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VIA ELECTRONIC AND REGULAR MAIL

Stefanie Brand, Director
Division of Rate Counsel
140 East Front Street 4th Floor
P.O. Box 003
Trenton, N.J. 08625

Re: Rate Counsel Petition for Rulemaking

Dear Ms. Brand:

The Retail Energy Supply Association ("RESA")[1] has closely analyzed the Petition for Rulemaking (the "Petition") filed by your office on May 27, 2014, and would like to offer comments and suggestions for an effective rulemaking that advances the interests of customers and protects retail suppliers from onerous obligations which do not enhance consumer protections and only serve to stymie retail competition. RESA supports effective and workable Energy Competition Rules that provide adequate consumer protections and are practically implementable by competitive suppliers. RESA will limit its comments to those proposed rules which RESA believes would be benefitted by additional changes.

[1] RESA's members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; 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 the position of RESA as an organization but may not represent the views of any particular member of RESA.

Comments on additions to "Change Order Required for Switch" Section of the Energy Competition Rules:

Add new subsections (x) through (xiii) under §14:4-2.3(c)(2)

(x) For residential and small commercial customers all transactions shall be followed by the TPS providing written copies of all relevant documents to the customer. Internet/phone sign ups shall be followed by the TPS supplying written copies of all relevant documents in paper form to the customer unless the customer requests by an affirmative acknowledgement to receive materials only in electronic format. For customers who have requested electronic materials the TPS shall then provide written copies of all relevant documents electronically. The TPS shall also provide the customer with the option to cancel their request to receive documents electronically. The TPS shall maintain proof of a customer's request to receive documents electronically for no less than 90 days after termination of the contract period.

RESA does not object to language which would require that third party suppliers ("TPSs") must provide written contracts to residential and small commercial customers. RESA further believes that if customers wish to receive electronic versions of their contracts, rather than hard paper copies, the customer should have the ability to receive electronic versions and not have to receive paper contracts. However, RESA has concerns with the overly prescriptive nature of the proposed language. A customer signing up for TPS service via the internet should be presumed to be comfortable with electronic transactions. A separate form of affirmative acknowledgement should not be required to show electronic delivery of written contracts for internet enrollments. The consent for electronic delivery should be permitted in the overall TPS supply contract. Accordingly, RESA recommends the following change:

Internet/phone sign ups shall be followed by the TPS supplying written copies of all relevant documents [in paper form] to the customer unless the customer consents [requests by an affirmative acknowledgement] to receive materials only in electronic format.

RESA also believes additional clarification is needed regarding the definition of a "small commercial" customer. Currently, there is no definition in the Energy Competition rules. In other states with restructured electric markets, small electric commercial customers are those non-residential, commercial entities with a cumulative peak load demand of 25 kW or lower as measured across all of a customer's facilities and meters. For small commercial gas customers, other states generally categorize commercial entities with a cumulative 5,000 or fewer therms per year as small commercial customers. RESA would support the inclusion of the following definition of "small commercial customer" consistent with other states:

"Small commercial customer" shall mean either (1) for electric, a commercial customer utilizing 25 kilowatt peak load demand or less on a cumulative basis across all of the commercial customer's meters and facilities; or (2) for gas, a commercial customer utilizing 5,000 or fewer therms of natural gas during the previous year on a cumulative basis across all of the commercial customer's meters and facilities.

In addition, RESA requests clarification on the phrase "relevant documents." While RESA presumes that "relevant documents" includes a customer's contract, without clarifying language, this provision is difficult to understand, and therefore, would be difficult to implement if adopted. RESA believes "relevant documents" should be defined as the contract and the standard one-page uniform pricing disclosure form described later in the Petition. RESA believes these documents include all of the necessary information for a customer to make an informed decision about switching energy suppliers.

(xi) Written materials shall include all relevant documents, including a one-page uniform summary and pricing disclosure form, disclosing all material terms of the agreement so that the customer is not required to go to or obtain other website pages or documents to receive a full disclosure of the terms and conditions in compliance with § 14:4-7.6(m);

Again, RESA reiterates the need for clarifying language so that all TPSs and customers understand what is included in the term "relevant documents." RESA supports the requirement to include a "summary document" which discloses all of the material terms of the agreement. Assuming "material terms" includes the specific items discussed in proposed new rule §14:4-7.6(m), RESA will address those proposed new requirements later in this document. If, however, there is a different intended definition of "material terms," RESA again requests clarification regarding what constitutes "material terms."

Subject to important revisions discussed below, RESA does not object to Rate Counsel's suggested amendments to N.J.A.C. § 14:4-2.4(i), which more explicitly require TPSs to provide copies of contracts to customers.

