



3333 K Street, NW, Suite 110
Washington, D.C. 20007
Tel: 202-333-3288
Fax: 202-333-3266

February 3, 2017

The Honorable Irene Kim Asbury
Secretary
State of New Jersey
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, NJ 08625-0350
Via email: rule.comments@bpu.state.nj.us

**Re: Docket No. EX14111343 – Energy Competition Standards,
Proposed Amendments N.J.A.C. 14:4-2.6, 6.2 through 6.6, 6.10,
7.4 and 7.6; Proposed New Rules N.J.A.C. 14:4-7.6A and 7.10A**

Dear Secretary Asbury:

The National Energy Marketers Association (NEM)¹ hereby submits comments on the Board's Proposed New Rules and Proposed Amendments to the Energy Competition Standards set forth at N.J.A.C. 14:4 pursuant to the New Jersey Register Notice dated December 5, 2016, in the above-referenced proceeding. NEM notes that many of the proposals stem from the stakeholder comments and subsequent discussions at a stakeholder meeting on the issues identified in a June 24, 2014, Notice² related to consumer protection provisions applicable to Third Party Suppliers (TPSs). Proposals related to accelerated customer switching and a TPS Contract Summary were introduced at that time as a means to enhance consumer protection and improve the energy shopping

¹ NEM is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

² Docket Nos. EX14060579 and EX14060610, Notice of Stakeholder Meeting and Opportunity to Comment, dated June 24, 2014.

process.³ NEM supports these measures subject to the recommendations set forth herein. The Board is also considering requirements related to TPS budget billing requests for which NEM is seeking clarification and proposes a terminology change. Finally, the Board is proposing to add a new Section to the regulations pertaining to the transfer of residential contracts by a TPS. NEM recommends a change in the timing of the notice requirements to accommodate transfers that occur in emergency circumstances and also recommends that the proposed timetable to be provided to customers returning to utility commodity service be rephrased as a general notification of the customer's ability to choose another third party supplier.

I. Section 14:2-2.6 - Accelerated Switching Timeframes and Meter Reading Requirements

The Board is considering improvements to the customer switching timeframes to accelerate that process and to relatedly require the utilities to schedule meter reading dates at least once a month as set forth in Section 14:4-2.6(f). Specifically, proposed Section 14:4-2.6(f)(1) would require an electric utility to switch a customer's electric supplier on the current month's scheduled meter reading date if a request is received at least thirteen days prior. Under proposed Section 14:4-2.6(f)(2), a natural gas utility would be required to switch the customer on the current month's scheduled meter reading date if a request is received on or before the 10th calendar day of the prior month. NEM supports these changes, subject to the modifications set forth below.

Consumers are confused and dissatisfied by the delay in the switching process when they shop for energy, which is currently twenty days. They simply do not understand the reason for the delay, particularly when other similar service changes, such as cell phone

³ NEM incorporates by reference its comments filed in Docket Nos. EX14060579 and EX14060610.

service, can be accomplished in a matter of hours. Accelerating the switching process as proposed will positively enhance the consumer energy shopping experience. An additional rationale for accelerated switching is to allow consumers to realize the full potential benefit of price savings that a TPS may be offering. Delayed switching times can result in the limitation and loss of consumer savings that can be experienced during peak pricing seasons.

The Pennsylvania Public Utility Commission adopted an accelerated switching timeline of three business days for electric choice customers, premised on the need to provide consumers with a faster timeframe within which they can avail themselves of more competitive rates.⁴ The Pennsylvania Public Utility Commission is currently considering the adoption of three business day switching for natural gas customers as well.⁵ The Maryland Public Service Commission⁶ has also recently adopted measures to accelerate the customer switching process. This is particularly noteworthy because the affected electric utilities in these jurisdictions operate in PJM just as the New Jersey electric utilities do, and they are able to implement these changes. At a minimum, NEM urges the Board to adopt the accelerated switching process set forth in the proposed regulations, and to additionally consider further shortening the accelerated switching process as adopted by neighboring jurisdictions.

⁴Pennsylvania PUC Docket L-2014-2409383, Order, issued April 3, 2014. The Pennsylvania PUC reasoned that accelerating the switching process will, “allow customers to more quickly and easily switch electric suppliers, which will allow customers to more fully realize the benefits of a fully functioning retail market through quicker and easier access to a more favorable retail rate. These changes will also allow customers to avoid being trapped on unfavorable and volatile rate plans as many were this past winter. Furthermore, these changes will advance competition in the retail market as EGSs will need to respond more quickly to customer concerns or risk losing them to more agile competitors.” (Order at 34).

