

CHAPTER 4 ENERGY COMPETITION

Authority

N.J.S.A. 48:2-1 et seq., in particular 48:2-13, 48:2-16 through 19, 48:2-23, 48:2-21.2 and 29.1, 48:2-37, 48:2-51.1, 48:3-7 et seq., and 48:3-51 et seq.

Source and Effective Date

R.2012 d.091, effective April 11, 2012.
See: 43 N.J.R. 1150(a), 44 N.J.R. 1534(a).

Chapter Expiration Date

Chapter 4, Energy Competition, expires on April 11, 2019.

Chapter Historical Note

Chapter 4, Autobus and Trolley, was adopted and became effective prior to September 1, 1969.

Chapter 4, Autobus and Trolley, was recodified as N.J.A.C. 16:52 by an administrative change, effective November 3, 1995. See: 27 N.J.R. 4906(a).

Chapter 4, Energy Competition Standards, was adopted as new rules by R.1999 d.257, effective July 9, 1999. See: 31 N.J.R. 2228(a).

Subchapter 1, Interim Anti-Slamming Standards, Subchapter 2, Interim Licensing and Registration Standards, and Subchapter 3, Interim Retail Choice Consumer Protection Standards, were readopted as R.2001 d.46, effective January 9, 2001. See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

Subchapter 4, Interim Environmental Information Disclosure Standards, Subchapter 5, Affiliate Relations, Fair Competition and Accounting Standards and Related Reporting Requirements, and Subchapter 6, Interim Government Energy Aggregation Program Standards, were adopted as new rules by R.2000 d.408, d.409 and d.410, effective September 11, 2000. See: 32 N.J.R. 3617(a), 3633(a), and 3642(a).

Subchapter 8, Interim Renewable Energy Portfolio Standards, and Subchapter 9, Net Metering, Safety and Power Quality Standards for Wind and Solar Photovoltaic Systems, were adopted as R.2001 d.231, effective June 15, 2001. See: 33 N.J.R. 2536(a).

Subchapter 8, Interim Renewable Energy Portfolio Standards, and Subchapter 9, Net Metering, Safety and Power Quality Standards for Wind and Solar Photovoltaic Systems, were readopted as R.2003 d.260, effective June 9, 2003. See: 35 N.J.R. 94(a), 35 N.J.R. 2892(a).

Subchapter 4, Interim Environmental Information Disclosure Standards, Subchapter 5, Affiliate Relations, Fair Competition and Accounting Standards and Related Reporting Requirements and Subchapter 6, Interim Government Energy Aggregation Program Standards, were readopted as R.2002 d.313, effective August 21, 2002. See: 34 N.J.R. 1524(d), 34 N.J.R. 3230(a).

Subchapter 6, Interim Government Energy Aggregation Program Standards, was repealed and Subchapter 6, Government Energy Aggregation Programs, was adopted as special new rules by R.2003 d.322, effective July 11, 2003 (to expire January 11, 2005). See: 35 N.J.R. 3711(a).

Subchapter 6, Government Energy Aggregation Programs, was readopted as R.2005 d.253, effective July 8, 2005. See: 37 N.J.R. 388(a), 37 N.J.R. 2888(a).

In accordance with N.J.S.A. 52:14B-5.1c, Subchapters 2, 3, 4, 5, 6 and 9, expired on July 8, 2006. See: 37 N.J.R. 3911(a).

Chapter 4, Energy Competition Standards, was renamed "Energy Competition" and Subchapter 1, General Provisions and Definitions, was adopted as new rules by R.2006 d.178, effective May 15, 2006. Former Subchapter 1, Interim Anti-Slamming Standards, was readopted as R.2006 d.178, effective April 18, 2006, and it was recodified as Subchapter 1A, effective May 15, 2006. Subchapter 8, Interim Renewable Energy Portfolio Standards, was readopted as R.2006 d.178, effective April 18, 2006, and it was recodified to N.J.A.C. 14:8 as Subchapter 2, Renewable Portfolio Standards, by R.2006 d.178, effective May 15, 2006. See: 37 N.J.R. 3911(a), 38 N.J.R. 2176(a).

Subchapter 4A, Public Utility Holding Company Standards, was adopted as new rules by R.2006 d.339, effective October 2, 2006. See: 37 N.J.R. 4889(a), 38 N.J.R. 4237(a).

Subchapter 5, Energy Licensing and Registration, was adopted as new rules by R.2007 d.344, effective November 5, 2007. See: 39 N.J.R. 1405(a), 39 N.J.R. 4851(a).

Subchapter 1A, Interim Anti-Slamming Standards, was repealed; and Subchapter 2, Energy Anti-Slamming, Subchapter 3, Affiliate Relations, Subchapter 6, Government Energy Aggregation Programs, and Subchapter 7, Retail Choice Consumer Protection, were adopted as new rules by R.2008 d.130, effective May 19, 2008. See: 39 N.J.R. 1405(a), 40 N.J.R. 2526(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 4, Energy Competition, was scheduled to expire on October 15, 2013. See: 43 N.J.R. 1203(a).

Chapter 4, Energy Competition, was readopted as R.2012 d.091, effective April 11, 2012. As a part of R.2012 d.091, Subchapter 4A, Public Utility Holding Company Standards, was recodified to Subchapter 4 and renamed Public Utility Holding Company (PUHC) Standards, effective May 7, 2012. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTERS 8 THROUGH 9. (RESERVED)

SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

14:4-1.1 Applicability and scope

(a) This chapter applies to various regulated entities involved in the supply of electricity and natural gas, as set forth at (b) through (e) below. If more than one subchapter applies to a given type of entity, the entity shall comply with the requirements in all applicable subchapters.

(b) This chapter applies to the following, as these terms are defined at N.J.A.C. 14:4-1.2:

1. Electric public utilities;
2. Electric power suppliers;
3. Gas public utilities;
4. Gas suppliers;
5. Energy agents, including energy consultants;
6. Government aggregators;
7. Private aggregators;
8. Public utility holding companies (PUHCs); and
9. BGS providers.

(c) Additional provisions that may apply to the entities listed at (b) above can be found in the Board's rules on renewable energy at N.J.A.C. 14:8.

(d) In addition to the requirements in this chapter, the regulated entities subject to this chapter are also subject to Board orders and other Board rules, including, but not limited to:

1. N.J.A.C. 14:3, All Utilities, which applies to electric public utilities and gas public utilities, as well as other regulated entities;
2. N.J.A.C. 14:5, Electric Service, which applies to electric public utilities;
3. N.J.A.C. 14:6, Gas Service, which applies to gas public utilities;
4. N.J.A.C. 14:12, Demand Side Management, which applies to electric public utilities and gas public utilities; and
5. N.J.A.C. 14:29, Energy Emergency, which applies to electric public utilities and gas public utilities.

(e) For the purposes of this chapter, a statement, action or failure to act by a contractor, agent or representative of any person or entity subject to this chapter shall be deemed to be the statement, action or failure to act by the person or entity.

Amended by R.2012 d.091, effective May 7, 2012.

See: 43 N.J.R. 1150(a), 44 N.J.R. 1534(a).

In (e), deleted a comma following “action” and “agent”, substituted “any person or” for “a regulated” and the second occurrence of “person or” for “regulated”, and inserted “subject to this chapter”.

14:4-1.2 Definitions

The following words and terms, when used in this chapter or in N.J.A.C. 14:8, Renewable Energy and Energy Efficiency, shall have the following meanings unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1.

“Advertising” means the activity of attracting public attention to a product, service, or business, etc., as through announcements in print, radio, television, telemarketing, electronically, internet, etc.

“Aggregator” means a government aggregator or a private aggregator, as those terms are defined herein.

“Basic gas supply service” or “BGSS” means gas supply service that is provided to any customer that has not chosen an alternative gas supplier, whether or not the customer has received offers as to competitive supply options; including, but not limited to, any customer that cannot obtain such service from a gas supplier for any reason, including non-payment for services. Basic gas supply service is not a competitive service and shall be fully regulated by the Board.

“Basic generation service” or “BGS” means electric generation service that is provided to any customer that has not chosen an electric power supplier, as defined herein, whether or not the customer has received offers for competitive supply options; including, but not limited to, any customer that cannot obtain such service from an electric power supplier for any reason, including non-payment for services. Basic generation service is not a competitive service and shall be fully regulated by the Board.

“Board” means the New Jersey Board of Public Utilities.

“Broker” means a duly licensed electric power supplier that assumes the contractual and legal responsibility for the sale of electric generation service, transmission or other services to retail customers, but does not take title to any of the power sold, or a duly licensed gas supplier that assumes the contractual and legal obligations to provide gas supply service to retail customers, but does not take title to the gas.

“Btu” means British thermal unit, a standard unit of energy. One Btu is equal to the amount of heat required to raise the temperature of one pound of liquid water by one degree Fahrenheit at its maximum density, which occurs at a temperature of 39.1 degrees Fahrenheit.

“Clean power marketer” or “CPM” means a person who participates in the Board’s clean power choice program by purchasing and retiring Renewable Energy Certificates (RECs) on behalf of a subscribing customer for an agreed-upon price that is added onto the customer’s utility bill.

“Customer” means the person identified in the account records of a regulated entity as the person responsible for payment of the bill for utility service or another regulated service. A customer may or may not be an end user, as defined in this section.

“Customer information” means information specific to a particular customer, which a regulated entity has acquired or developed in the course of providing services as authorized under this chapter. This term includes, but is not limited to, a customer’s name, address, telephone number, usage habits or history, peak demand and payment history.

“EDECA” means the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq.

“Electric distribution company” or “EDC” means an electric public utility, as defined herein. An EDC cannot be an electric power supplier, but may provide basic generation service.

“Electric distribution system” means that portion of an electric system, which delivers electricity from transformation points on the transmission system to points of connection at a customer’s premises.

“Electric generation service” means the provision of retail electric energy and capacity which is generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto.

“Electric power supplier” means a person that is licensed by the Board to offer, and to assume the contractual and legal responsibility to provide, electric generation service for use by retail customers. This term includes, but is not limited to, load serving entities, marketers and brokers that offer or provide electric generation service for use by retail customers. An electric power supplier generates electricity or buys electric generation, and sells it to others for use by retail customers. An electric public utility that provides electric generation service only for the purpose of providing basic generation service is not an electric power supplier.

“Electric public utility” means a public utility, as that term is defined in N.J.S.A. 48:2-13, that transmits and distributes electricity to end users in New Jersey.

“Electric related service” means a service that is directly related to the consumption of electricity by an end user, including, but not limited to, the installation of demand side management measures at the end user’s premises; the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user’s premises; the provision of energy consumption management, analysis, and information management; and billing and bill payment services, as authorized by the Board.

“End user” means a person who receives or consumes electricity, gas, telephone, water or wastewater service. An end user may or may not be a customer, as defined herein.

“Energy agent” means a person that is registered with the Board pursuant to N.J.A.C. 14:4-5, and is thereby authorized to arrange the retail sale of electricity, electric related services, gas supply or gas related services between government or private aggregators and electric or gas power suppliers, but does not take title to the electric or gas sold.

“Energy aggregator” means a government aggregator and/or a private aggregator, as these terms are defined in this section.

“Energy consultant” means an energy agent that is registered with the Board pursuant to N.J.A.C. 14:4-5.11, and is thereby authorized to receive certain customer information from an LDC through electronic data interchange (EDI).

“FERC” means the Federal Energy Regulatory Commission or any successor agency.

“Gas public utility” means a public utility, as that term is defined in N.J.S.A. 48:2-13, that distributes gas to end users in New Jersey.

“Gas related service” means a service that is directly related to the consumption of gas by an end user, including, but not limited to, the installation of demand side management measures at the end user’s premises; the maintenance, repair or replacement of appliances or other energy-consuming devices at the end user’s premises, and the provision of energy consumption management, analysis, and information management; and billing and bill payment services, as authorized by the Board.

“Gas supplier” means a person that is licensed by the Board under EDECA to offer or provide gas supply service to retail customers. This term includes, but is not limited to, marketers and brokers, as defined herein. A non-public utility affiliate of a public utility holding company may be a gas supplier, but a gas public utility or its subsidiary is not a gas supplier. If a gas public utility is not part of a holding company legal structure, a related competitive business segment of that gas public utility may be a gas supplier, provided that related competitive business segment is structurally separated from the gas public utility, and provided that the interactions between the gas public utility and the related competitive business segment are subject to the affiliate relations standards at N.J.A.C. 14:4-3.

“Gas supply service” means the provision to customers of the retail commodity of gas, but does not include any regulated distribution service.

