

**BEFORE THE
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	:	Docket No. EX14060579
Consumer Protection Provisions of its	:	
Rules Concerning Third Party Suppliers	:	
	:	
In the Matter of the Implementation of	:	
the Special Rule Adoption in	:	Docket No. EX14060610
Compliance with L. 2013, C.263	:	

**INITIAL COMMENTS OF
CONSTELLATION NEWENERGY, INC.**

In response to the State of New Jersey Board of Public Utilities’ (“Board”) June 24, 2014 Notice (“June 2014 Notice”) and discussions during the Board’s July 17, 2014 Stakeholder Meeting in the above-docketed proceedings, Constellation NewEnergy, Inc. (“Constellation”) hereby submits its Initial Comments regarding the issues identified in the June 2014 Notice related to the Board’s review of certain aspects of the residential retail energy markets in New Jersey.

Constellation, an Exelon company, is a leading competitive energy supplier, licensed as a Third Party Supplier (“TPS”) in New Jersey, and offering electricity, natural gas, solar, renewable energy, efficiency and energy management products and services to homes and businesses across the United States and Canada. Constellation provides integrated energy solutions that help customers buy, manage and use energy. U.S. residents and businesses rely on the Constellation family of companies for their energy supply. These customers include over one million residential customers in states such as Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania and Texas. In addition, more than 90,000 commercial, industrial, public sector and institutional customers – located in New Jersey and throughout the U.S. – including two-thirds of the Fortune 100, have selected Constellation to

help strategically manage their energy needs. These Initial Comments are based upon Constellation’s extensive experience in the State and in other jurisdictions regarding the establishment of rules and policies for retail energy markets, and will ensure the further development of New Jersey’s competitive electric markets, providing enhanced benefits to consumers.

As an initial matter, in the event that the Board or its Staff prepares a service list for this proceeding or otherwise requires additional information regarding the positions presented herein, Constellation identifies the following individuals:

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I. INTRODUCTION

The Board has opened the instant proceeding at an opportune time to evaluate the progress of competitive retail markets in New Jersey. New Jersey has seen substantial development and growth of its competitive opportunities for commercial and industrial (“C&I”) customers, for which shopping for competitive supply has become the norm. In fact, in a recent study, the *Annual Baseline Assessment of Choice in Canada and the United States* (“ABACCUS Report”), it was reported that 85.7 percent of large C&I customers in New Jersey have chosen competitive TPSs to meet their electricity supply needs, specifically.¹ These C&I customers

¹ ABACCUS Report at p.22. The Report is available at <http://defglc.com/publication/abaccus-2014-annual-baseline-assessment-of-choice-in-canada-and-the-united-states/>. The Report is meant to be a scorecard that tracks U.S. states’ and Canadian provinces’ progress in restructuring electricity markets. While the Report is sponsored by a group of competitive electric suppliers, the 2014 ABACCUS Advisory Board is comprised of regulatory commissioners and former commissioners, energy executives, and representatives from sponsoring companies. John Garvey, Senior Energy Analyst for the Board, was a member of the Advisory Board for 2014.

have seen benefits through well-tailored commodity supply options – e.g., fixed-price options providing budget certainty during tough economic times, or options that provide the ability for customers to get more involved in day-to-day markets – as well as through other innovative offerings that can work hand-in-hand with commodity products – e.g., solar installations and other behind-the-meter generation, energy efficiency reviews and upgrades, and/or participation in demand response markets. It is precisely these types of developments in the State that were the goals of energy market restructuring at its inception.