⁵ See Pennsylvania PUC Docket L-2016-2577413, Advance Notice of Proposed Rulemaking Order, adopted December 22, 2016.

⁶ See Maryland Public Service Commission, RM54. For electric customers under Maryland COMAR 20.53.04.02B, “A utility shall process an electronic enrollment or drop from a supplier to be effective within 3 business days after receipt of the electronic transaction.” For natural gas customers under Maryland COMAR 20.59.0403B(2), “A drop received by a utility less than 7 days before the first day of the next month shall take effect on the first day of the next subsequent month.”

NEM additionally notes that proposed Section 14:4-2.6(f) requires the utilities to, “execute all TPS change orders that comply with this subchapter and all requests from customers to *switch from a TPS to the LDC* without unreasonable delay to meet the timeframes described.” (emphasis added). NEM suggests that this language should be modified to include the corollary situation when a customer is seeking to switch from the *LDC to a TPS*. Indeed, NEM is concerned that the proposed regulations as written, because of this sentence, could potentially be construed to only require the utilities to accelerate the return of customers to utility default service without the commensurate responsibility to accelerate the process of switching a customer to a competitive supplier. That would significantly undermine the efficacy of the proposed changes.

II. Proposed Section 14:4-7.4(a)(8) and 14:4-7.6(b)(7) – TPS Budget Billing

The proposed regulations would add language pertaining to TPSs that offer budget billing. Proposed Section 14:4-7.4(a)(8) would require, “that there shall be a true-up at least once every 12 months for accounts on budget billing, and proposed Section 14:4-7.6(b)(7) would likewise require that, “a true-up of the account subject to budget billing shall be made at least once every 12-month period during the term of the contract.” NEM requests clarification of this proposed requirement and suggests a word change to better reflect industry practice.

Budget billing permits consumers to pay similar amounts each month and smooths the peak bills consumers receive during high-energy usage months by spreading the payments out over a greater period of time, with the goal of making consumers monthly bills more predictable and affordable. The typical industry practice is for the TPS to reconcile the budget billed amounts with the customer’s actual usage over a twelve-month period, or in some cases more frequent increments. After the reconciliation is

performed, the TPS recalculates the budget bill amount and adds the variance over the customer's next bill payments for the following year. This reconciliation process should be distinguished from a "true-up." In typical industry parlance, a "true-up" only occurs when a customer drops TPS service and the entire unbilled amount then becomes due. With this background in mind, NEM requests clarification that the Board did not intend that TPSs perform a "true-up," meaning the customer's entire unbilled amount would become due, at least every twelve months. Rather, NEM submits that the language should be changed to use the word "reconcile" to reflect the practice of recalculating the customer's budget billing payment and applying it to the customer's future billing payments.

NEM also notes that when a TPS customer is on budget billing, the utility consolidated bill does not reflect the overage of the TPS customer's usage. By comparison, if a customer takes utility commodity service and is on budget billing, the overage of the customer's usage will be shown on the bill. TPS customers need this information to make better energy usage decisions. Without this information, TPS budget billed customers may experience "sticker shock" when their usage is reconciled. In some cases, this can lead dissatisfied customers to drop from TPS service and result in a large amount due from the unbilled charges. Consumers would be better served if they had access to information that would allow them to better moderate their usage and avoid such a result.

III. Proposed Section 14:4-7.6A - TPS Contract Summary

The Board is proposing to add a new Section 14:4-7.6A to the regulations on TPS contract summaries. NEM previously noted its support for a TPS Contract Summary in Dockets EX14060579 and EX14060610 as a means to enhance consumer understanding of retail energy products, and to improve the quality and clarity of supplier disclosures

that are being made to consumers. This is premised on the construction of the TPS contract summary as a one-page document at the beginning of the customer's agreement that utilizes a standard disclosure format for material terms of service that highlight the important relevant terms to the consumer. When the TPS contract summary is framed in this manner it is easy for the consumer to see and understand the product offering, but the unique competitive elements of supplier pricing and terms of service are not standardized or restricted. The Board issued an Order adopting a TPS Contract Summary for service to residential customers in 2014.⁷ Subsequently, A-3851 was enacted on December 2, 2015, requiring TPSs to provide, "the customer a one-page information sheet summarizing the material terms and conditions of the contract as determined by the board." NEM continues to support the use of the TPS Contract Summary but offers the following recommendations to improve its effectiveness and usefulness to consumers.

