State of New Jersey
Board of Public Utilities

In the Matter of Third Party Suppliers – N.J.A.C. 14:4-7 – The Board's Review of Consumer Protection Provisions of its Rules Concerning Third Party Suppliers — **Docket No. EX14060579**

and

In the Matter of the Implementation of the Special Rule Adoption in Compliance with L. 2013, C.263 — **Docket No. EX14060610**

Comments of the Retail Energy Supply Association

INTRODUCTION

The Retail Energy Supply Association ("RESA")[1] respectfully submits these comments to the Board of Public Utilities ("Board") in the above-referenced proceedings addressing the Board's Review of consumer protection provisions codified in the Energy Competition Rules (N.J.A.C. 14:4 *et seq.*) and the implementation of legislation which prohibits third party suppliers ("TPSs") from making false and misleading claims to potential residential customers and prohibits TPS calls to residential customers where no business relationship exists.

RESA, a broad and diverse group of TPSs, believes that competitive retail energy markets deliver more customer-oriented, value-added services than the regulated utility structure that predated the Electronic Discount and Energy Competition Act ("EDECA"). Consistent with this belief, RESA remains committed to the development of a robust and sustainable competitive retail energy market, and supports the Board's review and enhancement of existing consumer protection regulations. A thriving competitive market can only be established where TPSs offer understandable products to educated consumers through honest advertising and marketing. RESA welcomes this dialogue and hopes that this process results in sensible enhancements to New Jersey's Energy Competition Rules.

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[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.

RESA believes that if any changes are made to the Energy Competition Rules, they should be thoroughly vetted by stakeholders and regulators, and they should be narrowly tailored to focus on residential customers. Of key concern for RESA is the clear need to educate New Jersey customers about retail choice, specifically the benefits of retail choice and the types of available products.

I. Adequacy of Current Regulations and Enforcement Authority of Executive Agencies

RESA believes the Board's first topic for comment ensures a rational approach to reviewing existing regulations and providing additional changes or enhancements in areas where oversight and regulation are needed, without overburdening the existing regulatory scheme. In the wake of this year's extreme winter weather, which overwhelmingly affected shopping customers on variable priced products it is clear that it is in the interest of all stakeholders to improve residential customer understanding and education, and enhance TPS product and marketing transparency. However, it is important that the current regulatory framework for TPSs be reviewed, in order to ensure that overly restrictive actions are not taken, which would ultimately hinder customer choice and the further development of retail competition in the State.

RESA notes that New Jersey's Energy Competition rules contain robust, detailed requirements for marketing to residential customers. These regulations, codified at N.J.A.C. 14:4-7.3–7.4, require TPSs to make a multitude of disclosures to both residential and commercial customers, including information from the TPS (license number, website, and contact information), product information (type of product, price, term) and other important disclosures (e.g., switching to a TPS is not mandatory). However, some of the requirements in the current marketing regulations are actually unnecessarily onerous. For example, N.J.A.C. 14:4-7.4(a)(4) requires a TPS to provide the average Basic Generation Service ("BGS") or Basic Gas Supply Service ("BGSS") rate over the same period of time that the TPS is advertising its price. This requires the TPS to include caveats and explanations, since the BGS rate is subject to fluctuations from ever-changing reconciliation charges (among other things) and the BGSS rate can be changed by the Gas Distribution Company ("GDC") two times per year. In short, a TPS may find itself in a position where it is providing comparison prices which inadvertently end up inaccurate. A TPS confronts similar compliance issues with N.J.A.C. 14:4-7.4(b), particularly since not all of the State's utilities provide a forward looking price to compare ("PTC") that is publicly available for the TPS to use as a point of comparison.

