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March 20, 2015

**Via Electronic rule.comments@bpu.state.nj.us and U.S. Regular Mail**

Mr. Kenneth J. Sheehan, Secretary  
State of New Jersey  
Board of Public Utilities  
44 South Clinton Street, 9th floor  
P.O. Box 350  
Trenton, New Jersey 08625-0350

**Re: I/M/O the Board's Review of the Government Energy Aggregation Rules  
Docket No. EX14111343**

Dear Mr. Sheehan:

The New Jersey Division of Rate Counsel ("Rate Counsel") hereby submits its comments in this matter on the comments on the draft Discussion Document published by the Board of Public Utilities on December 23, 2014, on its government energy aggregation ("GEA") rules, filed by stakeholders on or about February 20, 2015. At the January 29 stakeholder meeting Board Staff invited this second round of comments, to be filed by March 20.

The Board received seven sets of comments from: 1) the Electric Distribution Companies ("EDCs") collectively (PSE&G, JCP&L, ACE and RECO); 2) JCP&L; 3) Rockland Electric

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Company; 4) Commercial Utility Consultants; 5) Gabel Consultants; 6) the New Jersey League of Municipalities; and 7) the Retail Energy Suppliers' Association.

A large number of the comments concern the collection or provision of data to the municipalities or their agents, the third-party suppliers ("TPSs"), the EDCs, potential program participants or to Board Staff and Rate Counsel. With regard to data exchanged between the TPSs, the EDCs and the municipalities, Rate Counsel takes no position, subject to one caveat. If there is a cost associated with the provision of any data, the cost should be borne by the participants in the GEA program. RECO, for example, estimated that it would incur significant costs to modify its electronic data interchange system to distinguish individual switches to TPSs from those resulting from a GEA program, and to handle the large volume of data necessary to provide 24 months of customer-specific usage information, with specific customer identification information deleted. Ratepayers and regulated utilities who do not participate in the GEA program or who are located outside the territory participating in the GEA program should not bear any costs related to establishing or operating the program. This includes the cost of any data the TPSs believe they require from the EDCs. This recommendation is consistent with the statute authorizing GEA programs, which prohibits requiring electric or gas utilities to recover program costs from their shareholders or ratepayers. N.J.S.A. 48:3-93.2(b).

With regard to providing data to potential program participants, either in the initial round or in renewal rounds, Rate Counsel generally favors full disclosure. This proposal is consistent with the clear intent of the GEA statute and regulations to provide notice with full disclosure of all material terms to potential customers so they can make an informed decision whether or not

to participate in the GEA program. E.g., N.J.S.A. 48:3-94(e)(1)<sup>1</sup>; I/M/O Third Party Suppliers N.J.A.C. 14:4 et seq. the Board's Review of Consumer Protection Provisions of its Rules Concerning Third Party Suppliers, Docket No. EX14060579 (Sept. 30, 2014 Order) (requiring disclosure of listed material terms in a clear and consistent format).

Rate Counsel also favors full disclosure of all non-confidential data on GEA programs to Board Staff and Rate Counsel by TPSs, EDCs, municipalities, or their agents. Rate Counsel is cognizant of the TPSs' claims of "trade secret." Rate Counsel believes that the League of Municipalities is correct in its assessment that any assertion of trade secret should be evaluated in the context of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. In this regard, the burden is on the party asserting confidentiality to substantiate that claim. Moreover, that claim must be supported by more than a simple assertion that the data is in fact confidential. At this point, Rate Counsel takes no position on which GEA program data is confidential, other than individual customers' information, but supports Board Staff's attempt to obtain non-confidential data surrounding program implementation in order to better evaluate the effectiveness of the GEA programs.

Rate Counsel supports the Board Staff proposal to modify N.J.A.C. 14:4-6.10 to require a contract between a government aggregator and a TPS to include a provision that "all customer information shall be kept confidential and only used for the [GEA] program." This simply requires that the contract include the regulatory requirement that "all customer information provided to a government aggregator . . . by an LDC . . . shall be deemed confidential . . . [and] shall not be used or disseminated by any person for any purpose other than the facilitation of the aggregation program." N.J.A.C. 14:4-6.3(f). It is unclear how the distinction proposed by

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<sup>1</sup> "The governing body shall provide written individual notice to customers providing them *inter alia*, with the price and other factors allowing the customer to compare the government energy aggregation program to other alternatives." N.J.S.A. 48:3-94(e)(1).

RESA (p.10) changes the intent of Staff's proposal. This Staff proposal appears to be one of notice, as the Board's regulations already require confidentiality. Any change to N.J.A.C. 14:4-6.10 should not diminish or in any way limit the protections afforded customers under N.J.A.C. 14:4-6.3(f).

Several commenters suggested changes that would impact on Rate Counsel and Board Staff's role in the GEA process. Preliminarily, the suggestion that the period for commenting on draft bidding documents be shortened from fifteen days to ten days is beyond the scope of this proceeding. That requirement is statutory and cannot be altered by regulation. N.J.S.A. 48:3-94(b)(1). With regard to suggestions that Rate Counsel and Board Staff provide guidance with regard to the price to compare, neither Board Staff nor Rate Counsel can provide legal or business advice to private entities.

We thank the Board for the opportunity to comment on the Discussion Document for the GEA program rules. Please feel free to contact me if you have any questions or need any further information on this matter.

Respectfully submitted,

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