However, while C&I customers have taken full advantage of competitive retail energy offerings available in the State, the ABACCUS Report found that only 16.0 percent of New Jersey’s residential customers are shopping for TPS electric supply, in particular, a percentage lower than several other states with competitive electric choice markets.² Similar discrepancies can be seen with respect to large C&I versus residential customer shopping in New Jersey’s retail gas markets.³ In this way, while New Jersey’s C&I consumers are realizing market benefits, the large majority of residential customers are missing out on the benefits of competitive markets, which could provide broader options, more innovative products, and higher value propositions for consumers. For this reason, the instant proceeding represents an important examination, giving the Board and parties the chance to evaluate and improve the competitive markets for residential customers. By doing so, residential customers can be afforded the same benefits currently being offered to C&I consumers, at a time when energy costs represent a significant piece of household budgets and when competitive markets can provide solutions and tools to better manage these costs.

² See ABACCUS Report at p.14.

³ See, e.g., *New Jersey Natural Gas Switching Statistics – May 2014* (May 2014) (available at www.state.nj.us/bpu/pdf/energy/gdc07.pdf) (indicating that only 12.21 percent of residential load is shopping for natural gas supply versus 44.11 percent of C&I supply, including *both* small and large C&I customers).

The Board can look to adopt certain ‘best practices’ – including, but not limited to, those used in other states – helping to both educate customers and increase confidence in the State’s retail energy markets. For instance, the Pennsylvania Public Utility Commission (“Pennsylvania PUC”) ordered significant market structure and education improvements as it found itself at a similar crossroads as that faced by New Jersey with respect to retail competition for residential customers.⁴ The Public Utilities Commission of Ohio (“Ohio PUC”) similarly opened a proceeding to consider and implement market improvements to increase competitive options for residential customers.⁵

Constellation supports and delineates herein various market structure improvements that will encourage market transparency, increase consumer education and awareness, and provide additional oversight that will strengthen consumers’ choices and comfort with competitive markets. In particular, Constellation proposes and discusses in more detail in these comments the following improvements:

- (i) Improved consumer education for the benefit of residential customers;
- (ii) A true apples-to-apples Price-to-Compare (“PTC”) with which consumers can evaluate TPS offerings against EDC default supply;
- (iii) Accelerated switching requirements that will allow residential customers to make choices and switch to/from TPSs on an expedited basis in order to better react to and take advantage of competitive markets;
- (iv) A “Power-to-Choose” website in line with the types of sites used in Illinois, Texas, Connecticut and Pennsylvania;

⁴ See, e.g., Pennsylvania PUC Docket Nos. I-2011-2237952, M-2011-2270442, M-2014-2401345, L-2014-2409383 and L-2014-2409385.

⁵ See, e.g., the Ohio PUC’s ongoing Case No. 12-3151-EL-COI.

- (v) Adopting “best practices” for door-to-door marketing in order to balance the educational and market benefits of door-to-door marketing with the need for appropriate consumer protections;
- (vi) Requiring non-recourse purchase of receivables (“POR”) structures in order to allow TPSs to offer all customers – regardless of income or credit – with a full array of supply options, at a more competitive cost, placing TPS offers on more equal footing against utilities’ supply service; and
- (viii) Improving rules for licensure to encompass a third-party marketer that (a) is paid through a TPS on behalf of a customer with respect to a particular transaction/contract between the TPS and customer; *and* (b) takes actions on behalf of the customer that amount to more than an endorsement or referral of the TPS.

Constellation applauds the Board for soliciting and considering comprehensive comments from market participants – including, but not limited to, TPSs, utilities and consumers – as it continues to review aspects of competitive retail energy markets in New Jersey. By taking into account the positions discussed herein, the Board will encourage a wide array of stakeholders to invest resources into the State’s competitive retail markets.

II. CONSTELLATION COMMENTS

At the outset, Constellation recommends that the Board generally adhere to the following set of ten (10) core principles as it considers changes to New Jersey’s competitive retail markets, particularly with respect to the matters/areas raised in the June 2014 Notice:

- 1. Basic Generation/Gas Supply Service (“BGS”) shall include only essential, plain-vanilla service.** There should only be a single BGS or “POLR” rate for each

customer class. The actual default service or POLR product may vary by customer class (fixed-price or variable) but there should not be multiple product offerings for a particular customer class. Therefore, Time-of-Use (“TOU”) rates, energy efficiency offerings, demand response products and optional fixed-price products for certain customer classes shall not be offered as part of the default service or POLR structure, as those products are readily available from TPSs in the competitive retail market. If energy distribution companies (“EDCs”) are allowed to offer multiple products, it will perpetuate the existence of a number of customers remaining on BGS.

