



**In the Matter of the Board's Review of the Energy Competition Rules
at N.J.A.C. 14:4**

Docket Number EX141113432

**Written Comments Submitted By Gabel Associates, Inc.
February 20, 2015**

Introduction

Gabel Associates appreciates the opportunity to comment on the proposed modifications to the Government Energy Aggregation (GEA) rules that are currently being considered by Board Staff. The firm was an active participant in the development of the GEA rules and applauds Board Staff for its proactive approach to strengthen the rules in an effort to improve these programs.

Gabel Associates is extremely active in the GEA space and was the first firm to have successfully implemented a GEA Program in New Jersey. The firm has since successfully completed eight (8) programs, including multi-municipality cooperative purchasing aggregations, consecutive programs and programs containing additional renewable content. To date, our programs are estimated to save approximately \$15 million in energy expenses for New Jersey residents.

Since we have first-hand experience navigating through the GEA procurement and program implementation process in New Jersey, as well as have implemented the only second round (i.e. re-bid) GEA program in the State to date, we will be able lend important insights that are based on market realities and practical application.

Response to the Discussion Document

I. Reduce Unintended Customer Drops Associated with the LDC Notice to Customer of a Change Order (N.J.A.C. 14:4-2.6)

The BPU proposes a rule modification to reduce the amount of unintended customer drops associated with the LDC Notice to Customer of a Change Order (N.J.A.C. 14:4-2.6). The rule modification would require the LDC to distribute a different, standardized Notice to Customer letter for GEA customer enrollments.

1. We concur with this observation. No further response required.
2. **Response:** Gabel Associates endorses this rule modification. It has been our experience that the 30-day opt-out period generates a consistent 5% to 10% opt out rate. Gabel Associates agrees with the BPU that a standardized letter pertaining to GEA programs will successfully reduce confusion among GEA participants. This change should be a high priority, and we recommend that all stakeholders work together to implement this recommendation on an interim basis as soon as possible, while any formal rule changes are finalized.

II. Provide clarity regarding who can be a designee (14:4-6.3 (b) General Provisions Designee)

1. We concur with this observation. No response required.
2. *Response:* Gabel Associates takes no exception the rule modification outlined in Discussion Item II(2).

III. Ensure that Staff and Rate Counsel have the Appropriate Information to Review GEA Documents, Provide Comments and Track GEA Programs

1. *Response:* Gabel Associates takes no exception to Discussion Item III(1).
2. *Response:* Gabel Associates takes no exception to Discussion Item III(2). However, Gabel Associates offers a recommended clarification to Discussion Item III(2)(5) suggesting that the contact information for only "one or more representatives of the governing body" be provided on the cover letter for BPU and Rate Counsel filings rather than the contact information for each member of the governing body. We find that one central point of contact assigned to distribute the information to the appropriate members is more efficient.
3. *Response:* Regarding Discussion Item III(3)(a), Gabel Associates seeks clarification from the BPU on the following issue: When and at what stage should copies of the ordinance and/or resolution be provided to the BPU?

With regard to Discussion Item III(3)(e), Gabel Associates does not endorse the requirement to provide GEA statistics. Rather than codify this requirement into a rule modification, we recommend that the information be provided upon request, in a manner consistent with current practices. This information requires the coordination of multiple parties, (i.e. third party supplier, LDC, energy agent, etc.) and poses a hardship on the governing body to meet this requirement. Gabel Associates takes no other exceptions to Discussion Item III(3).

IV. Improve the Accuracy / Effectiveness of Customer Lists for Opt-Out Notices sent pursuant to N.J.A.C. 14:4-6.5 (d) and N.J.A.C. 14:4-6.6(q):

1. No response required.
2. *Response:* Gabel Associates endorses rule modification IV(2)(b). With regard to rule modification IV(2)(c), Gabel Associates would like to emphasize the importance and added value associated with the LDC developing a separate EDI indicator that tags GEA customers for the purposes of improving the accuracy of the opt-out list for consecutive rounds of GEA programs.

