State of New Jersey
Board of Public Utilities

Comments of the Retail Energy Supply Association to the Energy Competition Standards Proposed Amendments: N.J.A.C. 14:4-2.6, 6.2 through 6.6, 6.10, 7.4, and 7.6 Proposed New Rules: N.J.A.C. 14:4-7.6A and 7.10A

I. INTRODUCTION

The Retail Energy Supply Association ("RESA")[1] respectfully submits these comments in the above-referenced proceeding addressing the proposed amendments to the Energy Competition Standards at N.J.A.C. 14:4-2.6, 6.2 through 6.6, 6.10, 7.4, and 7.6 and the proposed new rules to the Energy Competition Standards at N.J.A.C. 14:7.6A and 7.10A. The Energy Competition Standards promulgated by the Board of Public Utilities ("BPU" or "Board") are particularly significant to RESA, whose member companies are licensed third party suppliers ("TPSs") in New Jersey that provide customers with opportunities to shop for electric and natural gas products and include a variety of commodity related options, such as fixed price contracts and "green" offerings, as well as value-added energy efficiency, demand response, and other energy-related options. In addition, RESA members participate in government aggregation programs across the State.

The Board's proposed amendments touch on four key aspects of the State's restructured electric and gas markets: (1) "switching" times between one TPS and another TPS service or between default or TPS service; (2) contract summaries for residential and small commercial

[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

customers; (3) government aggregation programs; and (4) assignment of residential TPS contracts. RESA believes the Board has proposed some positive changes to the Energy Competition Standards, but also has significant concerns with aspects of the proposed amendments, of both a technical and substantive nature. RESA is very concerned that these proposed amendments do not address major lingering issues related to residential customer shopping and hopes the Board will take this opportunity to implement additional changes which will enhance the customer switching and shopping experience. Accordingly, RESA submits the following specific comments and suggested changes which will better serve energy consumers and promote the robust, competitive marketplace envisioned by the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49, *et seq.*

RESA members respectfully request that the Board allow sixty (60) days after the publication of final rules to fully implement the new regulations, as many of the proposed regulations may require both TPSs and the State's local distribution companies ("LDCs") to implement changes in their systems in a short time period. This extra time will allow all parties to transition to the new regulations in a manner that is least disruptive to TPSs, LDCs, and their customers.

II. COMMENTS

A. Energy Anti-Slamming

1. N.J.A.C. 14:4-2.6(c)-(d)

RESA supports the proposed provision which requires that distinct enrollment confirmation letters be sent to customers who are part of a government energy aggregation program. Currently these residential and small commercial customers receive the standard

enrollment confirmation letter from their LDC which is a source of confusion for these customers, as the standard notice makes no reference to government aggregation programs. RESA asks the Board to convene a stakeholder process to solicit input for the drafting of these government aggregation enrollment confirmation letters.

RESA believes that the proposed regulations and the new government aggregation enrollment confirmation letter should also make reference to the option for residential and small commercial customers to opt-out of the government aggregation program. RESA proposes the below suggested language in bold to supplement the proposed new regulation:

> (c)The notice required above shall notify the customer of his or her choice of supplier and, for a residential customer, that the customer shall have a minimum of seven calendar days from the date of the confirmation notice to contact his or her LDC and rescind the TPS selection, **or in the case of a switch pursuant to a government aggregation the notice shall inform the customer of the ability to opt out of the aggregation program in accordance with N.J.A.C. 14:4-6.5 and 14:4-6.6.**

