates, utilities could seek recovery, for prudently incurred costs, through an appropriate supply administrative cost recovery

[6] PSE&G Letter, In the Matter of the Proposed Readoption with Amendments to N.J.A.C. 14:4 Et Seq., Energy Competition, BPU Doc. No. EX25040201 (August 13, 2025).

mechanism, such as the BGS reconciliation charge for default customers or the Local Distribution Companies' ("LDC") TPS agreements for shopping customers.

Subchapter 1. General Provision and Definitions

N.J.A.C. 14:4-1.1 General Scope

Rate Counsel does not oppose adding this clarifying provision.

N.J.A.C. 14:4-1.2 Definitions

This section defines an "electric-related service", in relevant part, as "a service that is directly related to the consumption of electricity by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises. . . ." Since the Board's "competition rules" were first adopted, there has been an expansion in the understanding of what investments might be necessary to facilitate, or perhaps even make possible at all, the installation of "demand side management measures" at an end user's premises. These necessary investments include health and safety measures, as well as, modest housing repairs. These supplemental investments are regarded as frequently being necessary for demand side management measures to be pursued. Accordingly, Rate Counsel recommends that the definition of an "energy-related service" be amended to read "including, but not limited to the installation of demand side management measures (including necessary health and safety measures and/or housing repairs). . . ." A similar amendment should be made to the definition of "gas related service."

Rate Counsel also recommends that the Board clearly define the terms "fixed rate" or "fixed price" contract and limit its use by TPSs in advertising and contract materials to instances where it explicitly meets this definition. TPS contracts that contain a "fixed rate element and a

variable rate element" should only be allowed to be described as "variable" to avoid any intentional or non-intentional misrepresentations to customers. Contracts with both a fixed and variable element should clearly indicate in all advertising material and contracts language that they are variable contracts with pricing subject to change pursuant to the terms therein. This is because, from the consumer perspective, this is a binary choice between fixed and variable – any contract with a variable element is, in fact, not fixed and should indicate as such. Rate Counsel recommends that this section, as well as, N.J.A.C. 14:4-7.12 be updated to include these additional consumer protections.

Subchapter 2 Energy Anti-Slamming

In this subchapter, the Board proposes additional anti-slamming protections regarding energy competition under N.J.A.C. 14:4-2.6 (d) & (e) and N.J.A.C. 14:4-2.6A.[7] The existing rule provides that LDCs must notify customers of change orders and execute switches within set timeframes. The proposed amendments create new provisions allowing customers to select and lock in a preferred supplier (Preferred Supplier Freeze, N.J.A.C. 14:4-2.6A) and obligate an LDC to reject unauthorized switches if a preferred supplier freeze is in place and immediately notify customers of same.[8]

Rate Counsel supports the Board's proposed anti-slamming protections and the consumer protection intent of these amendments. The rule's economic impact is of concern, as compliance costs are recognized but the draft regulatory framework lacks a clear explanation of cost-recovery or an allocation of cost methodology. These costs should be applied in a 50/50 split between the

[7] 58 N.J.R. 980. (February 2, 2026).
[8] N.J.A.C. 14:4-2.6 (d) and (e).

beneficiaries of this requirement and utility shareholders to encourage utilities to keep the costs of compliance to a minimum.

N.J.A.C. 14:4-2.6 - LDC Notice to Customer of a Change Order

The Board proposes adding additional notice provisions in new sections (d) & (e). When an LDC receives a change order for a customer who has previously chosen a preferred supplier, by filing a Preferred Supplier Freeze pursuant to 14:4-2.6A, the LDC must reject the request to switch a customer from the current supplier, 14:4-2.6(d). Under subsection (d), there are operational obligations on the LDC, which include that rejection of a request be made through the Electronic Data Interchange ("EDI") and that customer notice be provided within three business days of the request. The notice must be in writing through the customer's preferred communication selection (U.S. mail or email). The notice shall contain the name of the TPS that submitted the request, as well as a way for the customer to contact the LDC, should the customer wish to lift the freeze to authorize the switch (as service may not be transferred without an explicit request by the customer to lift the freeze).