- 2. Price Transparency between TPSs and EDC Offerings.** There must be a true apples-to-apples Price-to-Compare (“PTC”) with which consumers can evaluate TPS offerings with the BGS supply option. The PTC should include all EDC costs that are avoided when a customer takes supply from a TPS, including, but not limited to, any reconciliation charges. Providing customers with full and accurate information provides complete price transparency and enables customers to make informed decisions.
- 3. Market Contestability, with Low Barriers to Supplier Entry and Exit.** Stable and transparent regulatory frameworks should be developed and maintained to enable TPSs to enter and exit the market easily and offer products to customers without costly or overly complex restrictions.
- 4. Market Sustainability.** The price of any available BGS product must be sufficiently reflective of market prices to enable stability of the competitive market.
- 5. Informed Customers.** Customers should be aware of their ability to choose competitive supply, informed of their choices and able to easily compare options, prices, terms and conditions.
- 6. Ease of Switching.** Customers should be able to switch easily from BGS supply to a TPS and also between TPSs to pursue different opportunities and offerings.
- 7. Non-discriminatory Access to Billing and Usage Information and Effective Affiliate Rules.** TPSs should have access to a robust, complete and accurate set of customer data and billing information consistent with customer authorization, and without discrimination in favor of particular TPSs. Effective codes of conduct and other mechanisms should be in place so that there is no discrimination in favor of TPSs affiliated with EDCs.
- 8. Non-recourse POR.** Non-recourse POR tariff offerings should be required in order to allow TPSs to offer all customers – regardless of income or credit – with a full array of supply options, at a more competitive cost, placing TPS offers on more equal footing compared to BGS.

Constellation provides more details on these and other recommendations in its Comments herein.

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

While improvements can and must be considered and implemented, Constellation first notes that New Jersey maintains appropriate TPS and competitive market regulations and laws in many respects. For instance, Constellation supports certain State rules and regulations including, but not limited to, those that require:

- Verification of customer consent, including third-party verification (“TPV”), wet signature or electronic signature (which much comply with the Federal Signatures in Global and National Commerce Act);
- Retention of records for at least three years;
- Sending a copy of a TPS contract to a customer within 24 hours of a change order;
- Residential marketing materials to include:
 - A toll-free contact phone number;
 - The time period during which an advertised price is valid;
 - The duration of contract; and
 - An average price per kWh/Dth over that time period.

B. Methods of Consumer Education

For a market to succeed, it is imperative that all market participants – including TPSs and consumers themselves – must have access to data and information that assists them in considering and acting on opportunities in the market in a quick and deliberate manner. For consumers, of course, in addition to clear, true and fair TPS marketing materials and practices,

education regarding consumers' options and the ability to make choices for their energy needs is paramount to being able to confidently and correctly take advantage of energy choice. Residential customers, in particular, would benefit from easily accessible and well-promoted education regarding the characteristics and benefits of various product types including, but not limited to, fixed-price solutions for budget certainty. With appropriate background regarding the types of products that they may access in the marketplace, these customers will be better equipped to make important decisions about their energy. As discussed in more detail herein, such education measures can and should include, but may not be limited to: a well-developed, Board- or other State-operated "Power-to-Choose" website; forward-looking, transparent and apples-to-apples EDC PTCs capturing a reasonable time period; and door-to-door marketing subject to appropriate rules and regulations.