RESA is also concerned that the Board has missed an important opportunity to correct another existing point of confusion in the current regime for default form enrollment letters. In addition to the above referenced confusion that arises from the issuance of form enrollment confirmation letters for government energy aggregation customers, the standard form enrollment confirmation letters also create TPS customer confusion when issued to TPS customers whose contracts are assigned to another TPS. While these customers are "assigned" and not "enrolled," the Board provides no mechanism for these assigned customer contracts. When the TPS assigns the contract with the same terms and conditions to another TPS, the residential customer erroneously receives an enrollment confirmation letter from their LDC advising them that they have authorized a switch to a new TPS. Further, their customer is

advised that they have a seven (7) day right of rescission to terminate the contract and the assignment. Instead of "authorizing" a switch to a new TPS, the customer was *assigned* according to the terms of his or her contract and another seven-day rescission period would likely be inconsistent with the terms of the contract. Moreover, it is confusing to customers to receive an enrollment confirmation letter in the middle of their service with a TPS and many of these customers believe that they have been slammed by the acquiring TPS – rather than assigned to the new TPS under their existing contractual terms and conditions. RESA urges the Board to implement further amendments which direct the LDCs to treat assigned TPS customers in a distinct manner from newly enrolled TPS customers and specifically adopt regulations which provide that assigned TPS customers do not receive an enrollment confirmation letter from their LDC.

2. N.J.A.C. 14:4-2.6(f)

RESA supports the Board's proposal to codify switching times for electric and gas shopping customers. However, RESA believes these switching times could be further shortened, allowing customers to more immediately benefit from the products and services offered by a TPS, get out of an unwanted contract, or to switch to another TPS or to default service in a more expeditious fashion. Therefore, RESA strongly supports a further decrease in switching times for shopping customers.

III. Government Energy Aggregation Programs

3. N.J.A.C. 14:4-6.3(b)

RESA supports the new proposed amendment clarifying and requiring that in order to arrange the retail sale of electricity and natural gas, an entity or person must be registered with

the Board as an energy agent. RESA also notes that the existing processes and agreements for government aggregation programs provide an additional level of confidentiality protections for customers.

4. N.J.A.C. 14:4-6.4(j)

RESA does not object to the proposed requirement in this section for submitting government energy aggregation documents to the Board and the Division of Rate Counsel. However, RESA is concerned that the proposed provision to include the estimated number of customers (proposed N.J.A.C. 15:4-6.4(j)(4)(vii) may not be readily available at the time the program information is initially filed with the Board and Rate Counsel.

5. N.J.A.C. 14:4-6.4(k)

RESA supports the new proposed requirement to track customers on government energy aggregation programs separately from those customers who are served by a TPS but are not part of a government energy aggregation program. This information will better inform both the Board and TPSs on the number of customers shopping for electric and natural gas service.

6. N.J.A.C. 14:4-6.5(d)(1)

RESA has concerns with the proposed revision to this section of the Energy Competition Standards. Typically in a government energy aggregation process, existing TPS customers in a territory that will be aggregated under such a program are automatically excluded from the program. Under the current rule, these TPS customers do not receive any notification from the LDC about the program. RESA is concerned that the proposed changes to this regulation could be read to indicate that TPS customers within the geographic area of a government energy aggregation program may receive program notices and may be subject to enrollment in the

government energy aggregation program despite their existing contractual relationship with another TPS. This will undoubtedly lead to customer confusion for those shopping customers and may inspire TPSs to engage in their own marketing campaigns with these existing customers to ensure continued enrollment in existing contracts. RESA respectfully requests that the Board clarify its position on the proposed changes to this regulation to ensure that existing, non-governmental aggregation TPS customers will have the same treatment as the existing regulation and will not receive notices about government energy aggregation programs from the LDC.

7. N.J.A.C. 14:4-6.5(d)(3)

RESA has no objection to this proposed amendment which requires the LDC to send the government energy aggregation customer list to the participating municipality and further requires the municipality to remove customers outside of the municipal boundaries and customers on the "do not aggregate" list within five (5) days. RESA notes that no process is perfect and that the municipality may need more than five days to review the information from the LDC and ensure its accuracy. RESA suggests the below language to further supplement this proposed regulation:

> The LDC shall send to each applicable municipality, a list of the names and addresses of customers from that municipality to whom it intends to send the notice. After receiving the list, each participating municipality **or its designee** shall **use best efforts to** review the list to identify any inconsistencies between the municipality's records and the addresses that the LDC has identified as being within the geographic boundaries of the municipality and to identify customers who are on the municipality's list of residential customers who prefer to be excluded from government energy aggregation programs. ~~Within five business days of receipt of the list,~~ **T**he municipality shall notify the LDC accordingly, so that the LDC can adjust the list.