Rate Counsel endorses these protections, because it is critical to ensure that residential customers are not switched to energy suppliers without express authorization. Rate Counsel recommends the Board add additional language instructing LDCs on the manner in which costs, such as EDI configuration, customer notice within 3 business days, training, and system upgrades will be recovered so they are not improperly allocated and billed through distribution rates.

New Proposed Rule New N.J.A.C. 14:4-2.6A – Preferred Supplier Freeze

This section proposes a new provision and establishes the preferred supplier freeze mechanism. A preferred supplier freeze blocks the LDC from switching a customer's supplier(s). Customers may request an LDC to implement or lift a freeze. The LDC must act on the request within one business day and confirm their actions in writing within two business days. Exceptions to this rule exist, including where a preferred supplier declares bankruptcy, merges with another supplier, or the customer requests to switch to basic supply service (BGS or BGSS). TPSs are prohibited from offering different rates based on freeze changes. Overall, Rate Counsel endorses the preferred supplier freeze mechanism and the structure of this section, however, recommends certain refinements to ensure that customers are protected from unauthorized supplier switching and that the anti-slamming framework is implemented as intended.

Clear delineation of cost responsibility

The proposal does not specify who will bear the additional costs associated with LDCs implementing the preferred supplier freeze provisions. Rate Counsel requests the Board issue clarification of cost responsibility and recommends that the rules clearly communicate how surrounding compliance costs associated with implementing or administering preferred supplier freeze procedures— including, but not limited to, verification, rejection, and customer-notification. These costs should not be recovered from distribution rates, but rather fairly split between shareholders and the default and third-party supply customers that directly benefit from additional protection. After the 50/50 split, recovery of the remaining administrative costs should be handled through a mechanism related to the supply of generation service, but not through distribution rates.

Expand the Creation, Implementation and Lifting of a Freeze

Rate Counsel notes that N.J.A.C. 14:4-2.6A devotes considerable attention to lifting a preferred supplier freeze in subsections (e), (f), and (g). The regulation focuses significantly less on how one is actually created. It is well established that administrative processes represent substantial barriers to low-income customers taking active steps to protect their own self-interest. In order to reduce barriers for low-income customers, Rate Counsel recommends the addition of subsection 14:4-6A(b)(i) granting agencies that assist with LIHEAP, USF, and Fresh Start enrollment, with customer consent, the authority to file for or lift a freeze on a customer's behalf. To the extent that a LIHEAP, USF or Fresh Start enrollment agency determines during program enrollment that a customer would prefer to "implement or lift a preferred supplier freeze," that agency should be explicitly authorized to submit this written request on the customer's behalf. This procedural addition to the draft rules ensures that administrative barriers do not prevent low-income customers from protecting their interests. Rate Counsel recommends the following language be added to the sub-section to read:

> In the event that a customer receives assistance from the Low-Income Home Energy Assistance Program (LIHEAP), or is a participant in the Universal Service Fund, or the Fresh Start program, the agency enrolling the customer into that program is authorized, with the customer's consent, to submit a request to implement or lift a preferred supplier freeze for the provision of electric generation service or gas supply service.

Nondiscrimination Should Include Payment Status

Subsection 14:4-2.6A(i) states that all LDCs shall permit preferred supplier freezes regardless of the customer's supplier selections. Language should be added to this section to also

ensure that customers who are in arrears may still request a supplier freeze. Rate Counsel suggests adding the following bolded language:

> (i) All LDCs shall permit preferred supplier freezes on a nondiscriminatory basis to all customers, regardless of the customer's **payment status or** electric and gas supplier selections.

Strengthening Customer Communications Requirements

Rate Counsel supports the customer communication requirements in Subsection 4:14-2.6A(k) but recommends additional provisions; a required Review of the Customer Language by the Board, a Plain Language Requirement, and a Clarifying Statement that a Freeze Remains in Effect Until Changed.

