BEVAN, MOSCA, GIUDITTA & ZARILLO, P.C.
ATTORNEYS AT LAW

222 Mount Airy Road, Suite 200
Basking Ridge, NJ 07920
Phone: (908) 753-8300
Fax: (908) 753-8301
www.bmgzlaw.com

MURRAY E. BEVAN
mbevan@bmgzlaw.com

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VIA ELECTRONIC AND REGULAR MAIL

The Honorable Kenneth Sheehan
Secretary, New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
kenneth.sheehan@bpu.state.nj.us
rule.comments@bpu.state.nj.us

***Re: In the Matter of the Board's Review of the Energy Competition Rules at N.J.A.C. 14:4*, Docket No. EX14111343**

Dear Secretary Sheehan:

On behalf of our client, the Retail Energy Supply Association ("RESA"),[1] please accept this letter addressing the Board of Public Utilities' ("Board's") review of the Government Energy Aggregation ("GEA") Program Rules as part of its ongoing review of the Energy Competition Rules in the above-referenced proceeding. RESA is a broad and diverse group of retail energy suppliers that share a common vision that competitive retail energy markets deliver

[1] RESA's members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; 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 only those of RESA as an organization and not necessarily the views of each particular RESA member.

more efficient, customer-oriented outcomes than do regulated utility providers. RESA members offer retail electric service to residential, commercial, and industrial customers in New Jersey, throughout PJM, and in other competitive markets across North America.

RESA members have participated in numerous private and public energy aggregation programs throughout the country and have gained keen insights into key policies that both promote and hinder a successful program. As licensed Third Party Suppliers ("TPSs") in New Jersey, RESA's members are extremely familiar with the state's current GEA program and believe that certain modifications to the rules are warranted and, in some cases, necessary to improve all stakeholders' experience with the program and make the program more successful overall. In prescribing any rule changes, however, RESA would caution Board Staff not to adopt overly prescriptive policies for aggregators, TPSs and the government entities implementing the GEA program. Rather, Board Staff should give government agencies the freedom to work with aggregators and TPSs to develop the program structure, contract terms and product offerings that work best for the specific group of customers being served through the GEA program. Granting such deference to the agency implementing the GEA program will ensure appropriate oversight without imposing additional layers of bureaucracy, which would result in delays, less TPS participation and higher bids from those TPSs that do choose to participate.

In addition to granting due deference to the government entity implementing the GEA program, RESA believes the GEA program would be much better served if the Board were to require the state's Local Distribution Companies ("LDCs") to provide more granular data to the

government entity to supply to TPSs submitting bids for the aggregation program. More detailed data enables TPSs to better customize prices and services for particular communities launching or extending a GEA program, but does not raise customer confidentiality concerns, because no individual customer information is revealed. As a result, customers are better served by and have better experiences with GEA programs. To date there have been significant challenges obtaining the necessary data to support successful GEA programs. Although many GEA programs have managed to move forward despite these data challenges, RESA is aware of at least one aggregation program that failed to award a contract due in large part to the inability of the aggregator to obtain certain data. When sufficient data is not available, TPSs are forced to embed costly risk premiums into their bid prices driving up costs to participating consumers.

With regard to the specific questions and comments raised by Staff in the Discussion Document issued in connection with this proceeding, RESA submits the following comments.

I. Reduce Unintended Customer Drops Associated with the LDC Notice to Customer of a Change Order (N.J.A.C. 14:4-2.6)

RESA agrees with Staff's proposed rule modification to require the LDCs to issue a different standard enrollment letter to customers switching suppliers due to a GEA program than the letter which they send to customers switching suppliers independent of a GEA program. As staff recognizes, the current enrollment letters LDCs issue in connection with an aggregation program often cause confusion among customers since they do not identify that customers are being switched as part of a GEA program. As a result, customers may believe they were

slammed, and then drop out of the program despite their intent to be included, thereby missing out on beneficial pricing and product offerings.

RESA, therefore, supports a rule requiring the LDCs to issue enrollment letters to these customers that specifically reference they are being switched as a part of a GEA program. RESA believes that the EDI system could easily be modified to identify these customers, thereby automatically triggering enrollment confirmation letters which reference that they are part of the GEA program. A rule requiring the LDCs to issue such enrollment confirmation letters referencing the GEA program would reduce confusion and unintended customer drops, thereby bolstering the overall GEA program. Accordingly, RESA encourages the Board to adopt such a rule.

II. Provide Clarity Regarding who can be a designee (14:4-6.3(b) General Provisions Designee)

While RESA does not disagree that designees under N.J.A.C. 14:4-6.3(b) must be qualified, RESA urges the Board not to impose any additional licensing requirements on TPSs, which are already licensed as TPSs by the Board. GEA agents and brokers often contract out certain functions to TPSs, such as issuing the Opt-Out letters to customers. TPSs' performance of such duties should not trigger a requirement for them to obtain an additional license as an energy broker or agent.