8. N.J.A.C. 14:4-6.5(d)(8)

RESA has no objection to the policy of allowing customers to opt-in to a government energy aggregation program if the customer was inadvertently excluded. However, RESA does not believe that the notice should include the explanation proposed in this section, as the required notice is already very prescriptive and includes requirements to notify the customer of the municipality's participation in the program, the right to opt-out (for residential customers), the right to opt-in (for non-residential customers), directions for opting-in or opting-out, and contact information for the program.

RESA further submits that under this proposed section, it would make much more sense for the customer to notify the LDC if they are outside the geographic boundaries of the program, rather than the TPS. Since the customer information provided to the TPS ultimately comes from the LDC, it makes much more sense for the LDC to receive this information. This further ensures that future government energy aggregation programs in that same geographic area serve the correct customers, since the LDC is the point of contact for the list of eligible customers, and in fact, is responsible for sending notice of the government energy aggregation program to the customers.

9. N.J.A.C. 14:4-6.5(h)

RESA does not object to the proposed amendments in this section. However, RESA believes that either electronic submission or hard copy submission to the Board and Rate Counsel should be sufficient.

10. N.J.A.C. 14:4-6.5(j)

RESA supports the proposed amendment to allow the TPS and the government aggregator to include contract provisions allowing non-residential customers to join the government energy aggregation program at a later date.

11. N.J.A.C. 14:4-6.5(k)

RESA supports the proposed amendments requiring additional data to be provided for purposes of establishing a government energy aggregation program. This additional information will help aggregators and TPSs craft a government energy aggregation program that is tailored to participating governmental bodies. However, there is a crucial timing issue with the proposed amendments as data is to be provided within ten (10) days after the thirty (30) day opt-out period expires. This historical usage information as well as the capacity and transmission data is needed at the beginning of the aggregation process so the TPS and the government aggregator can properly price and design the proposed government energy aggregation program. RESA proposes the following language be added to both the electric and gas sections of this proposed amendment:

> **To enable the lead agency to advertise for bids for a government aggregation program, the LDC shall provide aggregate customer usage information, including aggregate consumption information and aggregate capacity and transmission obligation, to the government aggregator or its designee within 10 business days of such a request.**

12. N.J.A.C. 14:4-6.6(b) and N.J.A.C. 14:4-6.6(r)(9)

At the outset, RESA notes that these proposed provisions largely mimic the Residential Contract Summary that TPSs are required to send to residential customers under a previously adopted Board Order. However, RESA believes that these proposed amendments to the Energy

Competition Standards provide an opportunity to refine the requirements of the Board Order in a manner that better reflects the actual TPS market. As these sections pertain to providing a "GEA Program Summary" – a form of contract summary – RESA believes these proposed summaries should not differ in form and substance from the standard contract summaries provided to residential and small commercial customers who sign up for TPS service outside of a government energy aggregation program.

In addition, RESA believes there is no need to include an explanation of a variable rate product on a GEA Program Summary when no variable rate is being offered through the government energy aggregation program. Moreover, the inclusion of a customer's name, address, and LDC account number will unnecessarily increase the printing and program management costs associated with government energy aggregation programs by requiring individual notices. The point of government energy aggregation programs is to give everyone in a specific jurisdiction the same uniform contract and service through a single TPS. It is nonsensical to require customer specific, individualized GEA Program summaries. RESA proposes that the Board delete the references to "customer's name, address, and local distribution account number" and further proposes the following changes:

> **If variable,** provide a brief explanation of the difference between a fixed rate and a variable rate that is easily understandable by the general public, including an explanation on how weather fluctuations may affect the price of variable rate contracts;