Review of the Customer Language by the Board

Rate Counsel recommends that the language utilized by the LDCs to explain the supplier freeze provisions should be reviewed and approved by the Board or Board Staff before it is released to customers in order to ensure that the language is clear and covers all aspects of the provisions. The language of Subsection 4:14-2.6A(k)(1) should be revised to add the following bolded language:

> 1. A clear and neutral statement that the customer may opt to freeze either a TPS or the LDC as their supplier **which shall be reviewed by the Board or Board Staff prior to its release to customers**;

Plain Language Requirement

One barrier to easily understanding information regarding programs and processes, such as a preferred supplier freeze, is the failure to translate programs or process requirements from formal legal language into Plain Language. The term "Plain Language" has a technical meaning, detailed by the Plain Language Association International.[9] Rate Counsel proposes inserting the following language:

> Any information provided to customers pertaining to a preferred supplier freezes, either verbally or in writing, shall be clearly set forth in easy-to-understand, ISO 24495-1:2023 conforming Plain Language.

Prevent Involuntary Supplier Transfers During TPS Mergers or Customer-Assumption

Rate Counsel respectfully disagrees with the Board's proposed regulations in Subsection 14:4-2.6A(m), which requires an LDC to temporarily lift a freeze, when a customer's TPS merges with, or has its customers assumed by, another TPS. The LDC is then granted the authority, undertaken independently and without prior notice, to reinstate the preferred supplier freeze with the new TPS for each customer account. Rate Counsel considers this scenario problematic as a customer with a preferred supplier freeze has already affirmatively declined to effectuate a switch under any circumstances, merger or otherwise. Lifting the freeze in these situations would undo a prior customer decision without explicit consent and leave customers again vulnerable to slamming.

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[9] Plain Language Association International. "Who we are." Plain Language Association International (PLAIN), https://plainlanguagenetwork.org/about/who-we-are/
The Plain Language Association International (PLAIN) is a volunteer-run, non-profit organization promoting clear communication in over 15 languages, with members across 30+ countries. Formed in 1993, it brings together professionals to foster accessible, plain language documentation.

Rate Counsel recommends that when a TPS ceases to exist through a merger or when its customers are assumed by another TPS, customers with a freeze should be treated the same as when a TPS goes bankrupt or is unable to continue service as dictated by subsection 14:4-2.6A(n). Pursuant to the procedure set forth in subsection (n), the LDC is authorized to remove the preferred supplier freeze, however, the affected customer accounts are transferred to the "default" supply services provided by the local utility, either BGS for electric, or BGSS for gas. These services are approved by the Board to ensure their rates are based on market conditions while a new TPS is an entirely unknown entity to the customer.

Rate Counsel, therefore, recommends that customers with a preferred supplier freeze should not be transferred to a new TPS due to merger or assumption and, at most, the customer should be allowed to exercise an “opt-in” choice in the event of a merged or acquired TPS.

Board’s Responsibility to Notify LDCs of Bankruptcy, Non-operation or Merger of TPSs

The rules are unclear on how LDCs will be notified if a TPS declares bankruptcy, merges or is unable to serve customers. Rate Counsel recommends that the Board notify all LDCs within 15 days of when it receives notice that a TPS operating in the State has either declared bankruptcy, merged with another entity or is otherwise unable to serve customers since the Board may receive notice of this information before an LDC.

Subchapter 3 Affiliate Relations and Subchapter 4 Public Utility Holding Company (PUHC) Standards

The amendments and additions to N.J.A.C. 14:4-3 and 14:4-4 pertaining to Affiliate Relations and Public Utility Holding Company (PUHC) Standards which are proposed by the Board would accomplish several objectives:

- An amendment to N.J.A.C. 14:4-1.1 would clarify that the requirements and regulations that apply to a public utility holding company and its related competitive business segments apply to all entities that directly or indirectly acquire public utilities and their related competitive business segments.