“Government aggregator” means an entity that meets both of the following criteria:

1. The entity is subject to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.; the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq.; or the County College Contracts Law, N.J.S.A. 18A:64A-25.1 et seq.; or is the New Jersey School Boards Association; and

2. The entity enters into a contract with another government aggregator or with a TPS, as those terms are defined herein, to purchase electric generation service, electric related service, gas supply service, and/or gas related service for one or more of the following purposes:

- i. For the government aggregator’s own use;
- ii. For the use of other government aggregators; and/or
- iii. If the government aggregator is a municipality or county, for use by residential or non-residential customers, as defined herein, within its geographic boundaries.

A government aggregator does not take title to the energy involved in the aggregation program.

“kW” means kilowatts, a unit of power representing 1,000 watts. A kW equals 1/1000 of a MW, as defined herein.

“kWh” means kilowatt-hours, or 1,000 watt-hours.

“LDC” or “local distribution company” means an electric public utility or a gas public utility, as those terms are defined herein.

“Marketer” means a duly licensed electric power supplier that takes title to electric energy and capacity, transmission and other services from electric power generators and other wholesale suppliers and then assumes the contractual and legal obligation to provide electric generation service, and/or transmission or other services, to a retail customer or customers, or a duly licensed gas supplier that takes title to gas and then assumes the contractual and legal obligation to provide gas supply service to a customer or customers.

“Marketing” means a direct solicitation by a TPS to an individual customer for the purpose of persuading a customer to enter into an agreement for the purchase of electric generation service, gas supply service, electric related service and/or gas related service. This term includes direct mailings, telemarketing, internet websites, and in-person solicitation. Advertising is distinguished from marketing by the fact that advertising targets the general public or a group of persons, whereas marketing targets an individual potential customer.

“MW” means megawatts, a unit of power representing 1,000,000 watts. A megawatt equals 1,000 kW.

“Optional service” means an electric related service or a gas related service, as those terms are defined in this section.

“Person” means an individual, firm, joint venture, partnership, copartnership, corporation, association, State, county, municipality, public agency or authority, bi-state or interstate agency or authority, public utility, regulated entity, cable television company, cooperation association, or joint stock association, trust, limited liability company, governmental entity, or other legal entity, and includes any trustee, receiver, assignee, or personal representative thereof.

“PJM Interconnection, L.L.C.” or “PJM” means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, as defined in this section. Additional information regarding PJM and its subsidiaries can be found at <http://www.pjm-eis.com/index.html>.

“PJM Environmental Information Services” or “PJM-EIS,” means the wholly-owned subsidiary of PJM Technologies, Inc., which is in turn a wholly owned subsidiary of PJM Interconnection, L.L.C. PJM Environmental Information Services provides environmental and emissions attributes reporting and tracking services to its subscribers in support of renewable portfolio standards and other information disclosure requirements that may be implemented by government agencies.

“PJM region” means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection, as defined in this section. The PJM region is described in the Amended and Restated Operating Agreement of PJM Interconnection, which is incorporated herein by reference, as amended and supplemented. The Operating Agreement can be obtained on the PJM Interconnection website at www.pjm.com, or by writing to PJM Interconnection, Legal Department, 955 Jefferson Avenue, Norristown, PA, 19403.

“Private aggregator” means a non-government business or non-profit organization authorized to operate in New Jersey, that combines the energy loads of multiple end users, and enters into a contract with an electric power supplier for the purchase of electric generation service or with a gas supplier for gas supply service on behalf of those end users. A private aggregator does not take title to the energy involved in the transaction.

“Rate Counsel” means the Division of Rate Counsel, which is located in, but not of, the New Jersey Department of the Treasury pursuant to N.J.S.A. 52:27EE-54, or any successor agency.

“Ratepayer Advocate” or “RPA” means the Division of Ratepayer Advocate in the Department of the Public Advocate or any successor agency.

“Regulated entity” has the same meaning as is assigned to this term at N.J.A.C. 14:3-1.1.

“Retail” means the sale of energy to, or the purchase of energy by, one or more end users, regardless of whether the delivery of the energy will be through infrastructure owned or operated by the seller.

“Retail competition” means both of the following:

1. The ability of retail customers to purchase electric generation service from an electric power supplier, or to choose basic generation service; and

2. The ability of any electric power supplier, upon meeting basic licensing requirements, to offer electric generation service to retail customers.

“Retail customer” means a customer, as defined in this section, that purchases energy for its own use, or for use by other end users whose relationship with the customer is not an arms-length energy purchase transaction. This term includes government or private aggregator, as well as its customers.

“Slamming” means switching a customer from one TPS or LDC (for electric generation service or gas supply service) to another TPS, without obtaining authorization from the customer in accordance with this subchapter.

“Third party supplier” or “TPS” means an electric power supplier or a gas supplier as those terms are defined in this section.

“Therm” means 100,000 Btus.

“Wholesale customer” means a customer, as defined herein, that is not a retail customer, as defined herein.

Special amendment, R.2008 d.175, effective May 23, 2008 (to expire November 23, 2009).

See: 40 N.J.R. 3751(a).

In definition “Electric distribution system”, deleted the last sentence. Amended by R.2009 d.91, effective March 16, 2009.

See: 40 N.J.R. 3586(a), 41 N.J.R. 1261(a).

In definition “Electric distribution system”, inserted a comma preceding “which”; and incorporated the special amendment previously adopted as R.2008 d.175.

Public Notice.

See: 41 N.J.R. 1532(b).

Amended by R.2012 d.091, effective May 7, 2012.

See: 43 N.J.R. 1150(a), 44 N.J.R. 1534(a).

Deleted definition “Act”; in definition “Electric power supplier”, deleted the fourth sentence, and in the last sentence, substituted “An” for “However, an”; added definitions “Energy aggregator” and “Rate Counsel”; and in definition “Private aggregator”, inserted “or with a gas supplier for gas supply service”.

SUBCHAPTER 1A. (RESERVED)

SUBCHAPTER 2. ENERGY ANTI-SLAMMING

14:4-2.1 Scope

(a) This subchapter is intended to protect against unauthorized changes or “switches” in a customer’s electric power supplier or natural gas supplier, as required by the Electric Discount and Energy Competition Act, P.L. 1999, c. 23, section 37, N.J.S.A. 48:3-86 et seq.

(b) This subchapter applies to local distribution companies (LDCs) and third-party suppliers (TPSs), as these terms are defined at N.J.A.C. 14:4-1.2.

(c) This subchapter applies to the switching of a customer in either of the following situations:

1. A switch from one TPS to another TPS; or
2. A switch from an LDC to a TPS.

(d) In advertising and marketing to customers, and in switching customers from one TPS to another, or from an LDC to a TPS, a TPS shall comply with the Board's consumer protection standards for electric power suppliers and natural gas suppliers at N.J.A.C. 14:4-7.

14:4-2.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1 and in N.J.A.C. 14:4-1.2.

"Authorized TPS" means a TPS that a customer has voluntarily chosen in accordance with this subchapter.

"Change order" means a request, submitted by a TPS to an LDC, to switch the customer from one provider of electric generation service or gas supply service to another provider. A change order can apply to a switch from a TPS to another TPS, or from an LDC to a TPS.

"Subject customer" means a customer whose account is the subject of a change order, slamming complaint, or other action related to this subchapter.

14:4-2.3 Change order required for switch

(a) No TPS shall submit a change order to an LDC, unless the change order complies with this subchapter.

(b) To comply with this subchapter, a change order shall meet all of the following requirements:

1. The change order shall be transmitted from the TPS to the LDC through an Electronic Data Interchange (EDI) transaction, or through another electronic information exchange system with equivalent speed and security. Information on EDI may be found at the Board's website at <http://www.nj.gov/bpu/about/divisions/energy/edi.html>; and

2. The change order shall demonstrate, through compliance with the verification requirements at (c) below, that the customer has authorized the switch affirmatively and voluntarily.

(c) The change order shall be verified through one of the following:

1. Documentation that the switch occurred pursuant to an opt-out municipal aggregation program established in accordance with N.J.A.C. 14:4-6;

2. An audio recording of a customer agreeing to the switch verbally on a telephone call made by an independent third party or by a TPS. The questions and statements of the independent third party or the TPS may be recorded or electronic. However, all customer responses shall be made verbally in real time. The verification shall:
 - i. Include a statement by the customer of record, or person authorized to make the switch, of their first name, last name and the account service address;
 - ii. Verify that the person speaking is the customer of record, or is authorized to make the switch;
 - iii. Indicate the date of the recording;
 - iv. Confirm that the person speaking voluntarily wishes to make the switch;
 - v. Identify the name of the TPS to which the customer is switching;
 - vi. Indicate the customer's LDC account number and the type of service to be switched;
 - vii. State the price per kwh or therm, whether the price is fixed for a period of time or variable, and if fixed, for what period of time;
 - viii. The amount of any cancellation fees and/or any other charges not included in the per unit price under (c)2vii above; and
 - ix. Include a recording of the entire duration of the call, from the first contact with the customer to the disconnection of the call. This requirement may be waived with the customer's consent;

3. A signature in ink on a paper form, showing that the customer voluntarily authorized the switch. This form shall:
 - i. Identify the customer;
 - ii. Verify that the signatory is the customer of record or is authorized to make the switch;
 - iii. Indicate the date upon which the document was signed;
 - iv. Confirm that the signatory voluntarily wishes to make the TPS switch;
 - v. Identify the name of the TPS to which the customer is switching;
 - vi. Indicate the account number of the LDC and the type of service to be switched; and
 - vii. Include a statement that the customer acknowledges receipt of a copy of the terms and conditions of service;

4. An electronic record of an internet transaction that meets the requirements at N.J.A.C. 14:4-2.4; or

5. An audio recording of a telephone call initiated by the customer.

(d) If a customer is switching both electric power supply and gas supply service, the new TPS shall submit a separate change order for each service, even if the same TPS is chosen to provide both electric service and natural gas service.

(e) A TPS that switches a customer without complying with this subchapter shall be subject to enforcement in accordance with N.J.A.C. 14:4-2.8.

(f) (Reserved)

(g) All change orders shall contain the following customer information transmitted in accordance with the Board's approved EDI protocol. The change order shall not provide any additional customer information, as defined at N.J.A.C. 14:4-1.2, without the customer's express consent:

1. Name;
2. Address at which utility service is delivered;
3. Telephone number;
4. Customer account number as shown on LDC bills; and
5. Meter number, if a TPS or LDC requires this to complete enrollment.

Amended by R.2012 d.091, effective May 7, 2012.
See: 43 N.J.R. 1150(a), 44 N.J.R. 1534(a).

In (b)1, updated the website address; rewrote the introductory paragraph of (c)2 and (c)2i; in (c)2ii, substituted "switch" for "change"; in (c)2iv, substituted "switch" for "TPS change"; in (c)2v, substituted "to which the customer is switching;" for "; and"; in (c)2vi, inserted "customer's LDC" and deleted "of the LDC" following "number"; added (c)2vii through (c)2ix; rewrote (c)3ii by incorporating former (c)iii; recodified former (c)3iv through (c)3vii as (c)3iii through (c)3vi; in (c)3iv, substituted "switch" for "change"; in (c)3vi, substituted "to which the customer is switching;" for "; and"; in (c)3vi, inserted "and" at the end; added new (c)3vii; in (e), updated the N.J.A.C. reference; deleted and reserved (f); and rewrote (g)4.

14:4-2.4 Signing up or switching customers electronically

(a) A TPS that uses electronic methods to sign up customers, renew customers' contracts for service, and/or obtain authorization to switch a customer, shall comply with this section.

(b) If a TPS uses electronic methods to sign up, renew, or switch customers, the TPS shall comply with the Uniform Electronic Transaction Act, N.J.S.A. 12A:12-1 through 26.

(c) A TPS that uses electronic signup, renewal or switching shall maintain a website that includes, at a minimum, the following:

1. A statement that the customer, by using electronic signup, renewal, or switching, is consenting to the terms and conditions listed on the website in electronic form;

2. A separate statement as to software requirements for a customer to access and retain electronic records of the transactions made on the website; and

3. A mechanism to obtain the customer's acknowledgment of the customer's affirmative obligation to provide the TPS with any change in e-mail address, and/or with any withdrawal of consent for the electronic retention of contracts or other customer information.

(d) The website through which a customer may sign up for, renew service with or switch TPSs shall require the customer to pass through separate web pages that provide and collect, at a minimum, all of the following:

1. Customer information including, at a minimum, the customer's first and last name, service address, e-mail address, utility account number and, where required by a utility to complete enrollment, meter number;

2. The full terms and conditions of the contract;

3. A requirement that the customer assent to a statement indicating that:

i. The customer is the customer of record or has the authority to sign up, renew and/or change the TPS for the account listed;

ii. The customer has read, understands and agrees to the terms and conditions of the contract; and

iii. The customer is voluntarily authorizing a new enrollment, a renewal, or a switch in its TPS;

4. A prompt to the customer to print or save the terms and conditions to which the customer assents; and

5. An electronic method and/or an e-mail address for the customer to submit a request to cancel the contract, consistent with the terms of the contract.