13. N.J.A.C. 14:4-6.10(a)(12)

RESA opposes the proposed amendment requiring the TPS to return government energy aggregation program customers to the LDC at the end of the program. This provision frustrates the ability of the TPS and the governmental entity to freely enter into and negotiate a contract

which may contemplate alternate provisions. The governmental entity may want to allow the TPS to continue to supply the customers enrolled on the government energy aggregation program, or may want to authorize the TPS to provide other products and services to the government energy aggregation program customers at the end of the contract. RESA notes that aggregation programs are often not limited to only providing cost savings on electricity and natural gas, but also include deployment of renewables, new technologies, and other value added products. In addition, a governmental entity may wish to limit the number of times its residents are switched from one supplier to another and may choose to keep their customers with the same supplier until a new supplier is chosen. This proposed amendment unnecessarily restricts a governmental entity from structuring its contract in an alternative manner which may be more convenient and courteous to their residents. RESA proposes the following revisions to the amendment.

> A provision **setting forth the renewal and extension terms for the government energy aggregation contract. Unless otherwise provided for in the agreement, this provision shall provide** that the TPS shall return the customers to the LDC at the end of the government energy aggregation program, or if there are consecutive government energy aggregation programs, the TPS shall return the customers to the LDC at the end of the last consecutive government energy aggregation program;

14. N.J.A.C. 14:4-6.10(b)

RESA opposes this proposed amendment, which requires the governmental energy aggregation contract to be signed by an official from each municipality. This provision does not allow the municipality to designate an authorized or approved person to execute contracts. The ordinance authorizing the government energy aggregation program should be allowed to

address contracting authority. Moreover, a group of municipalities or a county aggregation program may wish to establish an administrative agency to manage contracting.

IV. RETAIL CHOICE CONSUMER PROTECTION

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

RESA reiterates its concerns with N.J.A.C. 14:4-6.6(b) and N.J.A.C. 14:4-6.6(r)(9); requiring the inclusion of a specific customer's name, address, and LDC account number at the top of a TPS Contract Summary. Requiring a TPS to include a customer's name, address, and LDC account number is an unnecessary and burdensome step that provides no real benefit to residential and small commercial customers.

Moreover, adopting overly detailed and prescriptive regulations which specify every single aspect of a Contract Summary removes the ability of a TPS to include additional information from which a customer may better benefit than the inclusion of an LDC account number. It is not clear from the regulations or the Board's publication that there is a need for this requirement or that customer confusion requires additional references and a customer's LDC account number (which is readily available on a customer's electric or gas bill).

In addition, it is not clear to RESA why a contract for a fixed-price product should include a description of a variable-price product. If the contract is for a variable-price product, such an explanation makes sense. However, it is confusing and pointless to explain to a customer a product that the customer is not purchasing. The Board should eliminate this requirement for fixed-price products. It is already difficult to fit everything the Board requires onto the one-page contract summary in size 12 font, and the level of detail required by the proposed regulations will harm suppliers who want to use the contract summary to provide

information about the actual product for which a customer is enrolling. RESA urges the Board to eliminate requirements to include customer-specific information on the contract summaries, and to instead adopt a more flexible approach in the types of information a residential and small commercial customer would benefit from reviewing on a one-page TPS Contract Summary.

16. N.J.A.C. 14:4-7.10A

RESA supports the proposed amendment requiring that a TPS acquiring residential customers through the purchase of another TPS or another TPS's accounts provide written notification to the affected residential customers. Such a rule will codify and standardize what is a common practice in the retail electric and gas markets today. That said, RESA does have a concern with a provision of the proposed rule that should be eliminated, as well as a concern about a concept which is absent from the rule and should be added.

Proposed new regulation N.J.A.C. 14:4-7.10A(a)(3) requiring that an acquiring TPS notify the acquired residential customers that they may choose another TPS or return to LDC default service prior to the assignment creates significant concern and RESA respectfully requests that the Board eliminate this requirement. Mandatory residential "opt-out" of contract assignment contravenes the assignment clauses of most residential TPS contracts which are routinely filed with the Board.

