

New Jersey Offers Legislation Designed to Address Energy Supply Companies' Variable Rate Disclosure Practices

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In the wake of the unexpected polar vortices and extreme weather that struck the East Coast in early 2014, many state public utility commissions and attorneys general were inundated with consumer complaints relating to increases in energy supply companies' variable rates. Regulators took notice, opening investigations and convening public conferences in an effort to understand how suppliers advertise, market, and telemarket their various variable rate energy offerings, and to ensure that such practices do not violate state law or regulations. Recently, the plaintiff's bar has also taken notice and a number of class actions raising false advertising and consumer protection claims have been filed against energy suppliers.

The core allegation in these suits generally is that the suppliers' variable rates simply were too high (although the claims are couched in terms of unfair and deceptive acts and practices, false advertising, breach of contract, etc.). Forecasters are predicting that Winter 2014 will be as cold as the previous one, making it unlikely that the level of regulatory scrutiny and civil litigation against energy suppliers will ebb any time soon.

Beyond the investigations and litigation, many states, such as New Jersey, are considering legislation designed to address suppliers' variable rate disclosure practices. On December 4, 2014, the New Jersey General Assembly Telecommunications and Utilities Committee unanimously voted to advance a package of three bills - A-3849, A-3850, and A-3851 - that would require the Board of Public Utilities ("BPU") to establish standards and procedures governing suppliers' business practices.

Under these bills, the BPU, among other things, would be charged with developing contract standards that make information on fixed versus variable rates more accessible. This would include a clear explanation of the differences between fixed and variable rates in at least 12-point font, and a one-page information sheet in both English and Spanish that summarizes the terms of the service contract. The next step for the bills is a vote before the full state Assembly.

Energy suppliers should take caution when explaining the terms of their variable rate contracts to ensure that the terms and limitations are clearly and conspicuously disclosed, and that all state regulatory requirements are satisfied. Good legal counseling in advance may go far in heading off regulatory investigations and class action litigation later.