(xii) Written prior notice shall be provided to the customer consistent with and in compliance with the notice requirement under N.J.A.C. 14:4-7.6(k) at sixty days and thereafter at forty-five days before a fixed rate contract may change to a variable rate contract for electric generation service or gas supply service informing the customer of the date upon which the fixed rate service contract term ends. A contract shall be affirmatively entered into through an acknowledgment in ink or electronic form as appropriate, consistent with the federal "E-SIGN

Act," 15 U.S.C. ch. 96, and the Uniform Electronic Transactions Act, N.J.S.A. 12A:12-l through -26. before the end of each term and before such change may occur in compliance with N.J.A.C. 14:4-7.12; If the TPS is unable to obtain an affirmative acknowledgement from the customer the TPS may continue to serve the customer on a month to month basis under the new variable rate but the variable rate must not exceed the "variable rate cap" noticed in the terms and conditions of contract contained in the original contract entered into by the customer.

RESA supports providing enhanced disclosures to customers nearing the end of their contract term, coupled with accelerated switching. However, requiring the customer to *again* consent to the terms of a contract (in the above scenario, a fixed rate product which reverts to a variable rate after a specified period of time) is an onerous requirement, both for customers and for retail suppliers. RESA believes the enhanced disclosure requirements will provide ample notice to customers automatically renewing into a new fixed price period at the end of their initial contract term, switch to another TPS, or revert to BGS or BGSS service from their utility, and that there is no need to have a customer again consent to terms of a contract they freely entered into at an earlier point in time. The language proposed in the Petition would remove options for customers instead of adding consumer protections. Customers who have selected a TPS have already made an affirmative choice for their generation service provider. It should not be presumed that the customer wishes to return to BGS/BGSS service at the end of an initial fixed price period. Moreover, this section highlights the competitive disparity between TPS supply and BGS/BGSS supply, as the utilities are not required to receive contractual customer consent to change their rates. RESA strongly objects to any provision that would effectively eliminate the option for customers to enter into an automatically renewing agreement with their chosen TPS.

RESA also requests clarification on the concept of a "variable rate cap," as this term is undefined. Would this cap be set by the supplier in their contracting agreement with the customer, or would this be a product of Board design? Conceptually, RESA supports a "variable rate cap" provided that the structure and level of the cap is determined voluntarily by the supplier and consented to by the customer.

Comments to New Section on Recordkeeping

Add new subsection 3. under § 14:4-2.5(b)

3. A customer's acknowledgement with an "ink or electronic form as appropriate." consistent with the federal "E-SIGN Act." 15 U.S.C. ch. 96. and the Uniform Electronic Transactions Act. N.J.S.A. 12A:12-1 through -26. which confirms the customer signed up for service and/or extended the service contract time period.

RESA opposes the inclusion of this new requirement in the Energy Competition Rules. This requirement would eviscerate contractual agreements reached between TPSs and customers in a telephonic enrollment. The current third party verification requirements allow a customer to affirmatively enter into an agreement with a TPS. The proposal here adds an additional, unnecessary layer of paperwork, which benefits neither customers nor third party suppliers. RESA believes the current regulations, when properly enforced, provide the necessary protection for customers who sign up for service with a TPS utilizing telephonic means.

It should also be noted that telephonic enrollments, properly confirmed through a valid third party verification ("TPV") process, are among the most transparent and easily verifiable methods of enrollment. This is because the actual customer authorizing the transaction is recorded accepting the terms and conditions of the contract. The enrollment authorization and TPV record can be traced back to the telephone number for the customer, adding an additional layer of verification if there are future concerns about the validity of the enrollment. This proposal will only serve to increase costs and burden those TPSs who are already complying with existing laws and regulations.

Modify the language under S14:4-2.5(c)

(c) [Notwithstanding (a) above,] The TPS shall retain the recording[s] of the entire sales call, including the marketing portion of the call that results in a contract [s may be disposed of six months], for no less than 90 days after the end of the contract term after the call was recorded [and need not be retained for three years].

RESA acknowledges Rate Counsel's willingness to accommodate supplier administrative concerns over storage and technical capabilities regarding this proposed rule. After discussion with RESA members, RESA supports a requirement to record and retain customer calls for a period of one year. Given the manner in which many telephonic recording systems operate, the easiest manner in which to mark the one year term is one year from the recording of the call. Various suppliers have implemented different means of complying with various state regulatory requirements regarding recording of customer calls.