- An amendment to N.J.A.C. 14:4-3.1 would clarify that the standards of conduct pertaining to public utility companies' dealings with affiliates applies to "transactions, interactions, and relationships," not just "transactions."

- An amendment to N.J.A.C. 14:4-3.7 would clarify that a public utility company's compliance plan must include an accurate list of all affiliates of the public utility holding company, not just the direct affiliates of the public utility company.

- New language proposed for N.J.A.C. 14:4-4.4 would clarify that certain financial and operational information filed with the Board are to be treated as public for both privately held and publicly held public utilities.

Rate Counsel supports these proposed changes, however, Rate Counsel believes that the Board should go further to clarify that the standards of conduct pertaining to public utility companies' dealings with affiliates apply to transactions, interactions, and relationships with affiliated entities in both retail and wholesale markets.

Definition of "Affiliate" Should be Further Clarified and Noted in the Rules

Rate Counsel is concerned is that the language in N.J.A.C. 14:4-3.1 (which defines the scope of the affiliate relations standards in N.J.A.C. 14:4-3.3, 3.4, and 3.5) and the definition of "affiliate" in N.J.A.C. 14:4-3.1, create ambiguity as to whether the rules, that apply to gas utilities' dealings with affiliated entities operating in retail markets in New Jersey, also apply to the utilities' dealings with affiliates in wholesale energy markets outside the State. Rate Counsel recommends additional changes to the rules, so that they apply – not only to retail markets in the State – but also to wholesale markets.

The Board's affiliate relations rules are intended to prevent cross-subsidization between public utilities and non-utility affiliates, as well as, deter discriminatory practices that would benefit an electric or gas utility's unregulated affiliates at the expense of other market participants. For example, N.J.A.C. 14:4-3.3(e) states that public utilities shall provide access to utility information, services, and unused capacity or supply on a non-discriminatory basis to all market participants. N.J.A.C. 14:4-3.3(f) and (g) require a public utility that offers to sell surplus energy or capacity to its public utility holding company or a "related competitive business segment" must make the offering available on a non-discriminatory basis to non-affiliated entities. N.J.A.C. 14:4-3.2 defines a "related competitive business segment" as a business venture of a public utility or public utility holding company that provides services, goods, or products offered by a public utility that the Board determines to be competitive, or that is not regulated by the Board.

For New Jersey gas utilities, "offers to sell surplus energy" commonly occur in wholesale markets where GDCs make off-system sales of natural gas. "Offers to sell excess capacity" would include temporary releases of interstate pipeline capacity that the utilities hold under long-term contracts. Both off-system sales and capacity release transactions occur in competitive markets upstream of the utility's gas distribution system. In the course of these capacity optimization activities, New Jersey gas utilities often transact with their own affiliated companies. Examples would be transactions between New Jersey Natural Gas Company and NJR Energy Services Company, or transactions between South Jersey Gas Company or Elizabethtown Gas Company and South Jersey Resources Group. However, because N.J.A.C. 14:4-3.1 appears to limit the applicability of N.J.A.C. 14:4-3.3, 3.4, and 3.5 to transactions with a "related competitive business segment of the electric or gas public utility company providing or offering competitive services to

retail customers in New Jersey" it may not be clear that these gas pipeline transactions fall within the scope of the Board's affiliate relations rules.

This is why the same non-discrimination standards that apply to public utilities' dealings with affiliates in retail markets should also apply to dealings with affiliates in wholesale markets. Transactions between gas utility companies and unregulated marketing affiliates can harm the gas utility's customers through self-dealing and cross-subsidization. Customers will pay higher costs if the utility overpays its affiliate when purchasing natural gas or undercharges its affiliate when releasing pipeline capacity or making off-system sales. Affiliate transactions in wholesale gas markets can also reduce competition and increase costs for retail choice customers by limiting access to interstate pipeline capacity and natural gas supplies. If the gas utility gives preference to its affiliates when releasing pipeline capacity or making off-system sales, unaffiliated gas marketers may find it more difficult to obtain the pipeline transportation services or deliver gas supplies needed to be competitive in offering gas supply to retail choice customers. With less competition, these customers will likely pay more to purchase gas from TPSs.