RESA believes that New Jersey residential customers would benefit from increased BGS and BGSS forward price transparency. To that end, RESA believes that a standard, three-month reconciliation period should be adopted for all BGS and BGSS pricing and that those prices should be published by the electric and natural gas distribution utilities on a forward-looking basis. If the Board implements the shopping website, as contemplated by P.L.2013, c.184 (legislation enacted on January 13, 2014, which allows the Board to compile and publish

shopping information on a website), and discussed in RESA's comments on customer education below, it would be the natural location for the utilities to publish quarterly, forward-looking prices. Ultimately, it is more effective and more equitable to ask the utilities to calculate and publish the BGS and BGSS process on a standardized, forward, and transparent basis, than to ask TPSs to struggle through recreating disparate pricing and reconciliation methods used across the State.

The Energy Competition rules provide further guidelines and requirements for the contents of contracts between TPSs and customers in N.J.A.C. 14:4-7.6. Residential customers currently have seven (7) days from the receipt of enrollment confirmation from their utility to terminate a contract (a markedly long period of time compared to other restructured markets), and also have a special right of termination if the customer moves, becomes disabled, or is deceased. However, curiously lacking from subchapter 7 of the Energy Competition rules is an "enforcement" provision. Subchapter 2, which governs switching customers and slamming, has an enforcement provision at N.J.A.C. 14:4-2.8, and subchapter 5, which governs licensing and registration of TPSs, brokers, energy agents, and aggregators, has an enforcement provision at N.J.A.C. 14:4-5.13.

Since TPS telemarketing is also at issue, RESA notes that the Division of Consumer Affairs ("DCA") has extensive regulations pertaining to telemarketing under N.J.A.C. 13:45D *et seq.* Telemarketers are required to register with DCA annually, must maintain and update a "do not call list" with numbers of New Jersey customers who have registered for the National Do Not Call Registry, and must comply with DCA's numerous other regulatory requirements. Failure to comply with DCA regulations and requests can subject the telemarketer to penalties under N.J.S.A. 56:8-13 (financial penalties of $10,000 for the first offense and $20,000 for second and subsequent offenses) and N.J.S.A. 56:8-14.3 (additional penalties for harming and/or targeting senior citizens). In addition, the telemarketer can lose the right to do business in New Jersey.

RESA believes a balanced, transparent enforcement and disciplinary regime will act as an effective deterrent to inappropriate business tactics. RESA believes that inadvertent errors should not be subject to harsh enforcement penalties, and that the Board should retain discretion in order to ensure inadvertent errors are not harshly penalized. Widespread and systemic business practices which are structured to take advantage of customers should not be tolerated.

II. Limitations on Content of Advertising and Marketing Materials

As stated above, RESA believes New Jersey has already implemented robust requirements for marketing to, and contracting with, residential customers. By and large, RESA does not believe that any of the current requirements for advertising should be limited, as many of the disclosures TPSs must provide to customers are necessary to educate consumers about the products they seek to purchase. Telephonic enrollments are required to be recorded and a verification must be performed before a customer can be switched. In fact, if a TPS is

telemarketing with the intent of signing up customers, the entire sales call has to be recorded under N.J.A.C. 14:4-2.3(c)(2)(ix).

RESA believes that all current avenues of enrollment – telephonic, electronic, and in person via door to door marketing, should be kept intact. Eliminating any of these viable and successful means of marketing would have a direct and deleterious impact on the ability of TPSs to market to customers in the TPSs' chosen method of advertising. Furthermore, adding requirements (such as a requirement for a telephonic enrollment to include a wet signature mail-in card) only adds needless bureaucracy to an already well regulated activity, and likely will not protect customers from bad actors. Once a customer enrolls with a TPS, the customer should be able to receive updates from their supplier in a manner that best suits that customer's wishes; if a customer chooses to receive electronic communications over hard copies, this choice should be honored.

RESA is open to discussing current recordkeeping requirements. The current requirement for retention of the marketing portion of a telemarketing call is six (6) months. RESA does not object to increasing this amount of time to one (1) year from the date of the call.

RESA believes that TPS marketing and advertising must honestly and transparently represent the products offered by the TPS. That is to say, all communications from the TPS to the customer about the product must honestly represent the structure, pricing, risks, term length, and conditions that make up the product. Customers should be fully informed on the product they are selecting to be sure that they are receiving optimal personal value from their choice. In large part, the existing New Jersey regulations that govern TPS marketing and overall business practices should be sufficient in providing enforcement authority over any TPS that fails to truthfully represent their product offerings. Additionally, the implementation of a Board shopping website will aggregate TPS residential product offerings and disclosure information in one spot, thus facilitating additional Board oversight regarding how TPSs are representing their products.