Comments on LDC notice to customer of a change order

Add new subsections (ii) and (ii) under § 14:4-2.6(d)

(i) The Board shall establish procedures that would shorten the sixty-day and/or two-billing cycle timeframe for customers to switch back to another electric power supplier;

(ii) The Board shall establish a maximum time of ten days within which the electric LDC must read the TPS electric customer's meter and return the customer to BGS service within 30 days after the customer contacts the TPS to cancel service. The Board shall establish a maximum time period of thirty days within which the local gas utility company must read the TPS gas customer's meter and return the customer to BGSS service within 60 days after the customer contacts the TPS to cancel service.

RESA believes accelerated switching, to TPS service from BGS or BGSS service, between TPSs, and from TPS to BGS or BGSS, is an important and much needed market reform in New Jersey. RESA is concerned that the proposed new rules in the Petition may actually lengthen switching time in New Jersey, rather than shorten it. RESA believes that requiring the utilities to shorten the number of days before a meter read to process a switch would be more effective in shortening switching times, as the current 20 day wait is needlessly onerous.[2] It appears the proposed language in this section of the Petition only contemplates a customer switch from a TPS to BGS or BGSS, and RESA believes that in a fully developed competitive market, there should be enhanced switching procedures for all customers and all types of switches.

RESA would prefer to see more accelerated switching times for shopping customers, and believes that a time frame of five (5) days to process a switch should be implemented in New Jersey. Pennsylvania recently shortened its switching time from five (5) days to three (3) days and eliminated the operational limitation of switching only on a scheduled meter read date. Connecticut also has a three (3) day switching requirement. Moreover, RESA believes that the seven (7) day rescission period should be tied to the receipt of the customer's contract and standard one-page contract disclosure form, rather than the receipt of the enrollment confirmation from the utility. Tying the rescission period to the receipt of the customer's contract allows the customer to fully enjoy the seven (7) day rescission period, and further incentivizes TPSs to provide customer contracts in a timely manner. RESA believes shortened switching times enhance the shopping experience for customers and allow customers to take advantage of TPS offerings as soon as possible.

[2] RESA acknowledges that this is a current topic of discussion on the NJ EDI calls, and that there appears to be a discrepancy between the 20 day switch window cited in the EDCs tariffs and the current EDI documents, some of which call for 15 days rather than 20. As of this writing, this issue has not been resolved.

Comments on Contracts

Modify Subsection (b)(4) under § 14:4-7.6

4. A statement of the residential and small commercial customer's rights, which shall provide that the customer will receive a confirmation notice of its choice of supplier and that, at a minimum, the customer will have fourteen [seven] calendar days from the date of the confirmation notice to contact its LDC and rescind its selection. Furthermore, that a contract for electric generation or gas supply service shall not be legally binding upon the residential and small commercial customer until the fourteen-day [seven-day] confirmation period has expired, and the customer has not, directly or indirectly, rescinded his or her selection;

RESA again reiterates the need for a firm definition of a "small commercial customer," and believes that, consistent with other restructured states, a "small commercial customer" should be considered one with a cumulative peak load of 25 kW for electric customers, and 5,000 therms for gas customers.

RESA opposes the proposal to change the rescission period from seven (7) days to fourteen (14) days. This is a step in the wrong direction. Please recall that this rule was amended in the most recent adoption of the Energy Competition rules in order to shorten the rescission period from fourteen days to seven days. Most restructured markets have even shorter rescission periods than New Jersey – Pennsylvania has a three (3) day rescission period, for example. Providing an additional week further lengthens the switching time for customers, mitigating many of the strides New Jersey has taken to enhance energy competition, and further frustrating the experience of shopping customers. RESA believes a seven day right of rescission is more than adequate.

Add new subsections (m) and (n) under ~ 14:4-7.6

(k) The TPS shall provide written notice to the customer at sixty days and thereafter at forty-five days [at least 30 days] prior to the end of the electric generation service or gas supply service contract, informing the customer of the date upon which the service contract term ends.

(m) Consistent with N.J.A.C. 14:4-7.6(k). the Board shall establish and require a TPS to use and annex to the top of its contract with residential and small commercial customers, a standard one-page uniform pricing disclosure form which summarizes and contains the following information: 1) the price per kWh (electric) or therm (gas); 2) whether the price is fixed or variable; 3) the BGS and BGSS prices to compare; 4) how often the variable price may change; 5) the variable pricing formula; 6) the maximum variable price increase (or decrease); 7) whether the customer is automatically subject to a variable price increase, and

if so when and how often; 8) the length of the contract; 9) any fees or penalties for early cancellation: 10) the length of time from cancellation to return to BGS or BGSS service, as applicable; 11) how much notice the customer must provide for cancellation without being subject to a fee or penalty: 12) the TPS's historic pricing for at least the prior 12 months: and 13) a toll-free phone number with contact name, email address and mailing address for customers to contact with questions, for problems, or to cancel the contract.

