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**Remarks of Stefanie A. Brand,
Director, Division of Rate Counsel,
I/M/O Third-Party Suppliers – N.J.A.C. 14:4-7 - The Board’s Review of
Consumer Protection Provisions of its Rules Concerning Third-Party
Energy Suppliers, Docket No. EX14060579,
and
I/M/O the Implementation of the Special Rule Adoption in
Compliance with L.2013, c.263, Docket No. EX14060610,
Presented at the Board Staff Stakeholder Meeting on
July 17, 2014**

Good morning. My name is Brian Lipman, I am the Litigation Manager of the Division of Rate Counsel, testifying on behalf of Stefanie Brand, the Director of the Division of Rate Counsel. I would like to thank the Board for the opportunity to testify today, regarding consumer protection provisions of the Board rules, and the special rule adoption, concerning third-party energy suppliers, as well as to discuss my office’s pending rulemaking petition.

As you are aware, the Division of Rate Counsel represents and protects the interest of all utility consumers - residential, small businesses, small and large industrials, schools, libraries and other

institutions in our communities. Rate Counsel is a party in cases where New Jersey utilities seek changes in their rates and/or services. Rate Counsel also gives consumers a voice in setting energy, water and telecommunications policy that will affect the rendering of utility services well into the future.

Consumer protection rules concerning third-party energy suppliers (“TPS”) and the high utility bills experienced by many customers is of great concern for the Division of Rate Counsel. Rate Counsel received many calls and emails over the last several months from ratepayers who had signed up with third-party energy suppliers and received alarmingly high bills and sudden rate increases this past winter. We understand that Board Staff have received many of the same types of complaints.

My testimony today comes in two parts. First, I would like to share with you what the Division of Rate Counsel has heard from consumers who have contacted our office about sharp increases in their bills from third party energy suppliers, and some problems that we have identified as a result of our conversations with those consumers. Secondly, I would like to share what the Division has been doing to try and help improve consumer protections for ratepayers who want to use third-party suppliers

and what we believe needs to be done going forward to prevent the problems that we have seen.

As everyone in this room knows, we had an exceptionally cold winter. The decrease in temperature caused an increase in electricity usage and in the demand for natural gas. The PJM energy markets saw all-time high winter peaks which raised prices in the energy spot market. The situation was exacerbated by a failure of some peaking units in our regional grid, PJM, to start when called upon, which sent prices even higher. Some third-party suppliers had locked in sufficient capacity in advance so that they did not need to buy while prices were high and they were able to protect their customers from these price spikes. This was also the case for our BGS suppliers, who have three-year contracts so they are able to purchase over a longer term. Other suppliers, however, did not hedge sufficiently and were forced to purchase gas and energy at these extraordinarily high prices. Where their customers had signed contracts that allowed for variable rates, the suppliers passed these high prices on to their customers.

If that was the end of the story, I would be sitting here today telling you about the need for customer education and a review of PJM's policies regarding the obligations of generation to deliver when called upon.

However, as we started to talk to consumers about their bills and their contracts, we learned that there are clearly some fundamental problems in how we oversee retail electricity and gas shopping. Many of the customers we heard from said that they did not sign up for variable rates and complained that they were not fully informed about the terms of their contracts. While some ratepayers knew generally what they were signing up for, they found that the written terms – if they got them at all – did not match the pitch they were given in the sales calls. Many admitted that the fine print of their contracts allowed the third party supplier to pass through these higher rates but that this had never been disclosed to them and could not be easily ascertained from the documents they were given.

One customer who was referred to us by a legislator gave us her contract which stated clearly that she was signing up for a fixed rate, not a variable rate. When we dug deeper into the documents she gave us, we found that the contract referenced a document that was available online, but was not provided to the consumer, saying that after a certain period of time the fixed rate would become variable. Several ratepayers complained that when they tried to cancel these contracts they were told they could not switch back for at least two billing cycles. Others mentioned that when they did go to switch back they were then

bombarded with calls and mail from other energy suppliers trying to sign them up.

