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2/6/18*



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BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

STEFANIE A. BRAND  
Director

January 29, 2018

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

Secretary  
State of New Jersey  
Board of Public Utilities  
44 South Clinton Street  
3rd floor, Suite 314  
P.O. Box 350  
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**Re: I/M/O Petition for Waiver of Enforcement of N.J.A.C. 14:4-7.6A pursuant to  
N.J.A.C. 14:1-1.2(b)(1) & (2)  
Docket Nos. EW17121286 & GW17121287**

Dear Secretary:

The New Jersey Division of Rate Counsel ("Rate Counsel") submits these comments in response to the petition of the Retail Energy Supply Association ("RESA") for a 60-day waiver of the Board's enforcement of N.J.A.C. 14:4-7.6A. That rule continues the requirement that each Third-Party Supplier ("TPS") prepare and provide to each customer a TPS Contract Summary, using a specific one-page, plain-language format.

Petitioner argues that the TPSs require an additional 60 days to prepare their TPS Contract Summaries, translate them into Spanish, program their computer systems, train their sales agents and update their web sites to provide the Summaries. The Petition also claims the

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TPSs are uncertain as to whether they must provide their contracts in Spanish. Finally, the Petition alleges that the Board has not posted the “TPS Contract Summary Standardized Format” on its website. The Petition relies on N.J.A.C. 14:1-1.2(b)1, arguing that the Board should grant the waiver because it is in “the interests of the general public.” Since the effective date of N.J.A.C. 14:4-7.6A was December 18, 2017, the waiver, if granted, would expire by Friday, February 16, 2018.

Use of the TPS Contract Summary format is not new under the recently promulgated regulation. The Board first ordered every TPS to use the TPS Contract Summary on September 30, 2014, starting on November 15, 2014.<sup>1</sup> The Board incorporated that same TPS Contract Summary requirement into the draft rules it proposed on December 5, 2016<sup>2</sup> and, after a period of public notice and comment, into the final rules adopted on November 21, 2017. The Board published the final rules on December 18, 2017, effective the same day, again requiring use of the same TPS Contract Summary format.<sup>3</sup> However, the final version of N.J.A.C. 14:4-7.6A did add one requirement to the TPSs’ obligations; it requires the TPS to provide the TPS Contract Summary in Spanish if requested by the customer.<sup>4</sup>

## DISCUSSION

During the public comment period on the proposed rule, neither Petitioner nor any TPS asked the Board whether TPSs must provide their contracts to customers in the Spanish

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<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). That Board Order resulted in part from many alleged consumer abuses by TPSs during the very cold “polar vortex” weather in the winter of 2013-2014, and Rate Counsel’s petition requesting enhanced protections for ratepayers who contract with a TPS.

<sup>2</sup> 48 N.J.R. 258(a).

<sup>3</sup> 49 N.J.R. 4015(a). This Petition was dated that same day.

<sup>4</sup> N.J.A.C. 14:4-7.6A(a)2.

language, or objected to doing so.<sup>5</sup> In fact, RESA's comments expressed the hope that the Board would allow TPSs to "include *additional* information that may benefit a customer."<sup>6</sup>

It would seem that any TPS asked to provide its contract to a customer in Spanish would do so. Providing the contract in the language understood by the customer seems beneficial to both the customer and the TPS. Indeed, one would expect each TPS to have already translated its contracts and Contract Summaries into Spanish, and perhaps other languages commonly spoken in New Jersey.

The Petition asserts that the Board had not, as of December 18, posted the "TPS Contract Summary Standardized Format" on its internet web site. Board Staff, however, reported that they had in fact done so.<sup>7</sup> A discrepancy as to the exact date of posting, however, is immaterial. The Board has required TPSs to provide TPS Contract Summaries to their customers since November 15, 2014, and at that time posted on its web page the Order providing the format. The TPS Contract Summary requirements have been in effect for over three years, and the Petition does not cite any reports of TPS non-compliance or Board enforcement activity. Accordingly, this assertion too provides no basis for waiving compliance with N.J.A.C. 14:4-7.6A. Rather, the only new requirement in the regulation is that the summary be provided in Spanish if requested by the customer. It is important that the translations are accurate and clear to Spanish speaking customers. Taking the proper time to ensure this is done correctly is appropriate. To the extent the TPSs need time to complete this task, Rate Counsel does not object.

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<sup>5</sup> See 49 N.J.R. 4015(a) (Dec. 18, 2017).

<sup>6</sup> Id., comment 68 (emphasis added). Nothing in N.J.A.C. 14:4-7.6A prohibits TPSs from providing additional information to prospective customers, but specifies a minimum set of material terms that must be prominently disclosed.

<sup>7</sup> The form is posted at [http://www.nj.gov/bpu/pdf/energy/TPS\\_ContractSummaryStandardizedFormat.pdf](http://www.nj.gov/bpu/pdf/energy/TPS_ContractSummaryStandardizedFormat.pdf) (viewed 1/9/18). (From the BPU Home page, go to "About BPU," then "Divisions," then "Energy," then click on link on right side of page to "TPS Contract Summary Standardized Format.")

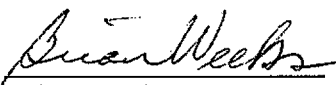
CONCLUSION

Rate Counsel strongly supports the Board's consumer protection rules, including the TPS Contract Summary requirements. Full disclosure of all material contract terms benefits all parties in the retail energy marketplace, and supports the credible and efficient functioning of that market. Rate Counsel presumes that the Board will vigorously uphold and enforce these important consumer protection rules. Nevertheless, Rate Counsel recognizes that preparing the TPS Contract Summary in Spanish is a new requirement under the final version of N.J.A.C. 14:4-7.6A, and accepts Petitioner's representations that TPSs need additional time to translate them, program their computer systems, train their sales agents and update their websites. Providing complete and accurate TPS Contract Summaries to customers, in English and Spanish, is in the public interest. Accordingly, Rate Counsel does not object to allowing TPSs the additional 60 days requested, i.e., until February 16, to fully comply with N.J.A.C. 14:4-7.6A.

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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IMO PETITION FOR WAIVER OF  
ENFORCEMENT OF N.J.A.C. 14:7-6A  
PURSUANT TO N.J.A.C. 14:1-1.2(b)(1) & (2)  
BPU Dkt. Nos.: EW17121286 GW17121287

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