

MURRAY E. BEVAN
mbevan@bmgzlaw.com

May 13, 2011

VIA ELECTRONIC AND REGULAR MAIL

The Honorable Bob Smith
Chair, Senate Environment & Energy Committee
216 Stelton Road
Suite E-5
Piscataway, NJ 08854
senbsmith@njleg.org

Re: RESA's Proposed Changes to A-3668/S-2630: The Municipal Shared Services Energy Bill ("A-3668")

Dear Senator Smith:

This firm represents the Retail Energy Supply Association ("RESA"), a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than regulated utility structures.¹ On behalf of RESA, we are writing to express our opposition to the provision of A-3668 that authorizes a municipal shared services energy company ("Company") to sell retail electricity outside the borders of municipal utility authorities ("MUAs").

Since the passage of the Electric Discount and Energy Competition Act of 1999 ("EDECA"), MUAs have not competed in markets served by retail suppliers. A-3668 radically

¹RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant Energy Northeast LLC 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.

changes the status quo by explicitly allowing MUAs—through the Company—to sell retail electric power outside of their borders.

In doing so, the legislation makes no allowance for the competitive advantages that MUAs enjoy, including no renewable portfolio standard (“RPS”) requirement and tax-exempt status. In fact, A-3668 explicitly provides in paragraph 23 that the Company “and its income shall be exempt from all taxes and special assessments of the State or any subdivision of the State.” Retail suppliers, on the other hand, are not exempt from state taxes. Moreover, by allowing MUAs, which are not required to meet the RPS, to obtain a larger share of the retail market, the legislation erodes nearly ten years of progressive environmental policies in New Jersey and has a deleterious effect on the retail competitive market as it creates an uneven playing field that significantly benefits the MUAs.

RESA does not believe there is any equitable way to allow the Company to compete against retail suppliers. Therefore, we recommend that paragraph 19 be amended to prohibit the Company from selling retail electricity outside its members’ borders, by adding the following bolded language to Paragraph 19 (a):

The municipal shared services energy company may enter into power supply contracts with any person, entity, or public agency within or outside the State of New Jersey for the **wholesale** purchase or sale of electric power and energy, or for both the **wholesale** purchase and sale of electric power and energy. **The municipal shared services company may not enter into wholesale or retail power supply contracts with any person, entity, or public agency outside of its members’ existing service territories for the retail purchase or sale of electric power and energy.**

Hon. B. Smith
May 13, 2011
Page 3 of 3

Furthermore, RESA does not support any amendments² that require the Company to become a licensed electric supplier if it does engage in retail sales outside its borders, because the Company would still have significant competitive advantages over retail suppliers, including tax-exempt status.

For the reasons stated, RESA respectfully requests that paragraph 19 of the legislation be amended to prohibit the Company from selling retail electricity outside its members' borders as indicated above. Please do not hesitate to contact me should you have any questions or concerns. Thank you.

Respectfully submitted,



Murray E. Bevan

cc: Senator Robert M. Gordon
Senator Christopher "Kip" Bateman
Senator James Beach
Senator Jennifer Beck
Assemblyman Chivukula
Amy Denholtz, OLS Aide
Judith L. Horowitz, OLS Aide
Kevil Duhon, Democratic Aide
Christina Gordillo, Republican Aide
Kristina Miller, BPU

² We have been informed that such amendments have been proposed by the Public Power Association of New Jersey ("PPANJ") and PSE&G.