C. Constellation's Specific Recommendations for Retail Market Improvements

1. Improved EDC PTCs.

Tools that provide historic, after-the-fact comparisons of *prices* are of limited use, if any, for consumers in a competitive retail market, particularly where consumers may be trying to compare utility rates – which may vary and present only one standard option – to fixed-price offerings or certain bundled-product offerings from TPSs. For instance, if a utility, a consumer or anyone else was to attempt to compare a customer's competitive fixed-price offering over the last year from a TPS to the utility's full-service prices for the same past time period, how could the evaluator account for events that *do not occur*, in comparing the two offerings? To explain, a fixed-price gas supply offering from a TPS and a utility's more variable full service gas rate are inherently different in nature, particularly due to the "insurance" provided by a TPS through its *fixed* price structure. That is, the TPS's fixed-price for a year, for instance, provides insurance

from unexpected increases to the commodity costs for that time period, regardless of whether market prices for that commodity increase during that term. The fact that prices *did not* actually spike or drop in a particular year does not mean that it was not valuable to have fixed-price protection in place against that risk. If we don't get sick in a year, we don't look back and say, "We shouldn't have bought health insurance last year; that was a bad decision."

Moreover, after-the-fact comparisons between a TPS product and a utility full service rate will not be able to take into account special aspects of a TPS's bundled offering. These could include, for example, TPS sign-up promotions such as gift cards, charitable donations, or "free-energy" offers, as well as "green" products for electric supply that a customer has opted to purchase from a TPS as part of a bundled, all-in TPS price.

Constellation strongly urges the Board to consider a collaborative working group ("PTC Work Group"), including utility, TPS, consumer, and Board Staff representatives, in order to evaluate what approaches other states/markets have taken, and whether changes to New Jersey EDCs' PTCs must be considered. The PTC Work Group will best serve to develop and provide recommendations to the Board for any PTC's goals and structure. At the very least, the PTC Work Group should consider that each utility publishes on a Board-maintained "Power-to-Choose" website a PTC that: is accurate and easy to understand; includes *all* costs making up each respective utility's default supply charges, including all costs and adjustments associated with the utility's commodity procurement methodology; and provides aggregate price comparisons for a reasonable period of time.

Absent carefully- and well-developed, forward-looking PTCs that are able to compare apples-to-apples between utilities' and TPSs' supply offerings for a reasonable period of time, innovation and diversity of offerings – including, but not limited to, offerings of fixed-price

commodity supply solutions by TPSs – will be discouraged, to the detriment of consumers’ interests. A PTC Work Group can best assist the Board in improving forward-looking PTCs with structures appropriate to encourage competitive offerings in the marketplace and promote consumer confidence and comfort in seeking out and choosing competitive TPS options.

2. Accelerated Switching Requirements.

Several states are in the process of or have already adopted requirements that provide for accelerated switching by customers from, to and between TPSs. For instance, the Pennsylvania PUC finalized regulation changes that dramatically reduce the time it takes customers to change TPSs.⁶ The new Pennsylvania rules accelerate switching time frames through off-cycle meter readings that will allow consumers to switch TPSs within three business days once the EDC has been notified. EDCs were required to implement the changes subject, of course, to appropriate cost recovery. The new accelerated switching regulations were adopted on an expedited basis, in part, to address a large number of consumers that contacted the Pennsylvania PUC in the wake of volatile 2014 winter electric supply prices, many of whom expressed frustration with the time it take to change TPSs in reaction to such changes in market conditions. As Pennsylvania PUC Chairman Robert F. Powelson explained:

It’s a huge needle-mover because we want customers to be able to be portable and be able to get into new products and not be trapped in what we call the 16- to 40-day billing cycle At the end of the day, this is about helping consumers that are actively out there on the market shopping by giving them greater portability, greater notification of the products that they’re being served by suppliers.⁷

⁶ See *Press Release: PUC Accelerates Switching Times for Electricity Supply*, Pennsylvania PUC Docket No. L-2014-2409383 (Apr. 3, 2014) (*avail. at: www.puc.state.pa.us/about_puc/press_releases.aspx?ShowPR=3332*).

