

BOARD OF PUBLIC UTILITIES



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VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

The Honorable Irene Kim Asbury
Secretary, New Jersey Board of Public Utilities
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EW17121286
GW17121287

Re: 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)

Dear Secretary Asbury:

Pursuant to Sections 14:1-1.2 (b)(1) and (2) of the New Jersey Administrative Code (“N.J.A.C.”), please accept this letter on behalf of our client, the Retail Energy Supply Association (“RESA”),¹ as a petition for waiver of enforcement of the new rule codified at N.J.A.C. § 14:4-7.6A, “TPS Contract Summaries” (the “Waiver”) for sixty (60) days. A check in the amount of \$25.00 is included for the filing fee. For the reasons detailed below, the Board of Public Utilities (“Board”) should grant the Waiver as it is in the “interests of the general public.”

The Board of Public Utilities (“BPU” or “Board”) proposed amendments to the Energy Competition rules on December 5, 2016. The Energy Competition rules, in pertinent part, outline the manner in which the State’s licensed third party suppliers (“TPS”) enroll customers,

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org

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obtain licenses from the Board, and market to and contract with customers. RESA filed comments to the proposed amendments on or about February 3, 2017. In part, RESA requested a modest sixty (60) day delay of implementation of the rules. The Board's failure to grant a delay in implementation does not take into account necessary changes to TPS production, enrollment, and account systems which need to be modified to conform to the new contract summary requirements.

Specifically, N.J.A.C. § 14:1-1.2 (b) (1) provides as follows:

The Board shall, in accordance with the general purposes and intent of its rules, waive section(s) of its rules if full compliance with the rule(s) would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public.

In the instant case, the Board should grant the Waiver as it in the "interests of the general public." New regulation N.J.A.C. § 14:4-7.6A(a) specifically requires that TPSs provide contract summaries to residential and small commercial customers "in a standardized format that will be posted under the heading "TPS Contract Summary Standardized Format" on the Board's website, <http://www.nj.gov/bpu/>." However, as of this writing, the new "TPS Contract Summary Standardized Format" is not available at <http://www.nj.gov/bpu/>.

In situations where the Board requires compliance with a document it has not yet made available, the interests of the general public dictate that Administrators interpret requirements in favor of, not to the detriment of, parties who are relying upon that guidance to comply with regulations. Suppliers are attempting to make a good-faith effort to comply with the new regulations – but the Board has not provided the regulatory guidance it is required to provide, according to its own new regulations. Accordingly, the interests of the general public support the Waiver for compliance with N.J.A.C. § 14:4-7.6A.

Moreover, in the instant case, there are additional policy considerations that should be taken into account. The new regulation requires that contract summaries be provided in Spanish

“upon request of the customer.” As the proposed new contract summary format has not been provided, as explained above, it would be unfair to expect TPSs to translate a document that is based upon a template not yet provided by the Board. Suppliers need to ensure they have the necessary time to ensure accurate and complete translations of its contract summary are created. In addition, the requirement to provide Spanish language contract summaries begs the question as to whether or not TPSs should also be providing their contract terms in Spanish as well. In sum, there are legal issues raised by these new regulations that every licensed supplier who markets to residential and small commercial customers in New Jersey must sort out, and the Board has given TPSs no time to analyze the important legal issues implicated by the new regulations.

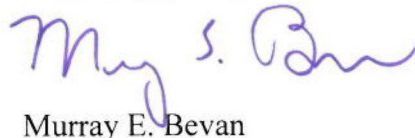
Once TPSs actually receive or access the Board’s new contract summary template, they will also need time to program their systems to produce the new contract summaries and to provide Spanish-language contract summaries when necessary. TPSs need time to ensure that their sales channels all have the appropriate, up to date contract summary information to provide to customers. Customer service scripts, for every type of marketing, need to be reviewed and updated for compliance and sales agents need to be trained on the new requirement to provide a Spanish-language contract summary at the request of the customer. Websites for online enrollment need to be modified to allow customers to request a Spanish-language contract summary. Implementation of this new regulation is more than just providing a template – there are key steps TPSs must take before their systems can adjust to the new regulations.

Allowing TPSs a mere sixty (60) day window to ensure compliance with the new contract summary requirements (particularly where suppliers are supposed to rely upon a document that has not yet been posted) will promote the interests of the general public. Allowing a delay in implementation of this rule is fair and equitable and ensures TPSs can review the Board’s new contract summary format and translate the document for those customers seeking a Spanish language contract summary, and ensure that TPS internal systems can properly manage the new requirements.

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For the reasons stated in this letter petition, RESA respectfully requests that the Board waive compliance with N.J.A.C. § 14:4-7.6A for sixty (60) days, pursuant to the terms of N.J.A.C. § 14:1-1.2(b)(1). Please do not hesitate to contact me should you have any questions or concerns.

Very truly yours,



Murray E. Bevan

cc: Tom Walker
Jacqueline Galka
Paul Flanagan
Cynthia Covie