(e) A switch requested by a customer through the internet is subject to the LDC notice requirements at N.J.A.C. 14:4-2.6, as well as all other applicable provisions of this subchapter.

(f) The receiving TPS shall send the customer a separate electronic message, acknowledging receipt of the enrollment, renewal or change.

(g) Each TPS shall ensure that all information that is transferred electronically between a customer and the TPS is encrypted, using an encryption standard that will ensure the privacy and security of all customer information.

(h) The TPS shall ensure that any electronic contract containing a TPS's terms and conditions shall be identified by a version number in order to ensure that the TPS, Board staff and the customer can verify the particular contract to which the customer assents.

(i) Upon request by the customer, the TPS shall make available to the customer a copy of the terms and conditions of the contract version number that the customer has signed. The TPS shall provide to the customer a toll-free telephone number, Internet means or an e-mail address for the customer to request this information throughout the duration of the contract.

(j) A contract shall be terminated only in accordance with the termination provisions in the Board's consumer protection rules at N.J.A.C. 14:4-7.10. If a contract for a customer enrolled or renewed via the Internet is terminated, the TPS shall provide a cancellation number to the customer.

Amended by R.2012 d.091, effective May 7, 2012.

See: 43 N.J.R. 1150(a), 44 N.J.R. 1534(a).

Rewrote (b), (d)3i, (e) and (f); in the introductory paragraph of (c), deleted a comma following "renewal"; in (c)2, deleted "the hardware and" preceding "software"; in the introductory paragraph of (d), deleted a comma following "with"; in (d)1, inserted "the customer's first and last"; in (d)2, deleted ". The customer shall be required to affirmatively indicate that the customer has read the terms and conditions" from the end; deleted former (d)4; recodified former (d)5 and (d)6 as (d)4 and (d)5; in (h), inserted ", Board staff and the customer"; in (i), deleted ", including the environmental disclosure label," following "conditions" and deleted a comma following "means"; and in (j), deleted "and to the LDC" at the end.

14:4-2.5 Recordkeeping

(a) All change orders and records of customer authorization of switches shall be retained by the TPS for a minimum of three years, except pursuant to (c) below, and shall be made available to Board staff upon request.

(b) The TPS shall maintain a record of the following:

1. The date and time of the customer's acceptance of service; and
2. The terms and conditions of service that the customer accepted, in the same form as the terms of service were presented to the customer.

(c) Notwithstanding (a) above, recordings of the marketing portion of calls may be disposed of six months after the call was recorded and need not be retained for three years.

Amended by R.2012 d.091, effective May 7, 2012.

See: 43 N.J.R. 1150(a), 44 N.J.R. 1534(a).

Rewrote (a) and (c); in the introductory paragraph of (b), deleted "all of" following "record of"; in (b)1, inserted "and" at the end; in (b)2, substituted a period for "; and" at the end; and deleted (b)3.

14:4-2.6 LDC notice to customer of a change order

(a) When an LDC receives a change order from a TPS to switch a customer's energy supplier, the LDC shall notify the subject customer of the change order.

(b) The notice required in (a) above shall be sent in writing, within one business day after the LDC receives or prepares the change order. The Board may modify this time frame for a particular LDC, in special cases and for good cause shown, by Board order.

(c) If an LDC receives a complaint from a customer about a pending or processed change order, the LDC shall immediately inform the customer that they may contact the TPS for dispute resolution, or Board staff to file a customer complaint. Upon receiving the complaint, Board staff will conduct an investigation.

(d) The LDC shall execute all TPS change orders that comply with this subchapter as soon as possible and without unreasonable delay.

14:4-2.7 Slamming complaints and investigation

(a) A customer that believes it has been the victim of slamming may contact the TPS to resolve the problem, and/or may contact the Board and file a written complaint.

(b) If a customer contacts the Board with an allegation that the customer has been slammed, the portion of the customer's bill that relates to the TPS's services shall be considered in dispute starting upon the date of the switch that is the subject of the slamming complaint. The TPS shall be subject to the same procedures and requirements that apply to a utility involved in a billing dispute, as set forth at N.J.A.C. 14:3-7.6.

(c) The Board may investigate an allegation of slamming or any other violation of this subchapter upon its own initiative or upon a complaint.

(d) (Reserved)

(e) If the Board finds that a customer has been slammed, the customer shall not be liable to its authorized TPS or its LDC for any charges in excess of those the customer would have been liable for had the slamming not occurred.

(f) If a customer disputes a switch, either before or after the LDC effectuates the switch, the TPS shall produce all documentation required under N.J.A.C. 14:4-2.3(c) and/or (g) and/or 2.4, within 10 business days after a request by the customer or the Board.

Amended by R.2012 d.091, effective May 7, 2012.

See: 43 N.J.R. 1150(a), 44 N.J.R. 1534(a).

Deleted and reserved (d); and rewrote (f).

14:4-2.8 Enforcement

(a) For the purposes of this subchapter, the act of any person, as defined at N.J.A.C. 14:4-1.2, acting on behalf of a TPS, shall be deemed to be the act of the TPS; and the act of any person acting on behalf of an LDC shall be deemed to be the act of the LDC.

(b) Any person determined by the Board, after notice and hearing, to have violated any provision of this subchapter shall be subject to one or more of the following:

1. Suspension or revocation of the TPS's authority to conduct business in New Jersey;
2. Financial penalties as permitted by law; and

3. Any and all other remedies authorized by law.

(c) In considering violations of EDECA or this subchapter, the Board may consider every day of each violation against each customer as a separate offense.

(d) A TPS that collects charges from a customer as a result of a violation of this subchapter shall be liable to the customer's authorized TPS or LDC for all charges paid by the customer as a result of the violation, in addition to any penalties or other remedies authorized under this subchapter or other laws.

(e) In addition to any other penalties, a TPS that violates this subchapter may also be liable, upon Board order, for direct costs incurred by the authorized TPS and/or the LDC as a result of the violation.

SUBCHAPTER 3. AFFILIATE RELATIONS

14:4-3.1 Scope

(a) This subchapter shall apply as follows:

1. N.J.A.C. 14:4-3.3 through 3.5 set forth standards of conduct applicable to transactions, between an electric public utility or gas public utility, including a related competitive business segment of an electric or gas public utility, and a related competitive business segment of the electric or gas public utility holding company providing or offering competitive services to retail customers in New Jersey or the public utility holding company itself providing or offering competitive services to retail customers in New Jersey;

2. N.J.A.C. 14:4-3.6 sets forth standards of conduct applicable to electric and/or gas public utilities and the related competitive business segments of each electric public utility and gas public utility, as well as the transactions, interactions and relations between an electric and/or gas public utility and a related competitive business segment of an electric and/or gas public utility; and

3. N.J.A.C. 14:4-3.7 through 3.9 address regulatory oversight, dispute resolution and violations and penalties applicable to electric and/or gas public utilities regarding affiliate relations, fair competition, accounting standards and related reporting requirements.

(b) A New Jersey electric and/or gas public utility, which is also a multi-state electric and/or gas public utility and subject to the jurisdiction of other state or Federal regulatory commissions, may file an application, requesting a limited exemption from this subchapter or part(s) thereof, for transactions between the electric and/or gas public utility and its affiliate(s) solely in its role of serving its jurisdictional areas wholly outside of New Jersey. To obtain such an exception, the applicant shall meet the requirements of N.J.A.C. 14:1-1.2(b).

Amended by R.2012 d.091, effective May 7, 2012.

See: 43 N.J.R. 1150(a), 44 N.J.R. 1534(a).

In (b), inserted the third occurrence of "gas".

14:4-3.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1 and in N.J.A.C. 14:4-1.2.

"Affiliate" means a "related competitive business segment of an electric public utility or a related competitive business segment of a gas public utility" or a "related competitive business segment of a public utility holding company" as defined in this section and in the Act.

"Affiliated" means related to an electric or gas public utility as an affiliate thereof.

"Category" means a group of products and/or services that use the same type of electric and/or gas public utility assets or capacity. For example, "leases of land under utility transmission lines" or "use of a utility repair shop for third party equipment repair" would each constitute a separate product and/or service category.

"Competitive service" means any services, goods, or products offered by an electric public utility or a gas public utility that the Board has already determined or that the Board shall in the future determine to be competitive pursuant to section 8 or section 10 of the Act or that is not regulated by the Board.

"Cross-subsidization" means the offering of a competitive product and/or service by an electric and/or gas public utility, or the offering of a product and/or service by an affiliate, which relies in whole or in part on the utilization of utility employees, equipment or other assets, and for which full compensation (via cost allocations or direct payment), as determined by the Board, has not been provided for the use of such electric and/or gas public utility assets, resulting in the inappropriate transfer of benefits from the utility ratepayers to the competitive product and/or service or affiliate.

"Dth" means decatherms or ten therms.

"EBB" means an electric and/or gas public utility's electronic bulletin board.

"Existing products and/or services" means those products and/or services, which an electric and/or gas public utility was offering prior to January 1, 1993, that have been approved by the Board prior to February 9, 1999, or an electric and/or gas public utility is offering on May 19, 2008.

"Fully allocated cost" means an allocation of the direct, indirect and other economic costs of all equipment, vehicles, labor, related fringe benefits and overheads, real estate, furniture, fixtures and other personality and administration

utilized, and other assets utilized and costs incurred, directly or indirectly in providing competitive services.

“Functional separation” means the formation of a separate business unit by an electric or gas public utility for purposes of offering competitive services permitted by N.J.S.A. 48:3-55(f) or 58(b), which separate business unit shall be a related competitive business segment of an electric public utility or gas public utility as defined in this section and in the Act.

“Individual proprietary information” means a customer’s name, address, telephone number, energy usage and payment history and such other information as the Board, by order, may determine.

“Joint purchases” means purchases made by a parent or holding company or affiliate thereof for use by one or more affiliates, the fully allocated costs of which are allocated to be paid proportionally by the affiliates, based upon utilization.

“Joint purchases allowed” means purchases not associated with merchant functions, examples of which would be joint purchases of office supplies and telephone services.

“Joint purchases not allowed” means purchases associated with merchant functions, examples of which would be gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, systems operations, and marketing.

“Merchant functions” means the marketing and/or the provision of electric generation service and/or gas supply service to wholesale or retail customers, as opposed to the marketing and/or provision of transmission and distribution services, by an electric and/or gas public utility.

“Public posting” means a posting on an electric and/or gas public utility’s EBB, website or other industry recognized and publicly accessible electronic or print medium.

“Public utility holding company” or “PUHC” means:

1. Any company that, directly or indirectly, owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of an electric public utility or a gas public utility or of a company that is a public utility holding company by virtue of this definition, unless the Federal Energy Regulatory Commission (FERC), or its successor, by order, declares such company not to be a public utility holding company under Title XII, Subtitle F of the Energy Policy Act of 2005 (known as the Public Utility Holding Company Act of 2005), Pub. L. No. 109-58, §§1261-77, 42 U.S.C. §§15801 et seq. (2005), or its successor; or
2. Any person that the FERC, or its successor, determines, after notice and opportunity for hearing, directly or indirectly, to exercise, either alone or pursuant to an arrangement or understanding with one or more other persons, such a controlling influence over the management

or policies of an electric public utility or a gas public utility or public utility holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in the Public Utility Holding Company Act of 2005 or its successor.

“Related competitive business segment of an electric public utility or gas public utility” means any business venture of an electric public utility or gas public utility including, but not limited to, functionally separate business units, joint ventures, and partnerships, that offers to provide or provides competitive services.

“Related competitive business segment of a public utility holding company” means any business venture of a public utility holding company, including, but not limited to, functionally separate business units, joint ventures, and partnerships and subsidiaries, that offers to provide or provides competitive services, but does not include any related competitive business segments of an electric public utility or gas public utility.

“Services that may not be shared” means those services that involve merchant functions, including, by way of example: hedging and financial derivatives and arbitrage services, gas and/or electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.

“Shared services” means administrative and support services that do not involve merchant functions, including by way of example: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.

“Short term” means a transaction of 31 days or less.

“Structural separation” means the formation of a related competitive business segment of a public utility holding company.

14:4-3.3 Nondiscrimination

(a) An electric and/or gas public utility shall not unreasonably discriminate against any competitor in favor of its affiliate(s) or related competitive business segment.