RESA believes that enhanced disclosures, tied to existing rescission periods, for residential customers who are nearing the end of their contractual term would enhance customers' shopping experiences and inform them of the products they are purchasing. RESA supports reasonable regulations which would require a TPS to inform residential customers of the approaching end of their contract term. For residential customers who are on fixed price products nearing the end of the term of the agreement, this reminder allows them time to shop for a new product should they choose to do so.

III. Methods of Consumer Education

While the Board has requested comments on numerous areas of high importance to the retail energy market in New Jersey, residential consumer education stands out as one of the most important areas for improvement. RESA firmly believes that educated and informed customers

form the base of a long term, successful retail market. To that end, RESA urges the Board to implement a website for shopping customers, targeted at the residential market, which gives customers much needed information on the retail market, and provides and unbiased avenue for customers to explore the retail market and choose a supplier and product that meets their needs. This website should be comprehensive and should include feedback from all participants – TPSs, regulators, the Division of Rate Counsel, and the State's utilities.

IV. Specific Issues Related to Third Party Supplier Contracts

RESA again notes that the current regulations provide strong protections and requirements for TPS contracts with customers – residential and commercial alike. However, RESA believes that the Board should adopt a standardized one page contract summary, similar to what was recently adopted in Pennsylvania, which should be included with contracts offered to residential customers. This document should highlight key terms of the contract between the TPS and the residential customer – price, length of contract, whether it changes to a variable rate, cancellation or early termination fees, and renewal terms. This contract summary should be simple and easy for a customer to understand, and should further assist customers in evaluating product offerings. While the contract summary cannot replace the legally binding contract between a TPS and its customer, the summary can ensure that the most important conditions of the contract are highlighted in plain language.

RESA believes there is a lack of clarity in the Energy Competition rules regarding what is a "fixed" price product, and what is a "variable" price product. RESA also notes that there are many other types of products, including hybrid products, which do not fit neatly into the "fixed" or "variable" price categories. TPSs offer block rates, contracts with fixed and variable components, and other product types, and should be allowed to continue to offer these products so long as the customer understands what he or she is purchasing.

RESA also believes that accelerated switching time is a key market enhancement that will greatly add to a shopping customer's experience. Pennsylvania has recently decreased its switching time for electric customers to three (3) days, and Connecticut has also changed its switching time to three (3) days. Furthermore, in Texas, expedited switching was implemented, without the deployment of smart meters. These states have utilized a number of measures, including estimates meter reads, sending utility trucks to perform meter reads for a fee, and utilizing meter reads that are no more than two (2) days old, in order to speed up the switching process. By contrast, in New Jersey, the switching process can take up to two billing cycles – over sixty (60) days, in some cases. A customer should be able to effectuate a switch to a TPS from BGS, from one TPS to another, or from a TPS back to BGS, in less than thirty (30) days. There is simply no reason why a customer should have to wait so long to change suppliers.

RESA is concerned about the notion of "guaranteed savings" in New Jersey, where the utilities' PTC is not always accessible or evident, and where TPSs offer a multitude of value

added products to their offerings. Terms such as "guaranteed savings" should be drafted as broadly as possible, without being misleading to customers. However, RESA lacks context to fully comment on the Board's topic.

CONCLUSION

RESA would like to thank the Board for soliciting comments regarding these important topics, and looks forward to continued dialogue and participation in a stakeholder process which balances the needs for consumer education and continued development of the retail market in New Jersey.

Respectfully submitted,



Murray E. Bevan

Bevan, Mosca, Giuditta & Zarillo, P.C.
Counsel for the Retail Energy Supply Association
222 Mount Airy Road
Suite 200
Basking Ridge, NJ 07920
(908) 753-8300
mbevan@bmgzlaw.com