For these reasons, Rate Counsel agrees with the Board's proposed changes in N.J.A.C. 14:4-3, but recommends the following changes to N.J.A.C. 14:4-3.1, 3.2, and 3.3 to provide additional ratepayer protections:

1. The definition of "affiliate" used in Subchapter 14:4-3 should be consistent with the rest of N.J.A.C. 14:4. Rate Counsel is not recommending a change to this section, it is only noted here below as a reference and to support Rate Counsel's recommendation of the use of the term in this section as outlined below.

    14:4-3.2 Definitions

> The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1 and 14:4-1.2.
>
> "Affiliate" means a "related competitive business segment of an electric public utility or a related competitive business segment of a gas public utility" or a "related competitive business segment of a public utility holding company" as defined in this section and in the Act.

2. The scope of the affiliate relations rules in N.J.A.C. 14:4-3, -4, and -5 should, where appropriate, apply to the public utility's dealings with affiliates that are not "related competitive business segment of the electric or gas public utility company providing or offering competitive services to retail customers in New Jersey." Rate Counsel recommends that the proposed rules insert the term "affiliate" where bolded and delete the language that appears between brackets (brackets appear as : [ ]) below.

   14:4-3.1 Scope

   (a) This subchapter shall apply as follows:

   N.J.A.C. 14:4-3.3, 3.4, and 3.5 set forth standards of conduct applicable to transactions, interactions, and relationships between an electric utility or gas utility **and an affiliate**, including [a related competitive business segment of an electric or gas utility, and] a related competitive business segment of the electric or gas public utility company providing or offering competitive services to retail customers in New Jersey or the public utility holding company itself providing or offering competitive services to retail customers in New Jersey.

3. The nondiscrimination provisions of N.J.A.C. 14:4-3.3(e), (f), and (g) should apply to the public utility's interactions with all affiliates. Rate Counsel recommends simply inserting the term "affiliate" where bolded below and deleting the bracketed words, to clarify that the related "competitive business segment of its public utility holding company" is in fact an affiliate, according to the definition as it appears as noted above in the N.J.A.C. 14:4-3.2 Definitions section.

   - 14:4-3.3(e) An electric and/or gas public utility shall provide access to utility information, services, and unused capacity or supply on a non-discriminatory basis to all market participants, including affiliated and non-affiliate companies, except as provided for in N.J.A.C. 14:4-3.4, 3.5, and 3.6.

(1) If an electric and/or gas public utility provides supply, capacity, services, or information to **an affiliate** [related competitive business segment of its public utility holding company], it shall make the offering available, via a public posting, on a non-discriminatory basis, to non-affiliated market participants, which include competitors serving the same market as the related competitive business segment of the electric and/or gas public utility's holding company.

- 14:4-3.3(f) An electric and/or gas public utility selling or making an offer to sell surplus energy, kWh and/or Dth, respectively, and/or capacity, kW or therms, respectively, on a short-term basis to its **affiliate** [PUHC or a related competitive business segment of its public utility holding company,] shall make the offering available on a non-discriminatory basis to non-affiliated electric or gas marketers, via a public posting.

- 14:4-3.3(g) An electric and/or gas public utility making an offer to sell surplus energy, kWh and/or Dth, respectively, and/or capacity, kW or therms, respectively, on a long-term basis to its **affiliate** [PUHC or a related competitive business segment of its public utility holding company,] shall make the offering available on a non-discriminatory basis to non-affiliated electric or gas marketers, via a public posting.