(b) An electric or gas public utility shall not represent that, as a result of the relationship with the electric and/or gas public utility or for any other reason, a related competitive business segment of its public utility holding company, or customers of a related competitive business segment of its public utility holding company will receive any different treatment by the electric and/or gas public utility than the treatment the electric and/or gas public utility provides to other, unaffiliated companies or their customers.

(c) An electric or gas public utility shall not provide a related competitive business segment of its public utility holding company, or customers of a related competitive business segment of its public utility holding company, any preference (including, but not limited to, terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of products and/or services offered by the electric and/or gas public utility.

(d) Transactions between an electric and/or gas public utility and a related competitive business segment of its public utility holding company shall be prohibited, except for the following:

1. Tariffed products and services;

2. The sale or purchase of goods, property, products or services made generally available by the electric and/or gas public utility, by the PUHC or a related competitive business segment of its public utility holding company to all market participants through an open, competitive bidding process; or

3. As provided for in N.J.A.C. 14:4-3.5(g) and (h), in (i) and (j) or 3.6(a) through (f), provided the transactions specified in N.J.A.C. 14:4-3.6 comply with all other applicable rules.

(e) An electric and/or gas public utility shall provide access to utility information, services, and unused capacity or supply on a non-discriminatory basis to all market participants, including affiliated and non-affiliated companies, except as provided for in N.J.A.C. 14:4-3.4, 3.5 and 3.6, provided the transactions specified in N.J.A.C. 14:4-3.6, Competitive utility products and/or services, comply with all other applicable rules.

1. If an electric and/or gas public utility provides supply, capacity, services, or information to a related competitive business segment of its public utility holding company, it shall make the offering available, via a public posting, on a non-discriminatory basis to non-affiliated market participants, which include competitors serving the same market as the related competitive business segment of the electric and/or gas public utility's holding company.

(f) An electric and/or gas public utility selling or making an offer to sell surplus energy, kWh and/or Dth, respectively, and/or capacity, kW or therms, respectively, on a short-term basis to its PUHC or a related competitive business segment of its public utility holding company, shall make the offering available on a non-discriminatory basis to non-affiliated electric or gas marketers, via a public posting.

(g) An electric and/or gas public utility making an offer to sell surplus energy, kWh and/or Dth, respectively, and/or capacity, kW or therms, respectively, on a long-term basis to the PUHC or a related competitive business segment of its public utility holding company, shall make the offering

available on a non-discriminatory basis to non-affiliated electric or gas marketers, via a public posting.

(h) Except when made generally available by an electric and/or gas public utility through an open, competitive bidding process, an electric and/or gas public utility shall not offer a discount or waive all or any part of any other charge or fee to a related competitive business segment of its public utility holding company, PUHC, or offer a discount or waiver for a transaction in which a related competitive business segment of its public utility holding company is involved unless the electric and/or gas public utility shall make such discount or waiver available on a non-discriminatory basis to other market participants.

1. An electric and/or gas public utility shall not give its PUHC or a related competitive business segment of its public utility holding company involved in energy supply or marketing a preference with respect to tariff provisions that provide for discretionary waivers of fees, penalties, etc., unless offered to all others on a non-discriminatory basis.

(i) An electric and/or gas public utility shall document the cost differential underlying the discount to its PUHC or a related competitive business segment of its public utility holding company in the Affiliate Discount Report described in (q) through (s) below.

(j) An electric and/or gas public utility shall apply tariff provision(s) on a non-discriminatory basis to its PUHC or related competitive business segments of its public utility holding company and to other market participants and their respective customers if the tariff provision allows for discretion in its application.

(k) An electric and/or gas public utility shall strictly enforce a tariff provision if the tariff provision does not allow discretion in its application.

(l) An electric and/or gas public utility shall process all requests for similar services provided by the electric and/or gas public utility on a non-discriminatory basis for its PUHC or a related competitive business segment of its public utility holding company and for all other market participants and their respective customers.

(m) An electric and/or gas public utility shall not condition or otherwise tie the provision of any products and/or services provided by the electric and/or gas public utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any products and/or services provided by the electric and/or gas public utility to the taking of any products and/or services from its PUHC or a related competitive business segment of its public utility holding company.

(n) An electric and/or gas public utility shall not assign customers to which it currently provides products and/or services to any related competitive business segments of its

public utility holding company, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors on a non-discriminatory basis.

(o) Except as otherwise provided by this subchapter, an electric and/or gas public utility shall not provide any assistance, aid or services to its PUHC or related competitive segment of the PUHC if related to customer enrollment, marketing or business development unless offered to all competitors on a nondiscriminatory basis. By way of example, but not limited to, an electric or gas public utility shall not:

1. Provide leads to its PUHC or a related competitive business segment of its public utility holding company;
2. Solicit business on behalf of its PUHC or a related competitive business segment of its public utility holding company;
3. Acquire information on behalf of or to provide to its PUHC or a related competitive business segment of its public utility holding company;
4. Share market analysis reports or any other type(s) of proprietary or non-publicly available reports, including, but not limited to, market, forecast, planning or strategic reports, with its PUHC or a related competitive business segment of its public utility holding company;
5. Share customer usage or end use equipment information, obtained during the course of providing electric and/or gas public utility services, with its PUHC or a related competitive business segment of its public utility holding company;
6. Request authorization from its customers to pass on customer information exclusively to its PUHC or a related competitive business segment of its public utility holding company;
7. Represent or imply that the electric and/or gas public utility speaks on behalf of its PUHC or a related competitive business segment of its public utility holding company or that the customer will receive preferential treatment as a consequence of conducting business with the related competitive business segment of its public utility holding company; or
8. Represent or imply that its PUHC or a related competitive business segment of its public utility holding company speaks on behalf of the electric and/or gas public utility.

(p) Provided it is in compliance with this subchapter, and subject to the provisions of N.J.A.C. 14:4-3.4(g), an electric and/or gas public utility may offer or provide customers advice or assistance with regard to a related competitive business segment of its public utility holding company and/or other product and/or service providers upon the unsolicited request of the customer, so long as such advice or assistance

is provided with regard to other competitors on a non-discriminatory basis.

(q) If a discount, rebate, or other waiver of any charge, penalty, or fee associated with products and/or services provided by an electric and/or gas public utility is offered to its PUHC or a related competitive business segment of its public utility holding company, the electric and/or gas public utility shall provide the following information within 24 hours of the time of the transaction, via a public posting:

1. The name of its PUHC or related competitive business segment of its public utility holding company involved in the transaction;
2. The rate charged;
3. The maximum rate;
4. The time period for which the discount, rebate, or waiver applies;
5. The quantities involved in the transaction;
6. The delivery points involved in the transaction;
7. Any conditions or requirements applicable to the discount, rebate or waiver, and a documentation of the cost differential underlying the discount as required in (f) or (g) above; and
8. Procedures by which a non-affiliated entity may request a comparable offer.

(r) An electric and/or gas public utility that provides its PUHC or a related competitive business segment of its public utility holding company a discounted rate, rebate, or other waiver of a charge, penalty or fee associated with services offered by the electric and/or gas public utility shall maintain, in compliance with N.J.A.C. 14:5-5.2, or longer if required by another government agency, for each billing period, the following information:

1. The name of its PUHC or a related competitive business segment of its public utility holding company being offered products and/or services provided by the electric and/or gas public utility in the transaction;
2. The related competitive business segment's role in the transaction, that is shipper, marketer, supplier, seller, etc.;
3. The duration of the discount or waiver;
4. The maximum rate;
5. The rate or fee actually charged during the billing period;
6. The quantity of products and/or services scheduled at the discounted rate during the billing period for each delivery point; and

7. Facts demonstrating that the discounted rate, rebate, or other waiver of a charge, penalty or fee was offered to non-affiliated entities on a non-discriminatory basis.

(s) All records maintained pursuant to (q) and (r) above shall also conform to FERC rules, where applicable.

14:4-3.4 Information disclosure

(a) An electric and/or gas public utility may provide individual proprietary information to its PUHC or a related competitive business segment of its public utility holding company, and only with prior affirmative customer written consent, or as otherwise authorized by the Board and only if it is provided to unaffiliated entities on a non-discriminatory basis.

(b) An electric and/or gas public utility shall make available non-customer specific non-public information acquired as a result of operating the public utility's distribution system, including information about an electric and/or gas public utility's natural gas or electricity purchases, sales, or operations or about an electric and/or gas public utility's gas-related goods or services, electricity-related goods or services, to a related competitive business segment of its public utility holding company only if the electric and/or gas public utility makes such information available, via a public posting, to all other service providers on a nondiscriminatory basis, and keeps the information open to public inspection.

1. An electric or gas public utility is permitted to exchange proprietary information on an exclusive basis with its PUHC or a related competitive business segment of its public utility holding company, provided it is necessary to exchange this information in the provision of the corporate support services permitted by N.J.A.C. 14:4-3.5(i) and (j).

2. The PUHC's or related competitive business segment's use of such proprietary information is limited to its use in conjunction with the permitted corporate support services, and is not permitted for any other use.

(c) When an electric and/or gas public utility makes available a list of electric generation and/or gas service suppliers (suppliers), the list shall only contain those suppliers who are duly licensed by the Board and comply with the electric and/or gas public utility's Board-approved tariff to operate on its distribution system. The suppliers list shall be maintained in alphabetical order, and not highlight or otherwise promote any particular supplier.

(d) An electric and/or gas public utility may provide non-public information and data that have been received from unaffiliated suppliers to its PUHC or a related competitive business segment of its public utility holding company or other non-affiliated entities only if the electric and/or gas public utility first obtains written affirmative authorization to do so from the unaffiliated supplier.

(e) An electric and/or gas public utility shall not solicit the release of such information exclusively to its PUHC or a related competitive business segment of its public utility holding company in an effort to keep such information from other unaffiliated entities.

(f) Except upon request by a customer, or as authorized in (c) above or otherwise by the Board, an electric and/or gas public utility shall not provide its customers with any list of product and/or service providers, that highlights or otherwise identifies its PUHC or a related competitive business segment of its public utility holding company, regardless of whether such list also includes the names of unaffiliated entities.

(g) If a customer requests information about any affiliated product and/or service provider, the electric and/or gas public utility may acknowledge that such affiliated product and/or service provider exists, but shall provide no additional information unless it provides a list of all providers of gas-related, electricity-related, or other utility-related products and/or services in business in its service territory, including the related competitive business segment of its public utility holding company.

1. Any such list shall include all suppliers licensed by the Board.

2. Where maintaining such list would be unduly burdensome due to the number of service providers, the electric and/or gas public utility shall not provide a list and may direct the customer to a generally available listing of service providers, for example, the Board, the telephone directory or Internet.

(h) An electric and/or gas public utility shall maintain complete and accurate records, documenting all tariffed and non-tariffed transactions with its PUHC and a related competitive business segment of its public utility holding company, including, but not limited to, all waivers of tariff or contract provisions.

(i) An electric and/or gas public utility shall maintain such records in compliance with the time frame required by N.J.A.C. 14:5-5.2 or longer if another government agency so requires.

(j) The electric and/or gas public utility shall make such records available for Board and/or Rate Counsel review upon 72 hours notice, or at a time mutually agreeable to the electric and/or gas public utility and the Board and/or Rate Counsel.

(k) An electric and/or gas public utility shall maintain a record of all contracts and related bids for the provision of work, products and/or services to and from the electric and/or gas public utility to and from the PUHC or related competitive business segments of its public utility holding company in compliance with N.J.A.C. 14:5-5.2 or longer if another government agency so requires.

14:4-3.5 Separation

(a) An electric and/or gas public utility, its PUHC and related competitive business segments of its public utility holding company shall be separate corporate entities.

(b) An electric and/or gas public utility and related competitive business segments of its public utility holding company shall keep separate books and records.

(c) Electric and/or gas public utilities' books and records shall be kept in accordance with applicable Uniform System of Accounts (USOA), 18 CFR Part 101, as amended and supplemented, which is incorporated by reference herein.

(d) The books and records of its PUHC or a related competitive business segment of an electric and/or gas public utility's holding company engaged in transactions, interactions and relations with the electric or gas public utility shall be open for examination by the Board.

(e) An electric and/or gas public utility shall not share office space, office equipment, services, and systems with a related competitive business segment of its public utility holding company, except to the extent appropriate to perform shared corporate support functions as follows:

1. An electric and/or gas public utility may access the computer or information systems of a competitive related business segment of its PUHC or allow a related competitive business segment of its PUHC to access its computer or information systems, for purposes of the sharing of computer hardware and software systems and may share office space, office equipment, services and systems, provided adequate system protections are in place to prevent the accessing of information or data between the utility and its affiliate(s), which would be in violation of this subchapter.

- i. Prevention of unauthorized access to computer and information systems shall be specifically addressed as part of an electric and/or gas public utility's compliance plan submitted pursuant to N.J.A.C. 14:4-3.7(b).