First, the proposed regulations at Section 14:4-7.6A(a)(10) specify that the TPS Contract Summary must be provided on a letter-sized (8.5 inch by 11 inch) page, and at Section 14:4-7.6A(a)(9), use fonts no smaller than 12 point in size. NEM requests that the Board consider allowing TPSs to use a legal-sized sheet for the provision of the TPS Contract Summary. A-3851 references that the summary be provided on a "one-page information sheet" but does not specify the page size. The sheer volume of the required disclosures in the summary coupled with the font size requirement make it difficult for TPSs to comply with a letter-sized page limitation. By permitting TPSs to use a legal-sized sheet it will allow for information to be placed on the page in a less confined, and therefore more readable, manner to the benefit of consumers. Accordingly, a legal-sized sheet should be permissible for the TPS Contract Summary.

⁷ BPU Docket No. EX14060579, Order, effective October 10, 2014.

NEM is also concerned about the proposed Section 14:4-7.6A requirement that TPSs, “[p]rovide a brief explanation of the difference between a fixed rate and a variable rate that is easily understandable by the general public, including an explanation on how weather fluctuations may affect the price of variable rate contracts.” This language is a recitation of the language from A-3851. NEM suggests that to aid TPS compliance that it would be helpful if the Board were to provide safe harbor language for this explanation for TPS use in the contract summary. NEM also notes that weather fluctuations are not the only factor leading to the variability of prices. A description that only focuses on that factor could be misleading to consumers. TPSs should be permitted to note that weather and other factors contribute to the variability of prices.

IV. Proposed Section 14:4-7.10A – Transfer of a Residential Contract by a TPS

The Board is proposing to add a new Section 14:4-7.10A to the regulations regarding TPS notification to customers and applicable terms and conditions of service for different TPS transfer scenarios. Proposed Section 14:4-7.10A(a) would apply in instances when, “a TPS purchase another TPS, the accounts of customers of another TPS, or the TPS accounts are otherwise transferred to an affiliate company.” The proposed language of Section 14:4-7.10A(a)(1) would require written customer notification of the transfer, “at least 30 days prior to the effective date of the customer switch.” NEM is concerned about this notification requirement as applied to customer transfers that occur in the context of emergency circumstances, such as supplier bankruptcy. Customers should be provided with prompt and timely notice of an assignment of their contract. However, especially in emergency circumstances, a thirty-day written notice requirement to the customer may be difficult or impossible to comply with by the acquiring supplier. NEM suggests that the notice requirement be rephrased to acknowledge the difference between

assignment in an emergency situation versus in the ordinary course of business. In recognition of the difference, suppliers should be asked to provide the notice to the customer “as soon as is practicable” in the case of bankruptcy or other events where the transfer must occur expeditiously.

Proposed Section 14:4-7.10A(b) is to be applied in the case that a TPS ceases operations and its customers will be transferred to utility commodity service. TPSs would be required to provide thirty days advance notice of the switch to utility commodity service, including a, “timetable for the customer to choose another energy supplier before defaulting to the LDC.” NEM reiterates its concerns expressed in the foregoing paragraph about the impracticability of applying a thirty-day notice requirement in emergency situations. The proposed regulations should permit the notice to be provided “as soon as is practicable” in that case.

Additionally, NEM is concerned that suppliers would be unable, from an operational perspective, to provide the proposed “timetable” to each customer in the notice as required in proposed Section 14:4-7.10A(b). In practical terms, it would necessitate the supplier having to prepare a timetable for each customer that reflected each customer’s different meter read date in order to accurately reflect when the customer would need to choose an alternative competitive supplier to avoid being switched to utility commodity service. In view of that difficulty, NEM suggests that this notice requirement should properly be directed toward providing a generalized statement about the customer’s ability to choose another third party supplier rather than receive utility commodity service.

Conclusion

NEM appreciates this opportunity to provide comment on the proposed amendments and proposed additions to the Board's Energy Competition Standards.

Respectfully submitted,

Craig G. Goodman
President
National Energy Marketers Association
3333 K Street, NW, Suite 110
Washington, DC 20007
Email: cgoodman@energymarketers.com;
Tel: 202-333-3288
Fax: 202-333-3266