Rate Counsel believes that there is a real problem here with the oversight given to third party suppliers. While most third party suppliers are reputable and follow the rules, there are some bad actors out there and they need to be reined in. Otherwise, customers will lose faith in retail shopping and the competitive advantages we hoped shopping would foster will be lost. Rate Counsel therefore recommends a three-pronged approach to addressing these problems.

First, we believe the state needs to investigate and bring appropriate enforcement action against those companies that are engaging in false advertising, slamming, and unconscionable marketing practices. Rate Counsel applauds the joint enforcement initiative by the Board and the Attorney General's office, Division of Consumer Affairs. To this end, Rate Counsel has shared with the Division of Consumer Affairs the names of the customers who have contacted us. It is our understanding that the Division has also received a number of complaints and has begun to investigate them and bring enforcement actions. These actions should have an important deterrent effect on those who would prey on consumers.

Second, we need to improve the process going forward. The Division of Rate Counsel supported recent legislation, P.L. 2013, c. 263 (A3422), which was signed into law on January 17, 2014. The law prohibits energy suppliers from making false and misleading claims to potential customers and prohibits suppliers' calls to customers where no business relationships exist. We also supported A3272, which was recently passed in the Assembly to improve protections for consumers entering into contracts with TPS.

We have also filed a Petition for Rulemaking with the Board. It is our belief that current Board rules are not adequate to address all the concerns and complaints of TPS customers and require reexamination and modification to strengthen the protections afforded to consumers. We have engaged in discussions with the Retail Energy Suppliers Association and some of its members regarding changes to the current regulations and policies that we believe will provide greater protections to ratepayers going forward. We believe that the most important improvement is increased disclosure, in clear and plain language, of all material contract terms, and acknowledgement of that disclosure. This protects the consumer, but also protects legitimate TPSs who provide appropriate disclosure.

We are proposing the following basic changes to the rules:

- (1) Require that the TPS promptly send, to each customer who signs up, in writing, by internet or by telephone, a written copy of the contract setting forth all material terms and conditions of the transaction. Customers must be provided with their contract and standard disclosure form, which I will discuss in a few moments. Rate Counsel would agree that customers may affirmatively consent to the TPS sending their contract and uniform disclosure form in electronic format. However, the customer must still be able to request a hard copy at any time.

- (2) Require that the TPS contract set forth all material terms and conditions of the transaction in a single document so that the customer need not go to another website page or obtain another document to receive a full disclosure of all material terms and conditions of the transaction. This could be accomplished by requiring all TPSs to use a standard one-page form containing the same uniform pricing disclosure information from the contract. Each TPS would attach that form to the contract and the customer could acknowledge, by signing and returning the form, that the TPS has disclosed all material terms. Rate Counsel thinks that in most transactions the contract and uniform disclosure form are the most relevant documents. However, other documents may be relevant if they amend or otherwise affect the terms or conditions of the contract, or if the additional document contains a term that the TPS will seek to enforce against the customer.

Rate Counsel believes these protections should be afforded to residential and small commercial customers. In discussion with

members of the industry, Rate Counsel understands the term “small commercial customer” should be defined.

- (3) Require that once the written materials have been provided, but before the contract can take effect, the customer must return a card or other acknowledgement with an ink or electronic form signature consistent with the federal “E-SIGN Act,” and New Jersey’s Uniform Electronic Transactions Act¹ confirming that he or she wants to sign up for service and/or extend the contract time period.

Many of the complaints received by Rate Counsel would have been avoided if this condition had been required. The customer needs an opportunity to review the written contract and standard disclosure form, and verify and understand the nuances of the terms and conditions.

To this end, Rate Counsel supports a rescission period running from receipt of the contract and disclosure form. This period should be of sufficient length to allow customers adequate time to review and understand the terms of the TPS contract.