(f) Subsection (e) above does not preclude an electric and/or gas public utility from offering a joint product and/or service, provided such joint product and/or service is authorized by the Board and is available to all non-affiliated product and/or service providers on the same terms and conditions, for example, joint billing services.

(g) An electric and/or gas public utility and its PUHC or related competitive business segments of its public utility holding company may make joint purchases of products and/or services, but not those associated with merchant functions.

(h) The electric and/or gas public utility shall insure that all such joint purchases are priced, reported, and conducted in a manner that permits clear identification of the electric and/or gas public utility's portion and its PUHC or the related

competitive business segment's portions of such purchases, and that direct costs of the joint purchase(s) as well as the indirect purchasing costs are apportioned between the electric and/or gas public utility and the related competitive business segment of the public utility holding company in direct proportion to the relative amounts of the purchased product(s) and/or service(s) received and/or utilized, respectively, and in accordance with this subchapter and other applicable Board allocation and reporting rules.

(i) An electric and/or gas public utility, its public utility holding company and related competitive business segments, or separate business segments of the public utility holding company created solely to perform corporate support services may share joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with N.J.A.C. 14:4-3.4 and this section, as well as other applicable Board pricing and reporting rules.

(j) Such joint utilization shall not allow or provide a means for the transfer of confidential customer or market information from the electric and/or gas public utility to a related competitive business segment of its public utility holding company in violation of this subchapter, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of a related competitive business segment of the public utility holding company. In the compliance plan required pursuant to N.J.A.C. 14:4-3.7(a) through (e), a senior corporate officer from the electric and/or gas public utility and public utility holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the electric and/or gas public utility follows the mandates of this subchapter, and to ensure the electric and/or gas public utility is not utilizing joint corporate support services as a conduit to circumvent this subchapter.

(k) A related competitive business segment of a public utility holding company shall not trade upon, promote, or advertise its relationship with the electric and/or gas public utility, nor use the electric and/or gas public utility's name and/or logo in any circulated material, including, but not limited to, hard copy, correspondence, business cards, faxes, electronic mail, electronic or hardcopy advertising or marketing materials, unless it discloses clearly and conspicuously or in audible language that:

1. The PUHC or related competitive business segment of the public utility holding company "is not the same company as the electric and/or gas public utility";

2. The PUHC or related competitive business segment of the public utility holding company is not regulated by the Board; and

3. "You do not have to buy products in order to continue to receive quality regulated services from the electric and/or gas public utility."

(l) The requirement of the name and/or logo disclaimer set forth in (k) above is limited to the use of the name and/or logo in New Jersey.

(m) An electric and/or gas public utility, through action or words, shall not represent that, as a result of its PUHC or a related competitive business segment of the public utility holding company's relationship with the electric and/or gas public utility, its affiliate(s) will receive any different treatment than other product and/or service providers.

(n) An electric and/or gas public utility shall not offer or provide to its PUHC or a related competitive business segment of its public utility holding company advertising space in the electric and/or gas public utility's billing envelope(s) or any other form of electric and/or gas public utility's written communication to its customers, unless it provides access to all other unaffiliated service providers on the same terms and conditions.

(o) An electric and/or gas public utility shall not participate in joint advertising or joint marketing activities with its PUHC or related competitive business segments of its public utility holding company, which activities include, but are not limited to, joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals) to existing or potential customers.

1. The prohibition in (o) above notwithstanding, at a customer's unsolicited request, an electric and/or gas public utility may participate, on a nondiscriminatory basis, in non-sales meetings with its PUHC or a related competitive business segment of its public utility holding company or any other market participant to discuss technical or operational subjects regarding the electric and/or gas public utility's provision of distribution service to the customer;

2. Except as otherwise provided for by this subchapter, an electric and/or gas public utility shall not participate in any joint business activity(ies) with its PUHC or a related competitive business segment of its public utility holding company, which includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;

3. An electric and/or gas public utility shall not participate jointly with its PUHC or a related competitive business segment of the PUHC in trade shows, conferences, or other information or marketing events held in New Jersey. For the purposes of this paragraph, "joint participation" includes any sharing of costs or facilities associated with the event, such as using the same signage, handouts, transport, advertising, booth or space, or presentation time; and

4. An electric and/or gas public utility shall not subsidize costs, fees, or payments with its PUHC or related competitive business segments of its public utility holding company associated with research and development activities or investment in advanced technology research.

(p) Except as permitted in (i) and (j) above, an electric and/or gas public utility and its PUHC or related competitive business segments of its public utility holding company, that are engaged in offering merchant functions and/or electric related services or gas related services shall not employ the same employees or otherwise retain, with or without compensation, as employees, independent contractors, consultants, or otherwise.

1. Other than shared administration and overheads, employees of the competitive services business unit of the public utility holding company shall not also be involved in the provision of non-competitive utility and safety services, and the competitive services shall be provided utilizing separate assets than those utilized to provide non-competitive utility and safety services.

(q) An electric and/or gas public utility and the PUHC or related competitive business segments of its public utility holding company shall not have the same persons serving on the boards of directors as corporate officers, except for the following circumstances:

1. In instances when this subchapter is applicable to public utility holding companies, any board member or corporate officer may serve on the holding company and with either the electric and/or gas public utility or a related competitive business segment of the public utility holding company, but not both the electric and/or gas public utility and a related competitive business segment of the public utility holding company; and

2. Where the electric and/or gas public utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the related competitive business segments, the prohibition against any board member or corporate officer of the electric and/or gas public utility also serving as a board member or corporate officer of a related competitive business segment shall only apply to related competitive business segments operating within New Jersey.

i. In the case of shared directors and officers, a corporate officer from the electric and/or gas public utility and holding company shall verify, subject to Board approval, in the electric and/or gas public utility's compliance plan required pursuant to N.J.A.C. 14:4-3.7(a) through (d), the adequacy of the specific mechanisms and procedures in place to ensure that the electric and/or gas public utility is not utilizing shared officers and directors in violation of the Act or this subchapter.

(r) All employee transfers between an electric and/or gas public utility and its PUHC or related competitive business segments of its public utility holding company providing or offering competitive services to retail customers in New Jersey that are engaged in offering merchant functions and/or electric related services or gas related services shall be consistent with the following provisions:

1. The electric and/or gas public utility shall make a public posting of all employee transfers within three working days;

2. An electric and/or gas public utility shall track and report annually to the Board all employee transfers between the electric and/or gas public utility and such related competitive business segments of its public utility holding company;

3. Once an employee of an electric and/or gas public utility is transferred to such related competitive business segment of its public utility holding company, said employee may not return to the electric and/or gas public utility for a period of one year, unless the related competitive business segment of the public utility holding company to which the employee is transferred goes out of business or is acquired by a non-affiliated company during the one-year period; and

4. In the event that an employee is returned to the electric and/or gas public utility, such employee cannot be transferred for employment by a related competitive business segment of the public utility holding company that is engaged in offering merchant functions and/or electric-related services or gas-related services for a period of one year.

(s) Employees transferring from an electric and/or gas public utility to a related competitive business segment of the public utility holding company are expressly prohibited from using any information gained from the electric and/or gas public utility to the benefit of the related competitive business segment of the public utility holding company or to the detriment of other unaffiliated product and/or service providers.

1. Any electric and/or gas public utility employee hired by a related competitive business segment of the public utility holding company shall not remove or otherwise provide information to said affiliate, that said related competitive business segment of the public utility holding company would otherwise be precluded from having pursuant to this subchapter.

2. An electric and/or gas public utility shall not make temporary or intermittent assignments, or rotations to related competitive business segments of its public utility holding company.

(t) All transfers of services not prohibited by this subchapter shall be subject to the following provisions:

1. Transfers from the electric and/or gas public utility to a related competitive segment of its public utility holding company of services produced, purchased or developed for sale on the open market by the electric and/or gas public utility will be priced at no less than the fair market value;

2. Transfers from a related competitive business segment of the public utility holding company to the electric

and/or gas public utility of services produced, purchased or developed for sale on the open market by the related competitive business segment of the public utility holding company shall be priced at no more than fair market value;

3. Prices for services regulated by a state or Federal agency shall be deemed to be the fair market value;

4. Services produced, purchased or developed for sale on the open market by the electric and/or gas public utility shall be provided to related competitive business segments of its public utility holding company and unaffiliated company(ies) on a nondiscriminatory basis, except as otherwise required or permitted by this subchapter or other applicable law;

5. Transfers of services not produced, purchased or developed for sale on the open market by the electric and/or gas public utility from the electric and/or gas public utility to related competitive business segments of its public utility holding company shall be priced at fully allocated cost; and

6. Transfers of services not produced, purchased or developed for sale on the open market by a related competitive business segment of the public utility holding company from that related competitive business segment of the public utility holding company to the electric and/or gas public utility shall be priced at the lower of fully allocated cost or fair market value.

(u) All transfers, leases, rentals, licenses, easements or other encumbrances of utility assets to a PUHC or related competitive business segments of a PUHC not prohibited by this subchapter shall be subject to the following pricing provisions, consistent with all other applicable Board rules:

1. Transfers, leases, rental, licenses, easements or other encumbrances of utility assets from the electric and/or gas public utility to a related competitive business segment of its public utility holding company shall be recorded at fair market value or book value; and

2. Transfers, leases, rental, licenses, easements or other encumbrances of assets from a related competitive business segment of the public utility holding company to the electric and/or gas public utility shall be recorded at the lesser of book value or fair market value.

Amended by R.2012 d.091, effective May 7, 2012.

See: 43 N.J.R. 1150(a), 44 N.J.R. 1534(a).

In (p)1, substituted "shall be" for "are".

14:4-3.6 Competitive products and/or services offered by a utility or related competitive business segments of a utility

(a) Except as provided for in the Act or this subchapter, an electric and/or gas public utility or a related competitive business segment of an electric and/or gas public utility shall not offer competitive products and/or services without the prior review and approval by the Board of a proposed tariff in

(j) A government aggregator may enter into a contract with more than one TPS for the purchase of electric generation service and/or gas supply service, provided that:

1. Each residential and each non-residential customer shall receive electric or gas service from only one TPS; and
2. Each contract specifies which is the TPS that will serve any customer that does not choose one of the providers in the aggregation program.

(k) A residential customer may opt-out of an aggregation program at any time and switch to another energy supplier, upon 30 days notice to the lead agency and the appropriate LDC.

Amended by R.2012 d.091, effective May 7, 2012.

See: 43 N.J.R. 1150(a), 44 N.J.R. 1534(a).

In (j)2, substituted "TPS that will serve" for "default provider for" and inserted "in the aggregation program"; and added (k).

14:4-6.4 Municipal and/or county energy aggregation programs

(a) A municipality or county may choose to establish and/or participate in a stand-alone energy aggregation program, a multi-government energy aggregation program, or a government-private energy aggregation program.

(b) If one or more members of an energy aggregation program is a municipality or county, the energy aggregation program shall comply with all applicable requirements in the rules of the Department of Community Affairs governing local public and public school cooperative purchasing, set forth at N.J.A.C. 5:34-7.

(c) If a municipality or county chooses to establish or participate in a government-private energy aggregation program, such a program shall be authorized by municipal ordinance or county resolution, as appropriate.

(d) A county shall establish a government-private energy aggregation program only if all of the following conditions are met:

1. One or more municipalities with residential and/or non-residential customers that will be eligible to participate in the program has authorized participation in the county energy aggregation program by ordinance;
2. All residential and non-residential customers included in the program are within the geographic boundaries of a municipality that has approved such participation in the program; and
3. The county energy aggregation program will not provide services in a municipality that are already provided by an existing energy aggregation program in that municipality.

(e) A municipality or county may choose to include appliance repair services in its energy aggregation program. These services may be obtained for government use or, in a

government-private energy aggregation program, for use by residential and/or nonresidential customers. However, appliance repair services shall be provided only to residential and non-residential customers that affirmatively choose to obtain these services through the energy aggregation program. Potential customers shall be advised of the option to obtain these services through the energy aggregation program as follows:

1. For an Option 1 program, the LDC shall explain this service as an option in its written notice to customers, issued pursuant to N.J.A.C. 14:4-6.5; or
2. For an Option 2 program, the municipality or county shall explain this service as an option in its written notice to customers, issued pursuant to N.J.A.C. 14:4-6.6(b).

(f) The lead agency of a government-private energy aggregation program shall be a municipality or county. If the lead agency in an energy aggregation program is not a municipality or county, the program shall not include any municipality or county that operates a government-private energy aggregation program.

