



TESTIMONY OF JAY KOOPER
BEFORE THE ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE
A-3422 – AN ACT CONCERNING CERTAIN ADVERTISING AND MARKETING
STANDARDS FOR ELECTRIC POWER SUPPLIERS AND AMENDING P.L.1999, c.23

Good morning Chairman Chivukula and members of the Assembly Telecommunications and Utilities Committee, my name is Jay Kooper, the Director of Regulatory Affairs for the Hess Corporation, and the New Jersey Chair of the Retail Energy Supply Association. Thank you for the opportunity to appear before the committee and discuss A-3422. This legislation targets an issue important to RESA and New Jersey’s retail electric market – maintaining strong and effective marketing practices to protect consumers and enable retail suppliers to effectively present consumers with products and options they can choose with respect to their electricity purchases – whether saving money, obtaining price certainty, helping the environment, or any other option consumers value.

RESA supports strong consumer education and marketing practices regulations that ensure that consumers have a good experience in both shopping for their choice of electricity products and services, and the marketing of these services. To that end, RESA, while supporting the underlying premise and goal of A-3422, suggests some amendments to this legislation to ensure that this bill, if implemented, appropriately targets those independent marketers and other third party entities that are the source of the Legislature’s concerns with respect to marketing, especially, with respect to this bill, telemarketing.

First, RESA welcomes the process outlined in the legislation, which calls for the Board of Public Utilities and the Division of Consumer Affairs to collaborate and create interim customer protection standards. However, we note that retail suppliers are prohibited under N.J.A.C. 14:4-7.4(j) from committing “dishonesty, fraud, or deceit.” Furthermore, Third Party Suppliers

("TPSs"), may not make misrepresentations in their marketing materials in violation of existing regulations or Board orders, and are already subject to the revocation of their licenses should they run afoul of any Board regulation or order.

That being said, RESA is concerned that this bill, as currently drafted, does not target the actors this Committee is concerned with as, in addition to licensed TPSs, there exist a number of unregulated, unlicensed marketing entities that are not subject to the regulations or constraints to which licensed TPSs are, and who we believe are responsible for the majority of unwanted telemarketing calls in the State. We therefore welcome a process that would require the Board and the Division to undertake a rulemaking process, complete with a notice and comment period, aimed at analyzing the current rules and regulations for both licensed TPSs and telemarketers in general, and allowing those entities to utilize their expertise to fashion rules which will adequately address those issues discovered. RESA would actively and thoroughly participate in this process to lend these agencies our perspective.

The current bill's up-front prohibition on contacting potential customers telephonically more than once a year, however, may work a huge disservice to customers, as a licensed TPS may be able to offer a new service or better price to a potential customer and want to contact them and, under the current bill, be arbitrarily prohibited from doing so. Since many of these unwanted calls are, in fact, not coming from licensed TPSs subject to the Board's regulation, this bill may have the unintended effect of allowing unregulated telemarketers to continue their practices while curtailing the good efforts of licensed TPSs. Rather than outright restrict conduct of licensed TPSs, RESA believes the Board and the Division should have the opportunity to assess and study the issues involved. RESA believes it would be beneficial to examine the current problems, identify the responsible market participants, and come up with solutions that are narrowly tailored to solve the problem without negatively impacting the competitive market and the current channels for communicating with customers. RESA therefore recommends that the current language prohibiting TPSs from contacting a potential customer via telephone more than once per year absent an existing business relationship be removed with the issue to be decided by the Board and the Division in the proceeding established by this bill.

RESA also recommends that the language requiring an electric power supplier in violation of this law to refund customer monies be removed, as it similarly targets electric power suppliers for the actions of unregulated telemarketers. It makes more sense for the Board and the

Division of Consumer Affairs to prescribe the appropriate remedy in a rulemaking process. Furthermore, electric power suppliers may already lose their license under current regulations for any infraction of the energy competition rules.

Finally, RESA notes that while many of New Jersey's ratepayers have taken advantage of the savings available from third party suppliers, many others are completely uninformed of these opportunities and innovative product offerings. RESA has been working with the Board to develop a website for shopping customers to use as a tool to compare prices and value added products from licensed retail suppliers. We think the implementation of a stakeholder process and the development of this website will help alleviate the confusion and questions from New Jersey customers and assist in creating a positive shopping experience.

Along with RESA's proposed amendments, we attach for the Legislature's consideration RESA's latest Consumer Education Guide, as it fully explains our goals and tools for promoting a positive shopping experience. We have shared this Guide with both the Board and the New Jersey Division of Rate Counsel. It is located on the front page of RESA's website at www.resausa.org and we are pleased to share it with you and answer any questions you may have.

We look forward to working with you to ensure that the experience of shopping for and choosing a competitive electricity product is a positive one for all New Jerseyans who wish to avail themselves of this choice. RESA's commitment to this goal is unshakeable.