In discussions with the industry, Rate Counsel believes there is agreement that the TPS should provide enhanced disclosures to customers nearing the end of their contract term. The TPS should provide notice to the customer 60 days and then 45 days before the end of the contact period that the contact is about to expire and be renewed. Rate Counsel recommends that the TPS obtain the customers’ affirmative consent if there is any change in material contract terms or conditions upon renewal. This would include, for example, a change in price, a change from a fixed to a variable rate structure, or a change in the range of allowable variation. These

¹ The Electronic Signatures in Global and National Commerce (“E-SIGN”) Act, Pub.L. 106-229, 114 Stat. 464, enacted June 30, 2000, 15 U.S.C. § 7001 et seq.; New Jersey’s Uniform Electronic Transactions Act, N.J.S.A. 12A:12-1 through -26.

enhanced disclosures should ensure that each customer receives clear notice of the contract renewal and any change in terms or conditions, and an opportunity to affirmatively consent.

- (4) Require that information regarding price, the end of the fixed price period, cancellation fees, and other major terms be explicitly detailed on a standard disclosure form in large bold letters, not fine print. Each TPS would provide this information to each customer on a standard, one-page disclosure form developed by the Board, along with the contract. The form must provide all required information, in bold print, easily understandable by a typical reader, and available to the greatest extent possible in the language understood by the customer.

The Pennsylvania form provided by RESA as Exhibit A to its June 30, 2014 letter to our office is a good starting point. Rate Counsel suggests also including the mailing and e-mail addresses and a toll-free telephone number for each TPS; how much notice the customer must provide for cancellation without being subject to a fee or penalty; and the TPS's historic pricing for at least the prior 12 months.

- (5) Require that the TPS maintain the entire recorded sales call, including the marketing portion of the call, for at least three months after the end of the customer's contract period, including any extensions. This will memorialize the contract terms and conditions to which the customer agreed when enrolling by phone. Discarding the recording before the end of the contract will not help to resolve disputes that may not arise until the end of the contract period.
- (6) Establish procedures to shorten the sixty-day and/or two-billing cycle timeframe for customers to switch back to BGS or BGSS, or to another TPS, and establish a maximum time limit for doing so.

Rate Counsel and RESA agree on this goal. Rate Counsel will defer to the Board and the regulated electric and gas utility companies as to the shortest practical time.

- (7) Investigate claims by customers regarding the release of customer proprietary information to third parties upon termination of TPS contracts in spite of customers being on an active “do not call” list.

We believe these simple measures will go a long way to making sure that customers are more knowledgeable and informed about what they are signing and ensuring they get it. We are hopeful that this will ensure that they are better shoppers and won't be surprised by price spikes again.

Rate Counsel has discussed these proposals with the industry, and thinks they can be tailored to address valid TPS industry concerns without negatively impacting legitimate TPSs.

Finally we urge the BPU to establish a website that will provide consumers with information about the various third party suppliers and the services they offer. We understand that the Board has been working on such a website but it is not yet fully up and running. We have proposed that the Board post on the website certain relevant information on the various plans offered to allow consumers to comparison shop. It appears all parties agree on the need for enhanced disclosure requirements.

Rate Counsel suggests that the Board's website disclosures include the "Price to Compare" savings; the number of customers or percentage of the New Jersey market and customer categories the TPS serves; the types of contracts each TPS offers; the relevant terms and conditions of service under the contracts each TPS offers; and details of each TPS's promotional offerings, such as "green" energy. The Board may select the format it considers most easily understandable by the general public, as long as each entry clearly discloses the terms and conditions offered by each TPS. Rate Counsel recognizes the industry's legitimate concern that not all TPS products are based solely on cost savings. Nonetheless, consumers need to be aware of what they are paying, what they are getting and how that compares to what else is available to the customer. We also urge that if the information is to come from the third party suppliers themselves, that the Board establish a method to check the information's accuracy. This will help educate ratepayers and allow the Board to monitor and review the composition of the retail energy market.

In sum, the Division of Rate Counsel believes that a lot can be done to make this system better. Retail shopping was established to give consumers choices. If we don't make these changes, consumers won't benefit and their confidence will disappear. This will undermine the very

purpose of EDECA and could bring retail competition to an end. Rate Counsel will continue its discussions with the Board and other stakeholders regarding ways to improve consumers' experience with third-party energy suppliers, and we hope our recommendations help the Board adopt rules to fix this problem.

I thank you very much for the opportunity to testify today, and we very much appreciate the Board's attention to this important issue. I am available to answer any questions.