(g) There are two types of government-private energy aggregation programs, as follows:

1. An Option 1 government-private energy aggregation program. An Option 1 program has the following characteristics:
 - i. The program automatically includes all residential customers in each participating municipality unless:
 - (1) The residential customer has contracted for service with a TPS prior to establishment of the program; or
 - (2) The residential customer opts-out, as defined at N.J.A.C. 14:4-6.2, of the program;
 - ii. The program may, at each participating municipality's discretion, include non-residential customers, as defined at N.J.A.C. 14:4-6.2, if the non-residential customers are located within the geographic boundaries of the participating municipality and opt-in, as defined at N.J.A.C. 14:4-6.2, to the program;
 - iii. The LDC is responsible for notifying residential customers of their option to participate in the program or to opt-out, and of notifying non-residential customers of the right to opt-in. This notice shall be provided prior to the advertisement for the receipt of bids for a TPS; and
 - iv. The LDC shall be the option administrator, as defined at N.J.A.C. 14:4-6.2; and
2. An Option 2 government-private energy aggregation program. An Option 2 energy aggregation program has the following characteristics:

- i. The program automatically includes all residential customers in each participating municipality unless:

(1) The residential customer has contracted for service with a TPS prior to establishment of the program; or

(2) The residential customer opts-out of the program;

ii. The program may, at each participating municipality's discretion, include non-residential customers that:

(1) Are located within the geographic boundaries of the participating municipality; and

(2) Opt-in in accordance with N.J.A.C. 14:4-6.6; and

iii. The following duties shall be performed either by the lead agency or by the participating municipalities:

(1) Notifying residential customers of their option to participate in the program or to opt-out. This notice shall be provided after a TPS is selected;

(2) Issuing a public notice to alert non-residential customers of their eligibility to participate in the program by opting-in; and

(3) Acting as the option administrator, as defined at N.J.A.C. 14:4-6.2.

(h) If a municipality or county is a participant in an energy aggregation program and becomes a member of a larger energy aggregation program, it shall comply with the notice requirements in the rules of the Department of Community Affairs governing local public and public school cooperative purchasing, at N.J.A.C. 5:34-7.18 and 7.19.

(i) An option administrator may choose to use the Internet as a means to accept opt-in or opt-out responses from potential participants in an energy aggregation program. Use of the Internet shall be accompanied by the option for potential participants to respond using either a toll-free telephone number or a postage-paid, pre-addressed response card.

Amended by R.2012 d.091, effective May 7, 2012.

See: 43 N.J.R. 1150(a), 44 N.J.R. 1534(a).

Rewrote (i).

14:4-6.5 Establishing an Option 1 government-private energy aggregation program

(a) Each municipality or county that wishes to establish or participate in a government-private Option 1 energy aggregation program shall provide a copy of the ordinance or resolution adopted pursuant to N.J.A.C. 14:4-6.4(c) to each LDC that serves the geographic area governed by the municipality or county.

(b) Each participating municipality in an Option 1 government-private energy aggregation program shall execute an LDC aggregation agreement with each LDC that serves customers in the municipality, using the applicable form agreement, obtainable from Board staff upon request. A

detailed description of the LDC aggregation agreement is set forth at N.J.A.C. 14:4-6.7.

(c) The LDC shall provide written notice of the energy aggregation program to customers in accordance with (d) through (h) below, prior to the advertisement for the receipt of bids under N.J.A.C. 14:4-6.8.

(d) The LDC shall send the notice required under (c) above to all residential electric and gas customers within the geographic boundaries of each participating municipality, except residential customers that already obtain electric generation service or gas supply service from a TPS. If requested by the municipality, the LDC shall also send a notice to all non-residential electric and gas customers located in the municipality.

(e) The LDC shall send the notice required under (c) above no later than 25 calendar-days after both of the following:

1. The LDC aggregation agreement has been signed by all parties to the agreement; and

2. If the LDC aggregation agreement contains any prior conditions that must be met before the notice is sent, all of these prior conditions have been met.

(f) The notice of customers required under (c) above shall include the following:

1. A statement that the participating municipality is establishing or participating in an energy aggregation program;

2. If the notice is to a residential customer, a statement that the residential customer has a right to opt-out of the program, but that if no opt-out response is submitted the customer will be included in the program;

3. If the notice is to a non-residential customer, a statement that the customer has a right to opt-in to the program, but that if no opt-in response is submitted the customer will not be included in the program;

4. If the notice is to a non-residential customer, a statement that by choosing to opt-in to the program, the customer has authorized the participating municipality or lead agency to obtain the non-residential customer's 12-month historical usage information;

5. A requirement that any opt-out or opt-in response be submitted to the option administrator within 30 calendar-days after the postmark on the notice;

6. Directions on how to submit an opt-in or opt-out response; and

7. A telephone number and e-mail address for customer inquiries regarding the energy aggregation program.

(g) The Board shall make available upon request a form for use in notifying customers under (c) above. The form notice shall be used for all government-private energy aggregation programs, except if a program uses special pricing

for renewable energy in accordance with N.J.A.C. 14:4-6.9(g), or includes appliance repair service. For these programs, the lead agency shall submit a draft notice to the Board Secretary for prior approval. The draft notice shall include, at a minimum, all of the information required at (f) above.

(h) If a residential customer does not submit an opt-out response to the LDC within 30 calendar-days after the postmark on the notice required under this section, the customer shall be included in the energy aggregation program.

(i) If a non-residential customer does not submit an opt-in response to the LDC within 30 calendar-days after the postmark on the notice required under this section, the customer shall not be included in the energy aggregation program.

(j) Within 10 calendar-days after the expiration of the 30-day response period for customers to opt-in or opt-out, the LDC shall provide the following information to the person identified in the government aggregator agreement:

1. The number of that LDC's residential customers, by rate class, that:

- i. Are located within the geographic boundary of the participating municipality;

- ii. Are not already being served by a third-party supplier; and

- iii. Did not submit an opt-out response during the 30-day response period;

2. The 12-month historical usage for each non-residential customer located within the geographic boundary of the participating municipality, that has chosen to opt-in to the energy aggregation program. Less than 12 months of data may be supplied if the customer is new to the LDC system or, in the case of electric interval data, if the appropriate metering has been installed less than 12 months previously; and

3. The 12-month historical usage for each government facility that each participating government aggregator has indicated will be included in the energy aggregation program. Less than 12 months of data may be supplied if the customer is new to the LDC system or, in the case of electric interval data, if the appropriate metering has been installed less than 12 months previously.

(k) Within six months after the end of the 30-day response period required under this section, the lead agency shall advertise for the receipt of bids in accordance with N.J.A.C. 14:4-6.8. If the advertisement is not issued within this time, the customer notice and opt-in/opt-out process required under (c) through (f) above shall be repeated. The lead agency may voluntarily choose to provide a copy of draft bidding documents to the Board and/or Rate Counsel, as defined at N.J.A.C. 14:3-1.1, for comments prior to advertising for bids. Any such voluntary submittal shall provide at least 15 cal-

endar days for the Board and/or Rate Counsel to comment on the documents.

(l) Upon completion of the bidding process in accordance with N.J.A.C. 14:4-6.8, the lead agency shall determine whether to award a contract to a TPS in accordance with N.J.A.C. 14:4-6.8, and to which TPS the contract shall be awarded. The lead agency may voluntarily choose to provide a copy of the draft contract to the Board and/or Rate Counsel for comments prior to executing the contract. Any such voluntary submittal shall provide at least 15 calendar days for the Board and/or Rate Counsel to comment on the draft contract.

(m) Upon award of a contract, each affected LDC shall be promptly notified of the identity of the selected TPS(s). This notice shall be provided by the lead agency, unless it is provided by participating municipalities.

(n) The lead agency shall execute a contract with the selected TPS. The contract shall comply with N.J.A.C. 14:4-6.9 and 6.10.

(o) Within 10 calendar days after the postmark on the notice to the LDC required under (m) above, the LDC shall provide to the lead agency or its designee, the name, address and account number of each residential and non-residential customer that will be included in the program, as indicated by the opt-in and opt-out responses that were submitted to the LDC.

(p) The government aggregator shall begin operation of the program promptly upon selection of a TPS.

14:4-6.6 Establishing an Option 2 energy aggregation program

(a) Each municipality or county that wishes to establish or participate in a government-private Option 2 energy aggregation program shall provide a copy of the resolution or ordinance adopted pursuant to N.J.A.C. 14:4-6.4(c) to each LDC that serves the geographic area governed by the municipality or county.

(b) If the program is open to non-residential customers, the lead agency and each participating municipality shall issue a public notice. The notice shall advise nonresidential customers located within the geographic boundaries of the municipality or county that they are eligible to participate in the program if they submit an opt-in response to the option administrator within 30 calendar days after the resolution or ordinance authorizing the program.

(c) Each participating municipality in an Option 2 government-private energy aggregation program shall execute an LDC aggregation agreement with each LDC that serves customers in the municipality, using the applicable form agreement found on the Board's website at <http://nj.gov/bpu/>. A detailed description of the LDC aggregation agreement is set forth at N.J.A.C. 14:4-6.7.

(d) If a non-residential customer does not submit an opt-in response to the option administrator within the 30 calendar-day response period set forth in the public notice required under (b) above, the customer shall not be included in the energy aggregation program.

(e) If the energy aggregation program includes non-residential customers, the option administrator shall provide to the LDC the names and account numbers of the nonresidential customers that submitted opt-in responses during the 30-day response period set forth in the public notice required under (b) above.

(f) Within 10 calendar-days after the date upon which both of the following have occurred, the LDC shall provide the customer information described at (g) below to the lead agency:

1. If the LDC aggregation agreement contains any conditions that must be met prior to the provision of the information required under (g) below, all of these prior conditions have been met; and
2. If the energy aggregation program includes non-residential customers, the option administrator has provided the information required under (e) above.

(g) The LDC shall provide the lead agency with the following information as required under (f) above:

1. The number of residential customers, by rate class, that are located within the geographic boundaries of the participating municipality and are not being served by a third-party supplier;
2. The 12-month historical usage of the non-residential customers that the option administrator has identified as program participants. This information may be provided separately for each customer or as an aggregate amount; and
3. The 12-month historical usage for each government facility that each participating government aggregator has indicated will be included in the energy aggregation program. Less than 12 months of data may be supplied if the customer is new to the LDC system or, in the case of electric interval data, if the appropriate metering has been installed less than 12 months previously.

(h) After receiving the information required under (g) above, the lead agency shall prepare draft bidding documents that meet the requirements at N.J.A.C. 14:4-6.8.

(i) The lead agency shall provide a copy of the draft bidding documents to the Board and to Rate Counsel, as defined at N.J.A.C. 14:3-1.1, for their comment at least 30 calendar days prior to advertising for bids. The Board and Rate Counsel shall have 15 calendar days from receipt of the draft bidding documents to provide comments. The lead agency may accept or reject comments submitted by the Board and Rate Counsel.

(j) The lead agency shall advertise for the receipt of bids, shall determine whether to select a TPS, and shall determine which TPS to select, in accordance with N.J.A.C. 14:4-6.8.

(k) The lead agency shall prepare a draft contract with the selected TPS. The contract shall meet the requirements of N.J.A.C. 14:4-6.9 and 6.10.

(l) The lead agency shall provide a copy of the draft contract to the Board and Rate Counsel for their comment. The Board and Rate Counsel shall have 15 calendar days after receipt of the draft contract to provide comments to the lead agency.

(m) The lead agency may accept or reject comments submitted by the Board and/or Rate Counsel. However, the lead agency shall not execute the contract until the earlier of the following dates:

1. The date upon which the Board and Rate Counsel have both submitted comments on the contract or have both indicated that they will not comment; or
2. Twenty days after the Board and Rate Counsel received the draft contract.

(n) After the requirements for Board and Rate Counsel comments at (l) and (m) above are met, the lead agency may execute a contract with the selected TPS(s) that meets the requirements of N.J.A.C. 14:4-6.9 and 6.10.

(o) After execution of the contract, the lead agency and/or each participating municipality shall provide written notice to all affected LDCs of the identity of the selected TPS(s).

(p) Within 10 business days after the postmark on the notice to the LDC required under (o) above, the LDC shall provide the lead agency with the name, address and account number of each residential customer located in a participating municipality, that is not already being served by a TPS.

(q) After receiving the information required under (p) above from the LDC, the lead agency or each participating municipality shall provide written notice in accordance with (r) and (s) below to all residential electric and/or gas customers within the jurisdiction of a participating municipality, except residential customers that already obtain electric generation service or gas supply service from a TPS.

