

March 22, 2021

**VIA E-MAIL**

Hon. Verlina Reynolds-Jackson  
144 West State Street  
Trenton, New Jersey 08608  
[aswreynoldsjackson@njleg.org](mailto:aswreynoldsjackson@njleg.org)

Hon. Daniel Benson  
3691A Nottingham Way  
Hamilton Square, New Jersey 08690  
[AsmBenson@njleg.org](mailto:AsmBenson@njleg.org)

**Re: Assembly Bill 4569**

Dear Assemblywoman Reynolds-Jackson and Assemblyman Benson:

On behalf of the Retail Energy Supply Association (RESA), thank you for providing us with the opportunity to offer comments on Assembly Bill 4569. Although we are grateful for the amendment which added electronic signature as a method of customer consent, RESA still strongly opposes this legislation as it would limit a customer's ability to choose the method by which they agree to the terms of an energy supply agreement with a third party supplier ("TPS") to only the options of putting "pen to paper" ("wet signature") or electronic signature. The currently authorized telephonic and website consent methods would be eliminated if this bill is enacted as would the Board of Public Utilities' discretion under EDECA to allow other convenient forms of customer verification in the future in consultation with the Division of Consumer Affairs.<sup>1</sup>

The energy slamming prevention provisions in EDECA, N.J.S.A. § 48:3-86(b), currently authorize the following four methods for obtaining a customer's approval to switch to a new electric or gas supplier:

1. the customer's written signature;
2. the customer's electronic signature;

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<sup>1</sup> See N.J.S.A. § 48:3-86(b)(1).

3. an audio recording of a telephone call initiated by the customer; or
4. independent, third-party verification of a telephone call initiated by an electric power supplier, electric public utility, gas supplier or gas public utility

EDECA further requires “[a] company performing independent, third-party verification [to]: (i) be independent from the entity that seeks to provide the new service; (ii) not be directly or indirectly managed, controlled, directed or owned, wholly or in part, by the entity that seeks to provide the new service, or by any affiliate of that entity; (iii) operate from facilities physically separate from those of the entity that seeks to provide the new service; and (iv) not derive any commission or compensation based upon the number of sales confirmed”. The company performing independent, third-party verification is required to obtain a customer’s oral confirmation regarding the change and record that confirmation by obtaining appropriate verification data. The BPU’s regulation, N.J.A.C. § 14:4-2.3(c)(2), sets forth a list of required questions that the independent third party must ask customers to confirm that they have affirmatively and voluntarily consented to switching suppliers and that they understand the contract terms. The TPV record must be made available to the customer upon request.

Like New Jersey, most other competitive supply states also allow customers to switch retail energy suppliers via telephone call (telemarketing) combined with an audio recording and/or independent third-party verification (TPV) to confirm that the customer is voluntarily and affirmatively consenting to enroll with the energy supplier. Some of these states also allow TPV to confirm door-to-door sales.<sup>2</sup> These widely accepted alternate methods of obtaining customer consent would be prohibited under the terms of A-4569.

In addition, pursuant to its discretion under EDECA, the BPU published a regulation, N.J.A.C. § 14:4-2.4, that allows customers a 5th method of switching suppliers, which is via the retail supplier’s website. The regulation requires a TPS using electronic methods to sign up, renew, or switch customers, to comply with the Uniform Electronic Transaction Act, N.J.S.A. § 12A:12-

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<sup>2</sup> See, e.g., **New York** – Uniform Business Practices for ESCOs at 25-26, available at: [https://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/8dd2b96e91d7447e85257687006f3922/\\$FILE/September%202020%20UBP%20CLEAN.pdf](https://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/8dd2b96e91d7447e85257687006f3922/$FILE/September%202020%20UBP%20CLEAN.pdf); **Maryland** – COMAR 20.53.01.02; COMAR 20.59.01.02; **Delaware** – CDR 26-3000-3001 at Section 11.7; **Washington, D.C.** – CDCR 15-327, CDCR 15-399; **Massachusetts** – 220 CMR 11.05(4)(c); 220 CMR 14.04(4)(c); **Illinois** - 83 Ill. Adm. Code 412.10, 83 Ill. Adm. Code 412.120; **Maine** – CMR 65-407-326; **Ohio** – OAC Ann. 4901:1-29-06; **New Hampshire** – N.H. Admin. Rules PUC 2004.08.

1 through 26. The regulation also sets forth specific requirements for the posted information and functionality of the TPS website used to sign up customers.

Customers want easy methods to sign up with retail energy suppliers. That is why telephonic and website enrollment methods are currently permitted in New Jersey and most other states. Moreover, New Jersey Senator Greenstein recognized this customer preference by sponsoring “shop with your wallet” legislation during two prior legislative sessions. Senator Greenstein’s legislation would make it more convenient for customers to switch their electric and gas suppliers by presenting items easily found in their wallet, such as a driver’s license or last 4 digits of their social security number, rather than providing their utility account number.

In addition, the prohibition against all forms of customer consent except a wet/electronic signature would be confusing to customers because contract renewals pursuant to A-4569 would only be allowed by wet/electronic signature even if the customer’s original agreement was executed via the TPS website or telephone and third-party verification. As you can imagine, the bill’s signature renewal provision would not only confuse customers, but would also force them into a process they do not want and generally create a very poor contracting experience.

A-4569 also makes no distinction between the type of customer contract which can only be agreed to by a wet/electronic signature. This means that multi-million-dollar energy contracts between sophisticated business parties that want to use a more convenient method of customer consent, such as telephone or website consent, are prohibited from doing so. RESA is concerned that A-4569 singles out this portion of the energy supply business for treatment different from all other forms of state commerce.

Finally, RESA fears that this bill, in addition to limiting customer contracting choice, will frustrate New Jersey’s efforts to encourage the use of green energy and to meet the state’s renewable energy goals that are set out in the Energy Master Plan by making it more difficult for customers to sign up for these renewable energy products. All electric supply contracts in the state provide a baseline amount of renewable power, called the state’s Renewable Portfolio Standard (“RPS”). However, only the state’s TPSs are allowed to offer greener or more renewable energy contracts. These include both renewable electric and renewable gas offerings. Over the last decade tens of thousands of customers have chosen to enter into these voluntary green contracts. RESA

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believes the Legislature should be encouraging these renewable products by making it easier for customers to choose them.

We would welcome the opportunity to discuss this legislation in more detail at your earliest convenience as A-4589 affects over 150 licensed third party suppliers and hundreds of thousands of customers who have not objected to the current methods in place to sign up for electric and gas service.

Very truly yours,



Murray E. Bevan