3. **Response:** With regard to the rule modification outlined in Discussion Item IV(3)(c), Gabel Associates cautions the Board with regard to imposing a regulatory *requirement* that the governing body review the LDC's list of account numbers and, more important, remove residential customers located outside the physical boundaries of the municipality. The lists that have been received from the LDCs for the various municipalities have generally been quite accurate with respect to geographic boundaries; however, for a variety of reasons the lists are not perfect, with some homes physically located within the jurisdiction omitted, and on occasion certain homes physically located outside the geographic boundaries included. These lists are routinely reviewed by both the agent and the municipality. However, different municipalities have different staffing levels and varying degrees of geo-coding capabilities and, depending upon the number of households on the list, achieving perfection with respect to reconciling the lists received from the LDCs is extremely difficult if not virtually impossible. As such, Gabel Associates proposes a requirement that the governing body use "best practices" to identify any inconsistencies in the LDC list. An added protection is put in place on the Opt-Out Notice explaining that if the notification reaches an address outside of the municipal boundary, residents should contact the awarded supplier to be removed from the program. As well, if residents inside the borders are not on the list and do not receive the initial mailing, they will not be included in the program automatically but do have the opportunity to opt-in to the program at any time.

4. **Response:** Gabel Associates takes no exception to this rule modification.

V. Ensure that Residential Customers are provided with sufficient information to decide if they want to be included in a GEA Program or Opt-Out

1. **Response:** Gabel Associates takes no exception to the rule modification outlined in Discussion Item V(1)(a), however we would like to clarify that the Program Summary would be provided "*as part*" of the Opt-Out Notices, rather than "*along with*" the Opt-Out Notices. This difference distinguishes the Program Summary as a cohesive part of the Opt-Out Notice rather than as a separate piece of paper provided in the Opt-Out Notice envelope.

Additionally, with regard to the rule modification V(1)(a) subsection (ii), Gabel Associates is concerned that the added row contains redundant text already outlined in the row titled "Right to Opt-Out/Rescind/Cancel". Of added concern is the inclusion of a standardized opt-out deadline which can be very difficult to accurately predict for each customer due to the unique postmark date of each letter. Customers are eligible to opt-out at any time during the contract, even after the 30 day opt-out period as expired.

2. **Response:** Gabel Associates takes no exception to the rule modification in Discussion Item V(2).

VI. Ensure that the contract between a government aggregator and the selected TPS contains the appropriate provisions (N.J.A.C. 14:4-6.10)

1. **Response:** Gabel Associates takes no exception to the rule modifications outlined in Discussion Item VI(1).

VII. Clarify that the regulations do not prohibit non-residential customers from joining a GEA program after the initial period for opt-ins.

1. No response required.
2. **Response:** It is Gabel Associates' recommendation that this requirement should not be codified in a rule change, but should be left to the specifications of the contract per the request of the governing body.

VIII. Additional Issues / Rule Modifications:

1. **Response:** Gabel Associates recommends only one additional change to the rules that may expedite and streamline a GEA program. We believe that the amendments to the Opt-Out Notice pursuant to the Board's September 30, 2014 Order, including a TPS Program Summary, has created a standardized and easy to review Opt-Out Notice template. For this reason, we recommend that N.J.A.C. 14:4-6.9(s) be modified to reflect a 10 day review period instead of a 15 day review period, consistent with the amount of time for the LDC to provide the list of customer information. While this change is relatively minor, we feel that this provides the Board and Rate Counsel ample time to review the letter and the awarded supplier additional time to print, mail and distribute the finalized opt-out letter to the residents. In many cases, the difference of an additional 5 days may result in the ability to catch an earlier meter read cycle, saving the residents an additional month of energy costs.

Gabel Associates is willing to provide additional documentation to clarify and validate the necessity of this change.

2. **Response:** Gabel Associates does not endorse the requirement for the LDCs to include a page on their website for townships interested in creating a GEA program. We do not believe that this is necessary, and it may lead to confusion in the marketplace.
3. **Response:** The GEA rules already require that GEA procurements be conducted consistent with Local Public Contracts Law (LPCL) which addresses advertisement of bids and distribution of notices to prospective bidders. LPCL is under the purview of the Department of Community Affairs; therefore, we do not believe that the procedural aspects of conducting a bid, including the provision of notice to suppliers, should be addressed in the BPU rules.

Conclusion

Gabel Associates appreciates the opportunity to provide these comments and looks forward to working cooperatively with Board Staff and all other stakeholders on GEA issues now and in the future.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Robert Chilton", is written over a horizontal line. The signature is stylized and somewhat illegible.

Robert Chilton
Executive Vice President