(r) The notice to residential customers required under (q) above shall include the following:

1. A statement that the participating municipality is establishing an energy aggregation program;
2. A statement that the residential customer has a right to opt-out, as defined at N.J.A.C. 14:4-6.2, of the program; but that if no opt-out is submitted the customer will be included in the program;
3. A specific statement of the cost to customers of participation in the program, and any other information neces-

sary to enable customers to compare the program to other alternatives;

4. A requirement that any opt-out response be submitted to the option administrator within 30 calendar days after the postmark on the notice;

5. Approximate start date for the program, and program duration;

6. Directions on how to submit an opt-out response; and

7. A contact name, phone number, and e-mail address for customer inquiries.

(s) The Board shall post a form notice to customers on its website at <http://nj.gov/bpu/>. This form notice shall be used for all government-private energy aggregation programs, except if a program uses special pricing for renewable energy in accordance with N.J.A.C. 14:4-6.9(g), or includes appliance repair service. For these programs, the lead agency shall submit a draft notice to the Board Secretary for approval. The draft notice shall include, at a minimum, all of the information required at (r) above.

(t) If a residential customer does not submit an opt-out response to the option administrator within 30 calendar-days after the postmark on the notice required under this section, the customer shall be included in the energy aggregation program.

(u) The government aggregator shall begin operation of the program promptly upon completion of the 30-day response period for customer opt-outs.

14:4-6.7 LDC aggregation agreement for government-private energy aggregation programs

(a) After the adoption of an ordinance or resolution authorizing establishment of a government-private energy aggregation program, each participating municipality shall execute an LDC aggregation agreement with each LDC that serves customers in the municipality, using the applicable form agreement found on the Board's website at <http://nj.gov/bpu/>. This agreement governs the working relationship between the participating municipality and the LDC during the establishment and operation of the government-private energy aggregation program.

(b) The LDC aggregation agreement shall require the government aggregator to do the following:

1. Respond to specific inquiries regarding the details of the particular government-private energy aggregation program;

2. In the case of an Option 2 government-private energy aggregation program:

i. Notify residential customers of the program in accordance with N.J.A.C. 14:4-6.6(q) through (s); and

ii. Act as the option administrator, as defined at N.J.A.C. 14:4-6.2;

3. Reimburse the LDC for certain costs, as specified in the form LDC aggregation agreement provided by the Board; and

4. Ensure compliance with all other requirements of this chapter that apply to the government aggregator.

(c) The LDC aggregation agreement shall require the LDC to:

1. Respond to general customer inquiries regarding government energy aggregation programs;

2. In the case of an Option 1 government-private energy aggregation program:

i. Notify residential customers of the program in accordance with N.J.A.C. 14:4-6.5(c) through (f);

ii. Notify non-residential customers, if requested; and

iii. Act as the option administrator;

3. Exercise reasonable care in the disclosure of customer information. However, the LDC shall not be responsible for errors or omissions in the preparation or the content of the customer information;

4. Charge the government aggregator no more than the actual, incremental costs incurred as a result of this subchapter; and

5. Ensure compliance with all other requirements of this chapter that apply to the LDC.

(d) The LDC aggregation agreement shall set forth the methods and procedures to be followed by both parties in performing their obligations under the agreement, including procedures for the transfer and handling of confidential customer information.

14:4-6.8 Advertising for bids, contract award

(a) A lead agency that is establishing an energy aggregation program shall issue an advertisement for the receipt of bids from TPSs interested in supplying services to the program. Such an advertisement for bids shall include bid specifications and shall, at a minimum, meet the requirements of this section and other applicable law.

(b) Bid specifications for a government-private energy aggregation program shall include:

1. An estimate, by rate class, of the number of residential customers, if any, that will participate in the aggregation program;

2. An estimate of the energy needs of the non-residential customers, if any, that will participate in the aggregation program; and

3. A specific listing of all government facilities that will be served under the energy aggregation program, and an estimate of the energy needs of each.

(c) Bid specifications shall not include provisions for “take or pay” contracts, under which an entity commits to pay for a specified level of service, whether or not the specified level is actually used. However, if a government aggregator lists a facility in the bid specifications under (b)3 above, the government aggregator shall continue to obtain services for that facility from the government-private energy aggregation program for the duration of the program contract, and may not obtain that service from another TPS during that time.

(d) The bid specifications shall require that any reimbursement made by the TPS to the government aggregator for expenses shall be made only for costs actually incurred by the government aggregator, in establishing or operating the energy aggregation program, as reflected in invoices or vouchers authorized and paid by the government aggregator. Bid specifications shall not include provisions for the payment by a TPS of concession fees, finders’ fees or other direct monetary benefits to the government aggregator.

(e) If bid specifications include a requirement that a TPS reimburse a government aggregator for expenses incurred in establishing or operating the energy aggregation program, the bid specifications shall include:

1. A description of the items for which reimbursement shall be required;
2. An estimate of the costs; and
3. A maximum amount that may be reimbursed by the TPS.

(f) All expenditures and reimbursements of preliminary costs under this chapter shall be budgeted in accordance with the Local Budget Law, N.J.S.A. 40A:4-1 et seq., and procured pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

(g) The lead agency shall evaluate bids received and shall select a bid based on the following:

1. For a government-private energy aggregation program, the lead agency shall select the most advantageous proposal, price and other factors considered; or
2. For a stand-alone or multi-government energy aggregation program, the lead agency shall select the lowest responsible bidder in accordance with the rules of the Department of Community Affairs governing local public and public school cooperative purchasing, set forth at N.J.A.C. 5:34-7.

(h) If a government-private energy aggregation program will provide appliance repair service, the lead agency shall prepare and issue a separate advertisement for the receipt of bids, which shall comply with all applicable requirements of this chapter.

14:4-6.9 Price requirements for government-private programs

(a) This section governs the rates for services provided to residential and non-residential customers under a government-private energy aggregation program.

(b) A contract providing for electric generation service and/or gas supply service to residential customers shall not set a rate for such service that, at the time of the contract award, exceeds the benchmark price, as determined pursuant to this section, except that the rate for electric generation service may exceed the benchmark price in accordance with (g) below.

(c) The contract may set a fixed price per kilowatt hour, or may include a pricing structure that allows for fluctuations in price during the life of the contract. However, the pricing structure shall not be changed without notice to the customers in accordance with N.J.A.C. 14:4-6.11(a).

(d) The benchmark price for each rate class shall be calculated by each LDC and shall not exceed the applicable amount specified at (e) or (f) below. Each LDC shall post the benchmark price for each rate class on its website and update this information within 24 hours of any change. However, if the data underlying the benchmark price for a rate class changes daily, or more frequently, the LDC may calculate and post a monthly average benchmark price.

(e) The benchmark price for electricity generation service shall be:

1. The cost of basic generation service for the rate class; plus

2. The pro rata value of the cost of compliance with the renewable energy portfolio standards at N.J.A.C. 14:8-2, which value is derived from a non-utility generation contract with an electric public utility that provides for the transfer of certain environmental attributes from the electric public utility to a supplier of basic generation service. This pro rata value shall be calculated using the average class I and class II price as determined by the EDC, multiplied by that reporting year’s total kWh output from each EDC’s committed supply and divided by the fixed price basic generation kWhs sold in the reporting year.

(f) The benchmark price for gas supply service shall be the rate for basic gas supply service.

(g) A contract providing for electric generation service and/or gas supply service to residential customers under a government-private energy aggregation program may set a rate for such service that is higher than the benchmark price only if both of the following criteria are met:

1. The electricity provided contains a percentage of class I and class II renewable energy, as defined at N.J.A.C. 14:8-1.2, that exceeds the applicable percentage

required under the renewable portfolio standards at N.J.A.C. 14:8-2; and

2. The participating municipality notifies all residential customers that will participate in or are eligible to participate in the program that an electricity rate higher than the benchmark price is under consideration. This notice shall be provided through the customer opt-out notice letter required under N.J.A.C. 14:4-6.5(g) and 6.6(s).

(h) The contract price for energy service to non-residential customers under a government-private energy aggregation program shall be determined through the bidding process.

Amended by R.2012 d.091, effective May 7, 2012.

See: 43 N.J.R. 1150(a), 44 N.J.R. 1534(a).

Rewrote (d) and (e)2; and in (e)1, deleted “, as defined at N.J.A.C. 14:4-1.2,” following “service”.

14:4-6.10 Contents of a contract between a government aggregator and the selected TPS

(a) A contract between a government aggregator and a TPS for an energy aggregation program shall meet all requirements in this subchapter and shall include, at a minimum:

1. The specific responsibilities of the government aggregator and the TPS;
2. The charges, rates, and fees for services under the energy aggregation program;
3. If applicable, the method and procedures to be followed by the TPS to enroll and educate customers concerning the energy aggregation program;
4. The terms and conditions that shall govern the relationship between the TPS and each customer, which shall include provisions that:
 - i. Allocate the risks associated with providing services, between the TPS and the customer receiving the services;
 - ii. Allocate risks associated with circumstances or occurrences beyond the control of the parties to the contract;
 - iii. Define default, and establishing remedies in case of default by a party to the contract; and
 - iv. Allocate the responsibility for any penalties that may be imposed by an LDC as a result of over-delivery of electricity or gas, under-delivery of electricity or gas, or non-performance by the TPS;
5. Provisions for the use by the TPS of the government aggregator’s resources, equipment, systems or employees in connection with the contract;
6. The term of the contract;
7. Provisions indemnifying and holding the government aggregator harmless from all liabilities, damages and

costs associated with any contract between a customer and the TPS;

8. A requirement that the TPS provide a performance bond if required by the government aggregator;

9. Procedures to ensure that participation in the aggregation program is consistent with this subchapter;

10. Any provisions necessary to ensure compliance with the Board’s consumer protection rules at N.J.A.C. 14:4-7;

11. If appropriate, provisions requiring the TPS to provide certain communications to customers in a language other than English; and

12. Any other terms and conditions that the government aggregator deems necessary.

SUBCHAPTER 7. RETAIL CHOICE CONSUMER PROTECTION

14:4-7.1 Scope

This subchapter shall apply to all electric power suppliers, and gas suppliers. Except where specifically addressing residential customers, the consumer protections contained in this subchapter shall pertain to all customers.

14:4-7.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. In addition, definitions set forth at N.J.A.C. 14:4-1.2 and 14:3-1.1 shall apply to this subchapter, unless the context clearly indicates otherwise.

“FTC” means the Federal Trade Commission or its successor agency.

“Redlining” means a procedure that involves unreasonable discrimination based upon race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location.

14:4-7.3 Advertising standards

(a) Any advertisements by a TPS that offers customers optional services, as defined at N.J.A.C. 14:4-1.2, whether such advertisement is in electronic, print, radio or television media, or via telemarketing or an internet website, which specifically targets residential customers for electric generation service or gas supply service, shall clearly and conspicuously state whether such optional services are provided at an additional charge that is not reflected in the advertised cost per kWh or per therm, or the advertised percentage savings.

(b) If the costs of the optional services are included in the advertised price per kWh or therm, or the advertised percentage savings, the advertisement shall provide a toll-free num-

ber, local telephone number or website where customers may obtain a detailed breakdown of the price per kWh or price per therm so the customers may view the rates with and without optional services included.

(c) A TPS shall include in its advertisements of a general nature, via electronic, radio and/or television medium, the following:

1. A toll-free or local telephone number that a customer may call or website that a customer may access to request detailed information concerning the average price per kWh for, and environmental characteristics of, electric generation service or average price per therm for gas supply service over the term of a contract for the service being offered, exclusive of any charges for any optional services; and

2. The LDC(s) in whose service territory(ies) the TPS is offering services. If the TPS offers its services throughout New Jersey, the advertisement may state this fact, rather than listing all New Jersey LDCs.

14:4-7.4 Marketing standards

(a) In marketing materials provided by the TPS to residential customers for the purpose of persuading the customer to authorize a switch to the TPS for electric generation service or gas supply service, whether such materials are in hardcopy form, electronically or via internet websites, the following information, and that in either (b)1 or 2 below, shall be provided:

1. A toll-free or local telephone number, which a customer may call or website, which a customer may access to request detailed information concerning the average price per kWh for electric generation service or average price per therm for gas supply service over the term of a contract for the service being offered, exclusive of any charges for any optional services;

2. The period of time over which the advertised price is valid;

3. The term (duration) of the contract for which the advertised price is being offered;

4. The average price per kWh for electric generation service or the average price per therm for gas supply service being charged for basic generation service or basic gas supply service by the LDC over the same period;

5. The TPS's license number;

6. The LDC(s) in whose service territory(ies) the TPS is offering the advertised services. If the TPS offers its services throughout New Jersey, the materials may state this fact, rather than listing all New Jersey LDCs;

7. Other materials or information that may be required to comply with the Environmental Disclosure Standards; and

8. A clear statement indicating whether or not the TPS offers budget billing.

(b) The marketing materials provided by the TPS to residential customers shall also include either of the following:

1. The estimated percentage savings on the total bill which a customer will realize under the advertised price relative to the customer taking basic generation service or basic gas supply service from the LDC; or

2. If a TPS does not offer a fixed price or guaranteed price electric generation service or gas supply service, the TPS shall describe in clear and conspicuous language the mechanism or formula by which the price is determined, and provide a detailed customer bill comparison, which demonstrates for a residential customer for 250 kWh, 500 kWh, 1,000 kWh and 2,000 kWh plus any monthly fixed and/or variable charge(s) for each month of the year, the customer's total electric bill under the proposed contract with the customer's total electric bill at the same electricity usage levels for each month of the year if the customer were to remain on basic generation service; and for 50 therms, 100 therms, 150 therms and 200 therms plus any monthly fixed and/or variable charge(s) for each month of the year, the customer's total gas bill under the proposed contract with the customer's total gas bill at the same gas usage levels for each month of the year if the customer were to remain on basic gas supply service, for the term of the contract being offered, such TPS shall also clearly indicate the period of time for which the savings offer is valid, and the term (duration) of the contract being offered.