III. Ensure that Staff and Rate Counsel have the appropriate Information to Review GEA Documents, Provide Comments and Track GEA Programs

Although RESA generally supports Board Staff and Rate Counsel having access to the appropriate information necessary to review and track GEA programs, RESA encourages the Board not to impose related requirements that extend the process of launching a GEA program or compel the disclosure of competitively sensitive customer data. Implementation of a GEA program is time-sensitive and regulatory delays can lead to higher bid prices and more risk to bidders threatening their future participation in the program. Therefore, while RESA agrees that certain information and documents should be provided to the Director of Energy, Director of Customer Assistance and Rate Counsel, RESA encourages the Board not to impose regulations that would protract the process of launching a GEA program.

In addition, RESA encourages the Board not to adopt a rule that would require TPSs to submit their final contracts before the government agency has awarded a bid. The contracts between customers and TPSs are often negotiated throughout the bid process and the executed contracts are not finalized until the bid is awarded. Therefore, RESA believes that any requirement that TPSs file their final contract with Board Staff and Rate Counsel only go into effect after the bid is awarded.

Finally, RESA believes that any requirement to provide statistics regarding the program, including the number of residential opt-out letters sent, the number of customers included at the start of the program and the number of customers at the end of the program, should be imposed on the LDCs, who would report aggregated information for all aggregation programs in their service territory, and not TPSs. With the implementation of an EDI indicator for GEA

customers, the LDCs will have this information readily available and RESA believes that they should be required to file it with the Board and Rate Counsel on a quarterly basis. RESA further believes that such information must be kept confidential by the Board and Rate Counsel and only presented on a statewide aggregated basis to the public. RESA certainly understands the desire of the Board's Business Ombudsman and public officials to present such statistics at town meetings and other public forums. Due to the competitively sensitive nature of this information, however, RESA believes that it must be presented on a statewide aggregate basis in these contexts. If not provided in such a manner, TPSs could suffer competitive harm threatening their future participation in the GEA program. Both TPSs and brokers representing GEAs bring unique competitive advantages in market expertise, business processes, and other characteristics. These unique business capabilities can manifest in different success rates for GEA programs. Publishing customer participation rates would undermine these individual TPS and broker competitive advantages. Additionally, if detailed information is made public regarding each individual GEA program it would be fairly easy in some instances to ascertain a particular TPS' market share in New Jersey. Accordingly, RESA recommends limiting the release of such information to aggregated state-wide data only, instead of providing statistics for each individual GEA program.

IV. Improve the Accuracy/ Effectiveness of Customer Lists for Opt-Out Notices Sent Pursuant to N.J.A.C. 14:4-5.6(d) and N.J.A.C. 14:4-6.6(q)

RESA generally supports an improvement in the accuracy and effectiveness of lists of customers participating in an initial or successive GEA program. In particular, RESA would

support the requirement that the LDCs maintain and honor a list of customers who have asked to be permanently excluded from receiving notices about upcoming initial or renewal GEA programs. Should these customers decide they later want to participate in the GEA program, however, they should readily be able to do so.

Staff's proposed rule change appears to contemplate sending a new opt-out letter at the time of program renewal to all customers currently enrolled under the GEA program. With regard to successive GEA programs, RESA believes that the Board should grant due deference to the government agency to structure the GEA program according to the terms and conditions it deems appropriate RESA believes the details of when an opt-out letter is required should follow the statutory requirements and should otherwise be defined in the contract between the TPS and the government entity. RESA generally does not oppose informing customers when a GEA program is up for renewal. However, this customer education can be achieved through a variety of mechanisms and need not include the issuance of a new opt-out letter to all customers. If the government agency wishes to impose such a requirement to send a new opt-out letter, TPSs must honor it; however, a Board requirement is unwarranted and will lead to unintended and undesired customer drops. As a result, residents will not have the opportunity to benefit from valuable prices and products offered through the program and the GEA program, as a whole, will suffer.

V. Ensure that Residential Customers are provided with sufficient information to decide if they want to be included in the GEA Program or Opt-Out

RESA does not oppose a requirement that TPSs provide a GEA Program Summary to be sent to residential customers along with the Opt-Out notice. However, RESA believes that the

required format of the Program Summary should be a template, rather than prescriptive. The GEA program administrator should have the flexibility to structure the summary in the form they deem appropriate, as long as certain required information is included.

The Staff proposal contemplates a requirement to include the following statement in the summary document: "As a residential gas/electric customer who has not chosen a Third Party Supplier for your gas/electric supply, you will be automatically enrolled in this Government Energy Aggregation Program unless you indicate your desire not to participate by doing the following." RESA does not oppose a requirement that the summary contain language indicating that customers who do not opt-out will be automatically included in the program. However, RESA advises against prescribing this statement verbatim in regulations. Instead, the GEA administrator should be afforded flexibility in drafting the summary. RESA also believes that this information should be stated plainly, rather than in capital letters and bold, which is unnecessarily foreboding. Emphasizing the statement in bold, all capital letters could appear to the customer as a warning and may negatively influence a customer's perception of the GEA program.

RESA advises against a requirement that the Opt-Out notice contain a typical residential customer annual bill comparison between the selected supplier and the LDC's approved BGS/BGSS rate. A bill comparison requires making assumptions about a typical customer's usage which will deviate from each individual customer's actual usage levels and bill amounts. This could generate customer confusion and may over or under-state the savings an actual

customer would experience. Rather, RESA suggests that the notice could include the aggregation rate and the current PTC, which are more accurate.