⁷ *Id.*

New Jersey would benefit by considering similar changes to switching rules and regulations, subject to appropriate implementation periods and recovery of full costs of such implementation and maintenance by the State's EDCs.

3. A Board-Maintained “Power-to-Choose” Website.

The Board should order a PTC Work Group to also provide recommendations regarding the appropriate structure and content for a “Power-to-Choose” website, in order to bring the State more in line with educational shopping sites such as those used in Illinois, Ohio, Pennsylvania and Texas, all of which have higher rates of residential customer shopping than New Jersey, as identified in the ABACCUS Report.⁸ If properly structured and implemented, the “Power-to-Choose” website can provide one valuable tool to weigh various current TPS offers against each other, as well as against utilities' current PTCs. The site can serve to better educate customers regarding the ability to make choices for their supply requirements, the types of options that they may consider or ask TPSs about (e.g., fixed-price offerings, variable rates, renewable products, etc.) and the benefits that such options may provide. The site can also serve as a central resource for customers to identify which TPSs are active in the marketplace and access those TPSs' own websites to find out more about the companies and their specific product offerings. This type of website can serve not only to educate customers for shopping, but to provide the Board with a central location to inform customers about the market and any changes, developments or other issues for which they may want to take notice.

Texas' current comparison site, maintained by the Public Utility Commission of Texas and also called “Power to Choose” (http://www.powertochoose.org/_content/_compare/compare.aspx), represents a good example of a shopping tool that provides links to active TPSs'

⁸ See ABACCUS Report at p.14.

own homepages, and provides current comparison information from these TPSs for various specific product types including, e.g., fixed-price, variable, index, prepaid and promotional products. The Connecticut Department of Energy & Environmental Protection’s “CTEnergy Info” site (http://ctenergyinfo.com/choose_entry.htm), the Pennsylvania PUC’s “PAPowerSwitch” site (<http://www.papowerswitch.com/shop-for-electricity/>), and the Illinois Commerce Commission’s “Plug In Illinois” site (<http://pluginillinois.org/>) are similarly well-designed websites that provide valuable information, education and comparison materials for consumers, encouraging retail market development in those states. These sites could all serve as the basis for creating the Board’s own website.

The PTC Work Group, in making its recommendation to the Board, should for instance consider that (1) the Power-to-Choose site should be designed with flexibility and functionality in mind, allowing for ease of access and timely comparison information, (2) TPSs should not be required to participate in the site, and those that do participate should *not* be required to publish all their offers on the site, as some TPS options will not be amenable to the standard types of products that are established for comparison on the site, (3) TPSs that opt-into participating in the site should be required to regularly update and always honor their respective pricing posted on the site, and (4) the site should make clear that other offers may exist, and that consumers should contact TPSs directly, or visit TPSs’ own sites for the full array of each TPS’s product lines.

By dedicating appropriate resources to create, maintain and *promote* a Power-to-Choose website, the Board can take a significant step towards improving customer comfort with and knowledge of energy choice.

4. “Best Practices” for Door-to-Door Marketing.

Constellation supports permitting door-to-door marketing of electricity and natural gas to customers throughout New Jersey, subject to the “best practices” for regulations that Constellation outlines and recommends herein. With appropriate rules, regulations and compliance measures, door-to-door marketing can serve a vital roll in the enhancement of retail markets by providing a distinct opportunity to educate customers about energy choice. Door-to-door sales agents that are properly trained and equipped with appropriate sales materials are very helpful in introducing consumers to the notion that they have the *ability* to choose energy suppliers, what switching entails (e.g., that switching will not harm their utility delivery service reliability), how the process works (e.g., timing for a switch), and what types of benefits competitive suppliers may be able to provide through their product offerings.

