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The Honorable Kristi Izzo
Secretary
State of New Jersey
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102
Via email: rule.comments@bpu.state.nj.us

**RE: N.J.A.C. 14:4
Energy Competition Rules**

Dear Secretary Izzo:

MXenergy Electric Inc. (MXenergy) hereby submits its comments in response to the New Jersey Board of Public Utilities (Board) "Notice of Opportunity to Comment on the upcoming Readoption of the Board's Energy Competition Rules, N.J.A.C. 14:4". MXenergy appreciates the opportunity to provide comments concerning two specific consumer protection provisions within the Board's Energy Competition Rules.

MXenergy is a licensed electric power supplier in New Jersey, license number ESL-0066. It received its license to supply electricity on April 28, 1999 2010. MXenergy, founded in 1999, is one of the fastest growing retail suppliers of natural gas and electricity and at present is serving over 500,000 customers in 14 states and Canada. Dedicated to providing affordable energy solutions, price protections and superior customer service, MXenergy has a broad retail sales footprint that provides it with a unique perspective to comment on the readoption review of the Board's Energy Competition Rules, N.J.A.C. 14:4.

A. Third Party Suppliers Should Not Be Required to Provide 30 Days Written Notice To Terminate a Contract Due To Non-Payment of Amounts Past Due.

Section 14:4-7.6(a) 5 requires Third Party Suppliers (TPS), within their contracts, to disclose that before a customer can be terminated the TPS must provide, at a minimum, 30 days written notice of the termination. Section 14:4-7.10 provides the specific provisions that must be included in the termination notice. In most instances, required written notice before termination of a TPS is an important consumer protection element. However, when these provisions apply to customers who have failed to pay their past due balances, it is a burden for both the TPS and its customers.

From an operations standpoint, the 30 day notification cannot be specific to customers effective drop date and balance. A TPS can only request a drop. Based on the utilities' processes this effective date can take anywhere from 1-2 bill cycles. Therefore, if TPS inputs an estimated date for termination and the customer is dropped by the utility prior to that date, customers will be misled.

Additional time, cost and TPS resources are required under this rule to advise customers that their contract will be terminated due to non-payment. Why should TPS have to provide an additional 30 day notice to a customer before terminating for non-payment? Other jurisdictions allow TPS, within their terms and conditions, to advise the customer that their contract will be terminated upon non-payment of a past-due balance. If the Board is concerned that consumers will be unaware that termination will likely result from non-payment, the statement within the terms and conditions can be required to be bolded in larger font. This would provide the consumer the needed notice but would not encumber the TPS or its other customers. Section 14:4-7.6(a)5 and 14:4-7.10

should be revised to provide that 30 day written notice for termination will be provided unless termination is caused by non-payment of non-disputed past due amounts.

B. Third Party Suppliers Should Not Be Required To Obtain Affirmative Written Signatures For Residential Customer Contract Renewals When The Only Material Change Is the Price for the Commodity.

Section 14:4-7.6(a), concerning retail choice consumer protection and contracting, presently requires that a TPS not provide retail supply service to a customer without the customer's written signature on a contract or Board approved alternative form of verification or renewal thereof. Section 14:4-7.6(j) further provides that "where an affirmative written signature is not obtained for renewal of a residential electric generation service or gas supply service contract, the existing contract shall continue on a month-to-month basis under the current terms and conditions and pricing."

Requiring existing contract terms to continue on a month to month basis under the current terms and conditions and pricing poses an impediment to the retail commodity supply market. Customers that may have been on a fixed price contract for a longer term may be eligible for a renewal contract with a lower price for retail supply. As this rule is presently written, the customer would be charged the commodity price from their old contract and would be unable to obtain the lower price unless they affirmatively sign a renewal contract. Dispensing with the affirmative signature requirement for contract renewals, when only the price differs from the original contract, will remove a regulatory requirement that at present increases suppliers' business expenses.

MXenergy proffers that consumers will be protected if renewal notices are required to be provided to all residential customers **but**, a residential customer's

affirmative written signature would not be required for residential contract renewals, when the only material change is the price of the commodity. This same issue is presently being considered by the New York Public Service Commission¹. On October 27, 2008, the New York State Public Service Commission issued an Order which adopted modifications to the Uniform Business Practices (UBP). The modifications enhanced oversight of Energy Service Companies (ESCOs) marketing activities and established standards, enhanced enforcement remedies and increased residential consumer protections including improved consumer disclosure requirements. During a technical conference held in Albany on May 21, 2010, the NYPSC Staff distributed a straw proposal, "Contract Renewals When ESCOs Change Anything Other Than Price: Affirmative Consent Required.". The proposal required that residential customers receive a renewal notice before a contract can be renewed. The Staff's proposal provided further that an affirmative signature for a renewal is not necessary if the only term being changed is price but an affirmative signature should be required if other material terms and conditions are being changed from the original to the renewal contract. MXenergy recommends that the Board amend Section 14:4-7.6 to require renewal notices be sent to all eligible residential customers but not require a residential customer's affirmative

¹ CASE 98-M-1343 - In the Matter of Retail Access Business Rules; CASE 07-M-1514 - Petition of New York State Consumer Protection Board and the New York City Department of Consumer Affairs Regarding the Marketing Practices of Energy Service Companies; and, CASE 08-G-0078 - Ordinary Tariff Filing of National Fuel Gas Distribution Corporation to establish a set of commercially reasonable standards for door-to-door sales of natural gas by ESCOs.

written signature for residential contract renewals when the only material change is the price of the commodity.

Conclusion

MXenergy Electric Inc. believes these two Rule amendments will continue the New Jersey's Board's protection of retail energy consumer's consumer protection rights but will also allow third party suppliers the ability to provide more cost effective retail supply which will promote the further development of a competitive and vibrant retail supply market in New Jersey.

Respectfully Submitted,

*Diana Serna for
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