These proposed amendments are intended to eliminate any questions as to whether the affiliate relations standards in N.J.A.C. 14:4-3.3, 3.4, and 3.5 apply to transactions, interactions, and relationships with affiliated entities in both retail and wholesale energy markets. The modifications to N.J.A.C. 14:4-3.3(e) through (g) would clarify that public utilities cannot favor any of their affiliates when offering to sell surplus energy or capacity. This should support competition in retail markets for natural gas by ensuring that the marketers that supply these customers have access to information about gas supplies and upstream pipeline capacity being offered by the utilities.

Subchapter 5 Energy Licensing and Registration

N.J.A.C 14:4-5.5(k)

The Board's proposed amendments to this section provide that it may return the posted surety bond to a licensee after the license expires, provided that the licensee produces its business tax clearance certificate and there are no outstanding in-state consumer complaints or investigations against the licensee. Rate Counsel generally supports this provision but recommends that the Board provide a waiting period between the expiration of the license and the return of the surety bond to ensure that no subsequent complaints or investigations arise in that time period.

Subchapter 6 Government Energy Aggregation Programs

In this subchapter, the Board proposes updating definitions for Option 1 and Option 2 programs and adding exemptions for customers who qualify for a preferred supplier freeze. Rate Counsel supports these changes, as they will support the public interest, and proposes two additional changes for the Board's consideration. First, Rate Counsel proposes precluding participants from using terms other than "fixed" or "variable" to describe their rates, as outlined in previous sections, to help reduce confusion and protect ratepayers. Second, Rate Counsel proposes a requirement that customers who overpay be refunded with interest at a rate equal to the customers' cost of debt.

Section 14:4-6.3

Rate Counsel recommends additional language that ensures overcharged TPS customers are refunded the amount of their overpayment plus interest. This would help maintain consistency

between standards for TPS providers and EDCs. The overbilling problem in Hoboken is an example of this issue. In January 2025, the TPS for the City of Hoboken, Direct Energy/NRG, informed the city officials, the energy agents for the program, and the Board that it had inadvertently overbilled thousands of customers in December 2023 and again in December 2024. Through discovery regarding the amount overcharged and refunds, Rate Counsel learned that Direct Energy/NRG overcharged over 9,000 residential customers in the first round and over 11,000 residential customers in the second round, with the total amount overcharged estimated to be between $280,000 and $320,000. Rate Counsel further learned that Direct Energy/NRG reported that it had already issued refunds to all overcharged accounts in January and February 2025, but that it would not pay interest even though NRG had held some of the overcharged customers' money for over a year at that point. Importantly, Direct Energy/NRG refused to respond to a discovery question propounded by Rate Counsel asking if customers outside of Hoboken had been overcharged in the past five years, making it unclear if this was a one-time incident or a persistent problem with this particular TPS.

The Board has clear authority in EDECA to regulate the process by which a TPS may offer and provide retail electric generation and gas supply service to utility customers. EDECA further authorizes the Board to regulate Government Energy Aggregation ("GEA") programs under N.J.S.A. 48:3-92 through -95. The Board has the authority under EDECA to set and enforce consumer protection standards for electric power suppliers, including penalties, fines, or other remedies for violating those standards. Additionally, the Board has authority to take a variety of measures to ensure that TPSs protect electric and gas utility customers' rights while providing their services. This includes the express authority, under N.J.S.A. 48:3-80(a), to use a broad range of methods to investigate electric power suppliers:

> [w]henever 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).]

Rate Counsel recommends adding a provision to N.J.A.C. 14:4-6.3 stating that: (1) TPSs who overcharge customers will be subject to an investigation to determine the amount that was overcharged and the number of customers impacted, and; (2) interest will be included in customer refund. Rate Counsel recommends the following language:

> **(m) A residential customer who is overcharged will be reimbursed with interest, and the TPS and/or government aggregator responsible for overcharging the customer(s) will, at the Board's discretion, be subject to an investigation and audit to determine the amount that was overcharged and the total number of customers affected.**

TPS customers are entitled to the same customer protection standards as with their LDC and should be reimbursed in situations where they are overcharged. These principles are essential to the functioning of retail competition for electric and gas service in New Jersey, as they will provide customers with the confidence to shop with less fear of potentially unscrupulous commercial practices.