The Board should adopt a robust set of door-to-door marketing standards and requirements that balances the educational and market benefits of the channel with the need for consumer protections. Based upon Constellation’s experience in each state in which we utilize door-to-door marketing for electric supply service, we recommend that those minimum standards include the following:

- Two (2) mandatory background checks for every door-to-door sales agent employed by a marketing firm that is selling on behalf of a TPS;
- Required drug screening for all marketing firm agents;
- Required TPV calls for door-to-door sales contracts;
- A requirement that the sales agent leaves the home for such TPV call;
- A requirement that a sales agent be terminated by the marketing firm upon a finding that a basic telephone number has been used for more than one enrollment (an indication of

improper activity by the agent), and that the customers that were attempting to be enrolled with such phone number be kept on/returned to utility service without penalties;

- Required maintenance by the TPS of specific zip code territories to which marketing firms and their agents are assigned for such TPS (as well as zip codes for which agents are restricted to sell on behalf of the TPS), to allow for ease of checks upon Commission or internal inquiries;
- Requirement that deal-contingent payments to agents not be made for a particular customer contract until the utility accepts the customer's enrollment; and
- Requirement that TPSs refrain from paying their marketing firms/agents for any sales for which customers are not successfully enrolled, such that only appropriate sales are compensated, and removing incentives for inappropriate sales activities by door-to-door agents.

While energy choice was implemented in the State many years ago, as shopping statistics illustrate, the residential market remains in its infancy and is ripe for growth if assisted by proper education of residential consumers. Carefully regulated door-to-door marketing – including certain “best practices”– provides to consumers person-to-person interaction and a question and answer opportunity to learn more about their options, and allows for energy suppliers to market their benefits.

5. Non-Recourse POR Structures.

The Board should require non-recourse POR structures for all utilities, as the lack of non-recourse POR structures serves to increase market costs and risks, and will be detrimental to end use consumers in all customer classes. With appropriate non-recourse POR structures, TPSs are better able to approach all customers – regardless of income or credit profile – with a full array

of competitive supply options, at a more competitive cost for any and all customers, which cost does not need to take into account the risk of payment default by consumers, thereby placing TPS offers on more equal footing against utilities' supply service.

Recourse POR programs unnecessarily harm customers in several ways. First, they deny some customers access to competitive options currently available in New Jersey's energy markets. Second, they create a negative experience and perception for customers just learning about competitive markets. Third, they dampen further development of the competitive market by reducing the number of TPSs that are willing to participate in the market, especially for residential customers. To explain, under a recourse POR program, if a customer makes full payments in a timely manner, the system works well and no problems should arise. However, when a customer is, for instance 60 days in arrears (if it was a 60-day recourse timeframe), the utility would drop the customer from consolidated billing and require dual billing, *regardless* of whether the customer is one (1) dollar or 100 dollars in arrears. Dual billing in the first instance may raise significant confusion for an already sensitive customer who has only experienced receiving bills from the utility. Moreover, many TPSs depend on consolidated billing because dual billing is not feasible and is cost prohibitive for them. Thus, with no ability to dual bill customers, TPSs may be forced to drop customers back to the utility's default supply service – an outcome neither the customer nor the TPS likely prefers.

In addition, from a policy perspective, a level playing field between utility service and TPS offers is necessary to ensure that the benefits of competition are accessible to New Jersey's consumers. A recourse POR program treats TPSs differently (i.e., as less important) than utility receivables – creating a preference for utility service – as only utilities retain an ability to disconnect customers for unreasonable non-payment. A TPS can only (1) seek to collect

receivables through a collections agency, which has the additional downside of tarnishing a customer's credit rating, and/or (2) move the customer back to utility service, either way leaving the TPS at a high risk of never being paid.