VI. Ensure that the contract between a Government Aggregator and the Selected TPS Contains the Appropriate Provisions (N.J.A.C. 14:4-6.10)

RESA generally opposes overly prescriptive requirements regarding the form and content of the contract between a government aggregator and the selected TPS, and believes that the details of the contract should be left to the government agency to negotiate. RESA believes that the government agency should have the authority to decide how customers will be served at the end of the contract term, whether it be a return to the LDC or a continuation of the GEA program. If the Board were to nonetheless require TPSs to include a provision that the TPSs will return the customers to the LDC at the end of the term, RESA believes that the requirement should be "program term," rather than "contract term," since the latter unnecessarily restricts the government entities' authority to structure the program as they deem fit. The GEA entity may have a program term of 3 years, but only award the contract for a 12 month term. In such a case, the GEA should not be forced to return all customers to the LDC only to re-enroll them with the new selected TPS one month later.

RESA further believes the Board's regulations should be general in scope and not specifically dictate such details as the billing arrangement between customers and the TPSs. Nor should the regulations require the signature of one or more members of the governing body of each participating municipality; rather, the municipalities should be entitled to delegate this duty as they see fit.

Although RESA supports a requirement on TPSs to preserve confidential customer information, RESA believes that the required provision should require TPSs to only use such information for "the purposes associated with GEA programs." Requiring a provision that TPSs may only use the information for the government energy aggregation program is too limiting.

VII. Clarify that the Regulations Do Not Prohibit Non-Residential Customers from Joining a GEA Program After the Initial Period for Opt-Ins

RESA supports a regulation clarifying that non-residential customers are not prohibited from opting into the program. However, RESA believes the GEA program should be able to decide whether or not to include non-residential customers in any particular bid and encourages the Board not to require them to include non-residential customers. The regulations should permit the specific GEA contract to specify whether and how non-residential customers can opt-into the program at a later date. Some TPSs may be willing to accept non-residential customers at any time, whereas others may not be willing to accept the ongoing risk of serving an unknown number of incoming non-residential customer opt-ins. This issue can be negotiated between the GEA entity and the bidding TPSs. An overly rigid regulatory requirement could negatively impact pricing for residential customers by forcing TPSs to include unnecessary risk premiums.

VIII. Additional Issues/Rule Modifications

While RESA does not have suggestions for specific expedience, RESA encourages the Board to realize that time is of the essence with regard to each GEA program. RESA, therefore, encourages the Board not to impose any additional delays in connection with this review process,

especially related to the period after the TPS has submitted the bid. Such delays could raise costs and introduce risks on TPSs, therefore mitigating their participation in future GEA programs.

RESA does not support a requirement that LDCs include a page on their website for townships interested in creating a GEA program that would include the LDC contact information for those interested in creating a GEA program. In RESA's experience, LDCs are not the appropriate ambassador or contact point regarding the program. With regard to whether the lead agency should be required to post contact information for prospective bidders, RESA believes that no requirement is necessary; the public contracting law already prescribes how the lead agency must alert potential bidders about a GEA program.

RESA believes the state's GEA program would vastly improve if the LDCs were required to provide more granular data to the government entities to supply to TPSs interested in bidding on a particular program. As an immediate measure, RESA believe that JCP&L should be brought into alignment with the other LDCs through a rule requiring the LDCs to provide aggregate capacity tag and transmission tag data to the GEA's designee at the pre-bid stage in the aggregation process. This would be an aggregated value (i.e. not a class average) that represents the summation of all of the individual residential customer capacity tags for the set of customers eligible to be included in the program. If non-residential customers are also to be included, the LDC would also provide both aggregate and class average capacity tag values for each non-residential service class.

In addition, the LDCs should be required to provide a granular data set for the set of aggregation customers, instead of only aggregated values. This data set would include anonymized data entries (no customer-specific information; name, account number, service/billing address would all be excluded) for each account eligible to be included in the aggregation on an opt-out basis (non-shopping, residential customers). The following is a list of data elements to be included:

a. # of accounts by service class
b. 24 months of kWh consumption information
c. 24 months of kW demand information
d. Capacity tag (PLC) value
e. Transmission tag (NSPL) value
f. Service classification (rate class ID, etc.)
g. Meter type, including smart meter tag or net meter tag if applicable
h. Load profile identifier
i. Line loss factor
j. Budget billing indicator

A rule requiring the LDCs to provide this information to the government entities would enable TPSs to better respond to proposals issued by the increasing number of government entities offering residential aggregation programs, ultimately resulting in better prices and services to customers participating in these programs.

In conclusion, RESA supports the Board's review and enhancement of existing rules regarding government energy aggregation programs in order to improve the experience of New Jersey electric and gas customers. In developing such regulations, RESA encourages the Board

to take into account its recommendations made herein, as well as during the discussion at the stakeholder meeting.

Please do not hesitate to contact me with any questions. Thank you.

Very truly yours,

Murray E. Bevan