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October 27, 2021

Via Electronic Mail

All Persons on the Attached Service List

**RE: I/M/O City of Hoboken Renewable Energy Aggregation Program -
Concord Energy Services and Commercial Utility Consultants
BPU Dkt. No.: EO20030257**

Hon. Mayor Bhalla, Hoboken City Council Members and Ms. Gonzalez:

The State Division of Rate Counsel writes to provide our comments on the draft public opt-out notice to the residents of the City of Hoboken for the contract between the third-party supplier and the City of Hoboken for its Renewable Energy Aggregation Program ("REAP"). REAP is an Option 2 government energy aggregation program pursuant to N.J.A.C. 14:4-6.1 et seq. The draft public notice for the REAP contract was provided to this office by Concord Energy Services and its subcontractor Commercial Utility Consultants, Inc. (collectively, the "Energy Agents") for the City, on October 12, 2021.

By letter dated February 4, 2021 this office provided you with comments on the two draft bidding documents for a program referred to at the time as the City of Hoboken Energy Aggregation Program ("CHEAP"). Those draft documents were filed by the Energy Agents on January 27, 2021 ("January 27 Filing") with Rate Counsel and the Board of Public Utilities ("Board"). It is unclear whether the REAP is merely a renamed CHEAP, or if they are two different programs with materially different terms. The January 27 Filing advised that the City of Hoboken would serve as the Lead Agency for the CHEAP Program. Rate Counsel recommended that the City of Hoboken have a municipal attorney review the January 27 Filing along with our comments. Rate Counsel reiterates that recommendation here, especially if the terms of the REAP differ materially from the CHEAP. Since our January 27 comment letter speaks for itself, we limit our comments here to only the draft public opt-out notice.

The Board's Government Energy Aggregation program rules require that the draft opt-out public notice provide certain information on a standardized one-page document, using "plain language." N.J.A.C. 14:4-6.6(r)(9); see N.J.S.A. 48:3-85(a)(1)(a). The REAP draft public opt-

out notice provided by the Energy Agents consists of a brochure, an opt-out card and a postage pre-aid return mail envelope that will be sent by the governing body of Hoboken to residents of the City. The brochure contains four pages of explanatory information, including a standardized one-page “Supplier Contract Summary.” Residents who wish to opt out of the REAP Program may mail the response card in the enclosed envelope, call or e-mail the selected third-party supplier, or call the Energy Agents. Residents do not need to take any action if they prefer to remain in the Program.

Board rules require the contract summary to indicate in 12-point bold-face font whether the price is “fixed” or “variable” and, if variable, to provide certain information including whether there are any ranges or ceilings on that variation. N.J.A.C. 14:4-6.6(r)(9)vi and vii. The draft Supplier Contract Summary does not contain this required information in any format, instead describing the price structure as “non-variable.”

A footnote on the Supplier Contract Summary states that the price can be adjusted to reflect any “change in law” that also affects the PSE&G power supply tariff. To the extent the contract allows the price to change during the term of the agreement, this is a variable price contract and cannot be considered “fixed” under the Board’s rules. See N.J.A.C. 14:4-6.9(c) (pricing structure that allows for fluctuations in price during the life of the contract is not a fixed price); see N.J.S.A. 48:3-85(a)(1)(a); N.J.A.C. 14:4-6.6(r)(9)vi and vii. Rate Counsel recommends stating that the price structure is fixed only if it will not change during the life of the contract for the Program.

A footnote on the “Program Options & Pricing” page of the brochure is similarly erroneous, stating that the REAP Program price is “Flat and non-variable.” The Board rules cited above specifically distinguish between flat and variable rates, and require clear disclosure of the actual price structure in a particular format. The “Statement Regarding Savings,” on the Supplier Contract Summary page of the brochure also suggests that the price will be variable, stating that, “This price may be higher or lower than [PSE&G’s] price in any month. There is no guarantee of savings.”

Moreover, the prices on the Program Options & Pricing page of the brochure appear misleading, as they contradict the information in the Statement Regarding Savings. The Program Options & Pricing page lists specific Residential prices for the REAP program “Standard Offering” and “Basic” options that are clearly lower than the PSE&G BGS price, suggesting actual savings for participants, while the Statement Regarding Savings two pages later states that REAP prices may be higher or lower than the BGS price and that savings are not guaranteed.

Rate Counsel recommends amending the Supplier Contract Summary to describe the price structure as “fixed” or “variable,” and providing it in the format required by Board rules, and to edit or remove any text that contradicts or does not support clear disclosure in plain language of the actual price structure of the REAP.

Due to the format of the draft brochure provided by the Energy Agents, it is also unclear whether all the information on the Supplier Contract Summary is set forth in type that is at least

12 point in size, as per N.J.A.C. 14:4-6.6(r)(9)vi and ix. Rate Counsel recommends ensuring that the final version of the Supplier Contract Summary use appropriately sized font, and in bold face where required.

Rate Counsel also recommends a correction in the fourth bullet point under “Things You Should Know” on the “Frequently Asked Questions” page of the draft brochure. The Hoboken REAP program is not regulated by the Division of Rate Counsel. Instead, all comments provided by the Division and by the Board of Public Utilities are merely advisory and may be disregarded by accepted or rejected by the Lead Agency. See N.J.S.A. 48:3-94b(1) and -94(c); N.J.A.C. 14:4-6.6(i); N.J.A.C. 14:4-6.6(t).

Please also include the Spanish language translation of the Supplier Contract Summary on the indicated page of the brochure.

The Supplier Contract Summary directs residents seeking more information to the web site for the third-party supplier, Direct Energy Services, LLC (www.directenergy.com/aggregations). Rate Counsel recommends ensuring that the information provided on that web site, and the final version of all documents to be sent to Hoboken residents, is consistent with Board rules.

Rate Counsel recommends ensuring that all public documents relating to the REAP Program, including all of the final public opt-out notice documents, are posted on the Energy Agents’ and the City’s web sites and made available in hard copy at a physical location (such as a municipal building) where residents may review them. This can assist those without internet access.

Accordingly, Rate Counsel recommends revising the draft public opt-out notice documents to reflect the changes discussed above. We again recommend having a municipal attorney review the CHEAP/REAP Program’s January 27 Filing and Rate Counsel’s comments on it, as well as the draft public opt-out notice and our comments herein. Of course, all documents relating to the REAP Program, including public notices, must comply with all provisions of public utility, consumer protection and other applicable law.

Respectfully submitted,

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By: /s/ Brian Weeks
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cc: Service List (via e-mail)

I/M/O the Government Energy
Aggregation Program of the City of
Hoboken, New Jersey

BPU Docket No. EO20030275

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