On the other hand, a *non-recourse* POR program, including a reasonable discount rate, will provide the benefits of POR while appropriately compensating the utilities for the billing and collection services they are better equipped to render. Customers benefit from a non-recourse POR program by avoiding confusion stemming from dual billing and increasing access to choices in their energy products. Utilities benefit by being made whole through the discount rate and by the reduction of administrative oversight required for initiating and monitoring customer drops associated with recourse term triggers. TPSs benefit by not having to price substantial risk into their products to account for interference due to recourse term triggers and the expense of uncollectibles, and by eliminating the need for TPSs to screen customers for credit eligibility.

6. Rules for Third-Party Marketer Licensure.

While competitive markets and opportunities continue to grow, competitive retail energy markets across the U.S. are beginning to include participation from a variety of entities – not only the traditionally-contemplated electricity and gas suppliers and brokers, but also third parties such as those that might carry out a marketing or telemarketing campaign designed for or by a TPS (such as door-to-door or telemarketing agents), or that may make offers to their own members and/or employees.

Addressing the role that third party entrants play will allow market participants to better determine which parties in a given transaction are required to have a license, and will reduce the likelihood of unknowing violations of licensure requirements. Additional clarity with respect to the types of entities that must be licensed will ensure that market participants are competing for

consumers' business on equal footing and, most importantly, provide additional protections to consumers against fraudulent or other anti-competitive practices through oversight of entities not currently licensed and monitored by the Board.

As marketers seek out new and innovative ways in which to reach consumers to promote their products and services, the marketplace may continue to see new entities appear in between suppliers and end-users. For this reason, it may not be best at this time to attempt to compile a specific and definitive list of such third parties which must or need not be licensed. Constellation recommends that, instead of attempting to prepare such a list of specific entities, the Board consider a rule which will provide additional clarity not only for the types of arrangements mentioned above, but also for new third-party relationships which may develop in the future. Specifically, Constellation recommends that – in addition to those entities that are currently required to be licensed under New Jersey Law and the Board's Regulations – the Board should require a third-party⁹ to be licensed where:

- (a) The third-party is paid through a TPS on behalf of a customer with respect to a particular transaction/contract between the TPS and customer; *and*
- (b) Such third-party takes actions on behalf of the customer that amount to more than an endorsement or referral of the TPS.

This rule generally establishes that *certain* but not *all* third-parties should be required to obtain a license.

To illustrate how this rule may operate, for instance, an organization or company that merely endorses a TPS to its members or employees – perhaps via a link to the TPS's offering or through a presentation by the TPS to such members or employees – is not taking actions that

warrant licensure. However, if that organization or company takes steps to actively participate in the TPS's transaction with new customers – e.g., negotiating contractual terms or prices, or providing advice or analyses regarding *various* offerings by the TPS or between TPSs – then such a third-party organization or company should be required to obtain a license, as it is doing more than mere promotion. In the same way, an individual customer of a TPS need not obtain a license if the customer receives a promotional gift or service from the TPS for referring a family member or friend, so long as the customer does not actively participate in actual enrollment or other more involved aspects of the TPS's transaction with the referred consumer (e.g., preparing and distributing advertisement materials, performing and communicating price analyses, presenting contracts for consideration/signature, or advising on contract language).

Greater clarity with respect to the roles and requirements of third-parties to TPSs' transactions with customers will only help to encourage continued development of the State's competitive retail markets with appropriate oversight, providing both opportunities *and* protections for the benefit of consumers.

III. CONCLUSION

Constellation appreciates this opportunity to submit its Initial Comments to the Board and looks forward to continued discussions on these and any new issues raised in the context of the State of New Jersey's competitive energy markets. Constellation is confident that its recommendations will promote robust continued development of the State's competitive retail markets, for the ultimate benefit of New Jersey's consumers.

⁹ Note that employees of a licensed TPS are *not* "third-parties." Constellation considers employees of a licensed TPS to be undifferentiated from the TPS itself; employees of a licensed TPS are encompassed by the license and are subject to its requirements and the Board's oversight of the licensee.

Respectfully submitted,



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