(c) If the Board determines, either on its own motion or in response to a petition, that information, other than that required under (a)4 and/or (b) above, would provide customers with a more accurate understanding of the potential savings from obtaining energy through the TPS instead of through BGS or BGSS, the Board may, by Order, require that TPS marketing materials include that information in addition to, or instead of, the information listed in (a)4 and/or (b) above.

(d) The TPS shall comply with all FTC telemarketing rules, including the restriction on telemarketing between the hours of 9:00 P.M. and 8:00 A.M., Eastern Standard Time.

(e) A TPS shall not market to retail customers prior to its receipt from the Board of a supplier license.

(f) The TPS shall clearly state in its solicitations to the customer, and in its marketing materials, whether in hardcopy, electronically or via internet website, that switching to a competitive third-party supplier is not mandatory, and the customer has the option of remaining with the LDC for basic generation service or basic gas supply service.

(g) For optional services being offered by the TPS, the TPS' marketing materials shall clearly and conspicuously identify each separate charge.

(h) The TPS shall not represent that it can terminate any services from the LDC, including, but not limited to, delivery of electricity and/or natural gas.

(i) The TPS shall not make misrepresentations, in its solicitations or its marketing materials or any way, in violation of any standards implemented by the Board pursuant to the Act, of any other consumer protection laws or rules implemented or enforced by the Division of Consumer Affairs, or of the mechanics of the customer enrollment process adopted by the Board.

(j) The TPS shall not commit dishonesty, fraud or deceit.

(k) A TPS shall not make a decision to market to a customer or customer group, or to accept or reject a customer, based upon race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location.

(l) Marketing to specific groups, such as housing associations, developments, senior citizen organizations, church/religious associations, and the like, shall not be considered discriminatory pursuant to this section. However, once a TPS has received applications from specific groups, the decision to accept or reject any customer or group thereof, shall not be based upon race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location.

(m) Marketing to specific LDC service territory(ies) shall not be considered discriminatory pursuant to this section. However, once a TPS has received applications from customers within a specific LDC service territory(ies), the decision to accept or reject any customer or group thereof, shall not be based upon race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location.

14:4-7.5 Credit

(a) A TPS shall employ uniform income, security deposit and credit requirement(s) for purposes of making decisions whether to offer service to a customer within the same customer class.

(b) A TPS shall maintain a written explanation of its income, security deposit and credit requirements, which shall be made available to the Board and the Division of Consumer Affairs within 48 hours after a request by either agency.

(c) A TPS shall apply such income, security deposit and credit requirements in a uniform manner for all customers for the same customer class.

(d) In the event that a TPS requires a security deposit from a customer, such deposit shall be maintained in an interest bearing escrow account, and the customer shall be provided a receipt.

(e) A TPS shall provide to the customer, upon request a written copy of its policy with respect to income, security deposit, and credit requirements.

14:4-7.6 Contracts

(a) A TPS shall not provide electric generation service or gas supply service to a retail customer without the customer's written signature on a contract or such alternative forms of verification identified in N.J.A.C. 14:4-2.3 and as the Board may permit to initiate such service(s), for switching TPSs or for renewal thereof.

(b) A TPS contract shall clearly and conspicuously state that the purpose of the document is to authorize a change in the customer's TPS, and include explicit terms and conditions, which shall include, at a minimum:

1. A clear statement of the duration of the contract;

2. The price per kWh or therm or, if a fixed pricing arrangement is not made, a clear and unambiguous statement of the precise mechanism or formula by which the price will be determined; if the contract contains no particular pricing terms, but rather, expresses the charges for service rendered on a percentage savings basis, the contract language shall clearly and conspicuously state the percentage savings being guaranteed, as well as the price or charges to which the percentage savings is being compared;

3. A complete list of any other fees, including, but not limited to, early termination penalties, due date for payment, late payment fees and the number of days after which a late payment fee may be applied, and interest charges, which will or can be imposed on residential customers, including, but not limited to, the specific conditions under which such penalties and/or fees can be imposed;

4. A statement of the residential customer's rights, which shall provide that the customer will receive a confirmation notice of its choice of supplier and that, at a minimum, the customer will have seven calendar days from the date of the confirmation notice to contact its LDC and rescind its selection. Furthermore, that a contract for electric generation or gas supply service shall not be legally binding upon the residential customer until the seven-day confirmation period has expired, and the customer has not, directly or indirectly, rescinded his or her selection;

5. A statement of the TPS's termination rights, which shall explain the specific conditions under which the TPS may terminate service, and that at a minimum the TPS shall provide the customer with 30 days written notice of the termination and an opportunity to remedy the termination condition. The notice shall state the TPS's rights to terminate the contract, regardless of whether the customer remedies the condition that triggered the termination notice; and

6. No statement that asks any customers to waive any rights they have under New Jersey or Federal Consumer Protection laws.

(c) A TPS contract shall include the TPS' local or toll-free telephone number, the LDC's emergency and toll-free customer service telephone numbers and the Board's Division of Consumer Relations toll-free telephone number.

(d) A TPS contract shall state that the customer should call the LDC in the event that an electric/gas-related emergency, such as a gas leak or power outage, exists.

(e) A TPS contract shall state that, for a residential customer, there is no charge for starting or stopping electric generation service or gas supply service, if done within the terms of the contract. This subsection does not prohibit an early termination fee or other penalty for failure to adhere to a valid TPS contract.

(f) A TPS contract shall explicitly permit a residential customer to terminate the contract, with 48 hours notice without penalty, as a result of a relocation within or outside the LDC's franchise area, disability that renders the customer of record unable to pay for the TPS's service, and/or the customer of record's death.

(g) A TPS contract shall clearly and conspicuously display the TPS' name and license number issued by the Board.

(h) A TPS shall file a sample copy of its residential contract(s) with the Secretary of the Board, with a copy provided to the Division of Consumer Affairs and Rate Counsel, as defined at N.J.A.C. 14:3-1.1; the initial filing of the sample copy of TPS contract(s) shall include a consumer complaint resolution process; a TPS shall file a sample copy of subsequent revisions of its contract(s) with the Secretary of the Board, with a copy provided to the Division of Consumer Affairs and Rate Counsel, within three business days. A TPS may elect to file a request for confidentiality for submitted information under the Board's Open Public Records Act (OPRA) rules at N.J.A.C. 14:1-12.

(i) In no event shall a TPS cease to deliver electric power supply or natural gas supply, subject to the terms and conditions of the contract and the LDC tariff, to the LDC on behalf of a residential customer, upon less than the minimum 30 days notice to the customer, except pursuant to a directive from Board staff pursuant to N.J.A.C. 14:4-5.

(j) Where neither an affirmative written signature nor an electronic signature is obtained for renewal of a residential electric generation service or gas supply service contract, the existing contract shall continue on a month-to-month basis under the current terms and condition and pricing.

(k) The TPS shall provide notice to the customer at least 30 days prior to the end of the electric generation service or gas supply service contract, informing the customer of the date upon which the service contract term ends.

Amended by R.2012 d.091, effective May 7, 2012.

See: 43 N.J.R. 1150(a), 44 N.J.R. 1534(a).

In (b)4, substituted "seven" for "14" twice; in (i), inserted "except pursuant to a directive from Board staff pursuant to N.J.A.C. 14:4-5"; and in (j), inserted "neither" and "nor an electronic signature", and deleted "not" preceding "obtained".

14:4-7.7 Customer bills

(a) All TPS bills shall be in clear and conspicuous language and shall contain sufficient information to enable a customer to accurately calculate the correct bill amount.

(b) All TPS bills shall include, at a minimum, all of the following:

1. The billing period and billing date;
2. The number of kWhs or therms used;
3. The unit price for each kWh or therm;
4. If the number of kWhs or therms is based on estimates or averages, or on information from a remote reading device, the bill shall clearly indicate the basis of the number of kWhs or therms;
5. If the bill includes charges for optional services provided by the TPS, a separate itemization of these charges;
6. The name, address and local and/or toll-free telephone number of each TPS for which billing is provided, and of each billing aggregator acting on behalf of a TPS;
7. The toll-free customer service and emergency telephone numbers of the LDC;
8. The address of the Board and the telephone number of the Board's Division of Customer Assistance: (973) 648-2350 and 1-800-624-0241; and
9. Any other information the Board requires by order after May 19, 2008.

(c) If a TPS does not issue separate bills for its services, the TPS shall provide to the LDC all of the following information for inclusion in the LDC's consolidated bills:

1. For all customers except for commercial and industrial electricity customers, the information required at (b)3 above;
2. For commercial and industrial electricity customers, the customer's current and total charges;
3. If the LDC includes charges for TPS-provided optional services on the LDC's consolidated bills, the itemization described at (b)4 above; and
4. The information required at (b)9 above.

(d) LDC bills shall comply with the Board's rules for all public utility bills at N.J.A.C. 14:3-7.5 and 7.6.

14:4-7.8 Customer information

(a) Customer information shall not be disclosed, sold or transferred to a third party without the affirmative written consent of the customer or alternative Board-approved consent methodology, except pursuant to N.J.A.C. 14:4-2.3, or under certain conditions, for example, a third-party performing services directly for a TPS under a binding confidentiality agreement.

(b) In the case of a transfer or sale of a TPS, customer consent shall not be required to transfer customer information to the subsequent owner of the business in order to maintain continuity of electric generation service or gas supply service.

14:4-7.9 Complaints

(a) A TPS shall use good faith efforts to respond to and resolve all complaints promptly.

(b) If a TPS has been advised that the customer is not satisfied with the TPS's response, the TPS shall advise the customer that the customer can contact the Board, at 1-800-624-0241, to request an alternate dispute resolution procedure or to file a formal complaint.

(c) A TPS shall maintain a record of the complaints received, how resolved, and still pending, for review by the Board upon request, within three days notice.

14:4-7.10 Termination of a residential contract by a TPS

(a) A TPS shall not terminate a residential contract due to non-payment in cases where charges are in dispute, provided undisputed charges are paid and the TPS and customer agree to resolve the disputed charges within 30 days of the time that a customer has notified the TPS that charges are in dispute.

(b) Residential customers may be terminated for non-payment at the time of the next meter reading, but with at least the minimum 30 days' written notice to the residential

customer, which shall include a toll-free or local telephone number of the TPS and the Board, the effective date, the reason for the contractual termination, timetable for the residential customer to choose another TPS before defaulting to basic generation service or gas service, and 15 to 30 days notice to the LDC.

(c) TPS shall not terminate a separate or independent residential contract due to non-payment of a non-residential contract.

(d) A TPS shall not terminate a residential contract for gas supply service or electric generation service for non-payment of another service, including gas supply service, gas related service, electric generation service or electric related service.

(e) If a TPS stops serving one or more customers without following the procedures at N.J.A.C. 14:4-2.3, the TPS shall promptly notify the customers and the customers' service shall be switched to BGS or BGSS, as appropriate.

Amended by R.2012 d.091, effective May 7, 2012.

See: 43 N.J.R. 1150(a), 44 N.J.R. 1534(a).

Added (e).

14:4-7.11 Presentation of New Jersey Sales Tax

Whenever a TPS provides or publishes its rates and charges, or comparable LDC rates and charges, all of these rates and charges shall be presented inclusive of New Jersey Sales and Use Tax. This includes, but is not limited to, the presentation of rates and charges in advertisements, marketing materials, contracts, verbal and telephone solicitations, verifications and customer bills.

New Rule, R.2012 d.091, effective May 7, 2012.

See: 43 N.J.R. 1150(a), 44 N.J.R. 1534(a).

SUBCHAPTERS 8 THROUGH 9. (RESERVED)