(n) All contract disclosures and material terms, including but not limited to the information provided under subsection (m) herein, shall be displayed in prominent and bold print and made available to the greatest extent possible in the language understood by the customer.

RESA firmly supports enhanced disclosure requirements for shopping customers. However, rather than codify the specific items which should be included in the "standard" one page document, RESA believes New Jersey should adopt an approach similar to Pennsylvania's, which also recently modified its regulations for electric and gas suppliers to require a similar one-page disclosure document. The language adopted in Pennsylvania is as follows:

(I) THE EGS[3] SHALL PROVIDE, WITH THE DISCLOSURE STATEMENT, A SEPARATE EGS CONTRACT SUMMARY IN A FORMAT PROVIDED BY THE COMMISSION.[4]

A copy of the format provided by the Commission is attached hereto as Exhibit A. This language allows for flexibility in implementation of the one-page disclosure requirement – rather than locking the necessary items into regulation, the Commission is free to change the items to be included in the one-page disclosure document as changes in the market become apparent and new products are designed by suppliers. RESA notes that many of the items Rate Counsel would like to see on the standard one-page disclosure are included on the form proposed by Pennsylvania. RESA believes the Pennsylvania approach strikes the correct balance between providing all necessary information to residential and small commercial customers, and providing regulatory certainty for suppliers.

Create New Section § 14-7.13, Board Website

(a) The Board shall establish and maintain a website detailing the information received from TPSs on a quarterly basis, which will include for each TPS, data in the aggregate for residential and small commercial customers on:

[3] The term "EGS" is the equivalent of a "TPS" in New Jersey.

[4] This section will be codified at Pennsylvania Regulation § 54.5. Disclosure statement for residential and small business customers.

1. The "Price to Compare" savings;
2. The number of customers and customer categories the TPS serves:
3. The types of contracts the TPS provides:
4. The relevant terms, and conditions of service under existing contracts:
5. Details on the TPSs' promotional offerings, including but not limited marketing information on all contracts offered with or without promotions in addition to the information required to be provided under new subsections (x) through (xii) under N.J.A.C. 14:4-2.3, and new subsections (m) and (n) under N.J.A.C. 14:4-7.6. and establish a mechanism to ascertain the accuracy of the information received by the TPSs and posted on the website.

(b) The Board shall establish and maintain a website detailing information supplied by each TPS under subsection (a) above, that conducts business in New Jersey, which states the material terms and conditions of service offered, including but not limited to the information required to be provided under new subsections (x) through (xii) under N.J.A.C. 14:4-2.3, and new subsections (m) and (n) under N.J.A.C. 14:4-7.6. and establish a mechanism to ascertain that the information received by the TPSs and posted on the website is accurate.

RESA is in agreement with Rate Counsel's call for a Board established retail shopping web site, but RESA also believes the information required under this proposed section creates a perverse incentive for suppliers to exaggerate claims of cost savings under their contracts. Not every TPS offers financial "savings." Customers choose to sign up for TPS service for a multitude of reasons – while cost savings is certainly one of them, many customers appreciate the financial certainty offered in a fixed price product. Other customers are looking for other value-added products offered by TPSs. To reduce the benefits offered by TPSs to customers to mere financial savings suggests that this is the only thing a TPS can offer to a customer. This is simply not true.

Moreover, TPSs simply cannot provide the information required by this paragraph. For certain utilities in New Jersey, the price to compare ("PTC") is completely unknown to the supplier, and is only provided on the customer's bill. Furthermore, since PTC is not currently calculated on a forward looking basis, as is the case in many other states, but rather reflects what would have been charged for the previous month of service, a TPS simply is not capable of providing this information. In short, for certain utilities in this state, such information is impossible to disclose.

In addition, many TPSs consider the number of customers they serve to be proprietary information. While they are required to disclose this information to the Board in their annual license renewal filings, many suppliers choose to file this information and request confidential treatment of same. RESA believes it would be more beneficial to have the Board compile this information on a percentage basis, rather than individually force TPSs to disclose proprietary information.

RESA would like to establish a meaningful dialogue with the Division of Rate Counsel and Board Staff by creating a stakeholder process and scheduling an initial meeting in the very near future in order to bring in additional suppliers and address the comments and concerns raised in this letter. We hope that this letter serves to provide you and your office with a better picture of our position on improving consumer protection for retail supply customers in New Jersey and providing meaningful choice for New Jersey's gas and electric supply customers.

Very truly yours,

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