Subchapter 7 Retail Choice Consumer Protection

As noted above with respect to Subchapter 1, all TPS advertising, marketing, and contract materials should be prohibited from describing the contract as "fixed price" if the contract contains any variable price elements and should be required to only describe the contract as "variable" instead of "non-variable" or some other term. Such requirement will ensure that there are no intentional or unintentional misrepresentations to consumers.

N.J.A.C. 14:4-7.3 Advertising Standards and N.J.A.C 14:4-7.4 Marketing Standards

The Board's proposed amendments to this section provides, that a "TPS shall provide advertising (and marketing) materials to Board staff for review upon request." Additionally, the proposed amendments provide that:

> Board staff may direct a TPS to cease advertising (and marketing) practices within the State for up to 60 days based upon a determination that the TPS has violated any provision of this section. If Board staff determines that the TPS has cured the violations, the temporary advertising restriction shall be lifted. If a TPS fails to cure, violations alleged pursuant to this section, Board staff may recommend that the Board take action pursuant to N.J.S.A. 48:3-81.

Rate Counsel supports these amendments as they give Board Staff the ability to protect consumers from misleading advertising practices. Rate Counsel further recommends that the regulations provide Rate Counsel with the ability to recommend that Board Staff request advertising and marketing materials from TPSs and investigate potential violations. As the advocate for all New Jersey ratepayers, this office frequently receives complaints from consumers regarding TPS practices. Creating a formal mechanism for referral from Rate Counsel to Board Staff will ensure that Rate Counsel and Board Staff can continue to work together to provide the best protection for customers.

N.J.A.C. 14:4-7.6 Contracts

The proposed rule amendments require TPS providers to notify customers 30 days before the expiration of a fixed price element within the terms of the customer's contract. Additionally, where a TPS contract has a fixed price element and a variable price element, the proposed

amendment requires the TPS to provide "an explanation of the difference between a fixed rate and a variable rate that is easily understandable by the general public" As well as "include the historical variable rate billed by the TPS for the three preceding months."

Rate Counsel supports this requirement with the caveat that a TPS should be prohibited from referring to a TPS contract with both fixed and variable price elements as anything other than a "variable" price. Additionally, Rate Counsel recommends that the regulations are updated to require that the difference between the fixed and variable rate elements is clearly explained in all marketing and advertising materials as well as the contract, in a manner to conform with the most recently published ISO Plain Language standard.

N.J.A.C. 14:4-7.14 Billing Errors

The proposed rules provide notice and refund requirements regarding overpayment that results from TPS billing errors. Rate Counsel is generally supportive of this new rule. Rate Counsel further recommends that interest should begin to accrue after one billing cycle. For many residential customers, overbilling can result in constrained cash flow, forcing customers to make difficult decisions between paying for utility service and other essential items and services. Additionally, Rate Counsel recommends that any overpayment be returned with interest at a rate equivalent to the average consumer credit card interest rate. Customers with constrained cash flow due to overpayment errors will likely be forced to leverage their personal credit cards to pay for essential services and products. They should thus be compensated accordingly. Requiring such a level of interest to be included in customer refunds will incent TPS providers to ensure accurate

accounting to avoid overcharging in the first place, as well as, incent quick processing of refunds in the event of overbilling, and thereby protect customers from further undue hardships.

Further, refunds should be in the form of on-bill credits, or if that method is impossible, a certified check or cashier's check. The use of gift cards for refunds should be prohibited. Gift cards often remain unused or include fees which detract from their value. They are also hard to trace and subject frequent scams.

CONCLUSION

Rate Counsel thanks the Board for the opportunity to provide these comments.

Respectfully submitted,

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