TPS contract assignment provisions typically allow the TPS to transfer a contract to the acquiring TPS under the same contract terms and conditions. Such provisions do not provide customers with an opportunity to break the agreement – customers who do are subject to the cancellation provisions of the contract – including any termination fees.[2] Moreover, customers

[2] The majority of competitive retail market states do NOT require mandatory opt-out notices to assigned customers. Where such notice is required – as in Massachusetts and New York – customers are also informed that they will

have accepted these terms when they agree to enroll with the TPS. A mandatory "opt-out" provision will diminish the value of any sale of a TPS or its customers to the acquiring company and may constitute an unconstitutional taking if adopted. In addition, this new proposed requirement may work an unintended harm on residential customers, who may unwittingly return to BGS or BGSS service at a higher rate than that of their contracted TPS rate. RESA urges the Board to strike this requirement from the proposed rule.

Notably absent from the proposed rule is a provision to acknowledge that assignments of TPS contracts are not enrollments initiated by the customer which ordinarily require that the LDC confirm the customer's intent to switch. TPSs who have acquired residential customers report that where enrollment confirmation letters (previously discussed under paragraph 1 of these comments) are not suppressed and are sent to assigned residential customers, double digit attrition occurs. However, where enrollment confirmation letters are suppressed and assigned customers receive notice from their new TPS, attrition rates are negligible. Providing another avenue for assigned residential customers to cancel their TPS contracts (without any reference to contractual early termination fees, if any) would further escalate attrition rates for assigned residential contracts, eroding confidence in the TPS market and creating uncertainty in the value of TPS residential contracts.

In addition to removing proposed new regulation N.J.A.C. 14:4-7.10A(a)(3) from the final rule adoption, RESA supports two additional changes to the proposed rule:

> **5. (a) An assignment or transfer of a supplier contract from one supplier to another is not an enrollment or a drop.**
> **5. (b) LDCs shall not send enrollment confirmation letters to assigned customers.**

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be subject to any cancellation provisions of their contracts, including early cancellation fees, should they choose to opt-out.

In considering the above request to remove proposed new regulation N.J.A.C. 14:4-7.10A(a)(3) from the final rule adoption and include the above language, RESA also urges the Board to consider regulations in other restructured markets, including relatively recent actions taken by the Maryland Public Service Commission (the "MPSC") to promulgate rules related to notification of assigned customers. These regulations, effective March 4, 2016, similarly require notice to the customers being assigned, but contain no provision which requires that the notice allow customers to cancel their existing contract.[3] The Delaware Public Service Commission ("DPSC") is also promulgating new rules which similarly require notice of assignment to customers, and do not include any requirement to allow a customer to "opt-out" of an existing contract without penalty. A final DPSC order was published on February 2, 2017; the rules will be published in the Delaware Bulletin on April 1, 2017, with an effective date of April 11, 2017 and are expected to be codified at Section 3001:10.10 of the DPSC's regulations. Lastly, the New York Public Service Commission ("NYPSC") also contains guidelines for assignments of TPS contracts in its Uniform Business Practices ("UBP"). In pertinent part, these regulations require notice to customers of the assignment, including notice of any changes to the price, terms and conditions of service, to the extent permitted by the customer's contract with the TPS.[4]

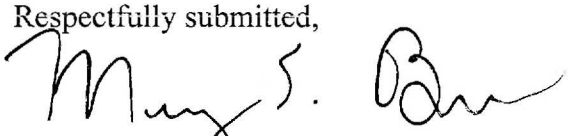
V. CONCLUSION

[3] The referenced MPSC regulations are codified at COMAR 20.53.07.12, which can be viewed at http://www.dsd.state.md.us/comar/comarhtml/20/20.53.07.12.htm.

[4] The UBP can be accessed at http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/8dd2b96e91d7447e85257687006f3922/$FILE/UBP%20Manual%20Feb%202016%20Final.pdf. The UBP discusses assignments of contracts at Section 5.J, on page 32.

RESA submits that the proposed changes it recommends herein more accurately and better reflect the current state of the competitive energy marketplace, while promoting its further growth. Therefore, RESA encourages the BPU to incorporate the suggestions contained herein before adopting the final rules.

Respectfully submitted,



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