

CHAPTER 4

ENERGY COMPETITION

Authority

N.J.S.A. 48:2-1 et seq., in particular 48:2-13; 48:2-16; 48:2-16.1; 48:2-16.2; 48:2-23; 48:2-29.2; 48:2-37; 48:2-51.1; 48:2-78 et seq., 48:3-7; 48:3-9; 48:3-10 and 48:3-48 et seq.

Source and Effective Date

R.2001 d.46, effective January 9, 2001.
See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

Chapter Expiration Date

Chapter 4, Energy Competition, Subchapters 1, 1A and 4A, expire April 18, 2011.

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

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). See, also, Subchapter Historical Notes.

Subchapter 8, Interim Renewable Energy Portfolio Standards, was adopted as R.2001 d.231, effective June 15, 2001. See: 33 N.J.R. 2536(a).

Subchapter 8, Interim Renewable Energy Portfolio Standards, was readopted as R.2003 d.260, effective June 9, 2003. See: 35 N.J.R. 94(a), 35 N.J.R. 2892(a). See, also, section annotations.

Subchapter 5, Affiliate Relations, Fair Competition and Accounting Standards and Related Reporting Requirements, was readopted as R.2002 d.313, effective August 21, 2002. See: 34 N.J.R. 1524(d), 34 N.J.R. 3230(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 by 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 by 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, also section annotations.

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).

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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 a

regulated entity shall be deemed to be the statement, action or failure to act by the regulated entity.

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.

“Act” means the “Electric Discount and Energy Competition Act” (P.L. 1999, c.23).

“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. An electric distribution system generally carries less than 69 kilovolts of electricity.

“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 power supplier may provide basic generation service, as defined herein. However, 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 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 on behalf of those end users. A private aggregator does not take title to the energy involved in the transaction.

“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.

SUBCHAPTER 1A. INTERIM ANTI-SLAMMING STANDARDS

14:4-1A.1 Scope

The following standards are to protect against unauthorized changes 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. These standards also apply to the unauthorized switch of a customer away from basic generation service or basic gas supply service provided by an authorized electric or natural gas utility.

14:4-1A.2 Definitions

The following words and terms, when used in these standards, shall have the following meanings unless the context clearly indicates otherwise.

“Act” refers to the “Electric Discount and Energy Discount and Energy Competition Act,” (P.L. 1999, c.23).

“Board” means the New Jersey Board of Public Utilities or its successor agency.

“Change Order” means a request made by an electric power supplier or a natural gas supplier to an LDC to have the supplier of record of a customer changed.

“Customer” means any person that is an end user and is connected to any part of the transmission and distribution system within an electric public utility’s service territory or a gas public utility’s service territory within this State.

“Electric power supplier” means a person that is duly licensed pursuant to the provisions of the Act to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers, and includes load serving entities, marketers and brokers that offer or provide electric generation service to retail customers. The term excludes an electric public utility that provides electric generation service only as a basic generation service pursuant to section 9 of the act.

“Electric public utility” means a public utility, as that term is defined in R.S. 48:2-13, that transmits and distributes electricity to end users within this State.

“Gas public utility” means a public utility, as that term is defined in R.S. 48:2-13, that distributes gas to end users within this State.

“Gas supplier” means a person that is duly licensed pursuant to the provisions of the act to offer and assume the contractual and legal obligation to or provide gas supply service to retail customers, and includes, but is not limited to, marketers and brokers. A non-public utility affiliate of a public utility holding company may be a gas supplier, but a gas public utility or any subsidiary of a gas utility is not a gas supplier. In the event that 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 adopted by the Board pursuant to subsection k. of section 10 of the Act.

“Local Distribution Company (LDC)” means an electric public utility or a gas public utility.

“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 contractual and legal obligation to provide electric generation service, and may include transmission and other services, to an end-use 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 an end-use customer or customers.

“Slamming” means an unauthorized change in a customer’s electric power supplier or gas supplier.

“Third Party Supplier (TPS)” means an electric power supplier or a gas supplier as those terms are defined herein, or a person acting on behalf of such suppliers.

14:4-1A.3 Change orders for gas or electric service

(a) No TPS shall submit to a LDC, an order requesting a change of a customer’s electric or gas supplier unless the order is in accordance with these rules. The only acceptable change order that an LDC will process is from an Electronic Data Interchange (EDI) transaction, in a Board approved format.

(b) A change order shall be deemed to be unauthorized unless the customer has authorized the change affirmatively and voluntarily and the supplier has obtained the customer’s approval either through a signed contract or such other alternative forms of verification as the Board may permit, pursuant to its consumer protection standards or Board Order.

(c) Each change order submitted to an LDC on behalf of an electric or gas supplier must be subject to verification procedures, in accordance with these rules and Board Orders prior to the change being effectuated by the LDC. A separate verification for an electric power supply and gas supply change order must be undertaken, even if the same company is chosen to provide both electric and natural gas services.

(d) Records of customer authorization changes shall be retained by the TPS for a minimum of three years. In the event that a customer disputes a change order, either before or after a switch is effectuated by the LDC, the TPS shall produce the customer switch authorization within (3) business days of a request by the customer or the Board.

Special amendment, R.2003 d.322, effective July 11, 2003 (to expire January 11, 2005).

See: 35 N.J.R. 3711(a).

Rewrote (b) and (d).

Special amendment R.2003, d.322, expired January 11, 2005.

Rewrote (b) and (d).

14:4-1A.4 TPS billing

In addition to all other information required to be included in the customer’s bill pursuant to regulations and/or Board Order, any bill submitted to a customer by or on behalf of gas supplier or an electric power supplier shall contain the name and telephone number of each party for which the billing is provided, the name and telephone number of each billing aggregator acting on behalf of a customer’s TPS, the LDC’s emergency phone number and any other information deemed appropriate by the Board, as well as the name, address and telephone number of the Board of Public Utilities at (973) 648-2350 and 1-800-624-0241.

Amended by R.2001 d.46, effective February 5, 2001.

See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

Deleted the identifier.

14:4-1A.5 TPS change order procedures

(a) Notwithstanding the time frame for execution of TPS customer change requests as set forth by regulation and/or Board Order, all TPS change orders received and verified in compliance with existing standards, shall be executed as soon as possible and without unreasonable delay.

(b) When an authorized change of a supplier is requested, the LDC shall be responsible for sending notification to the customer of the ordered change in writing, within one business day or such other a time frame as prescribed by the Board.

(c) The LDC responsible for implementing the TPS change orders must make available to customers upon written or verbal request, confirmation of their supplier change orders, to the extent the LDC has received such an order, electronically from a TPS.

14:4-1A.6 Unauthorized service termination and transfer (slamming)

(a) In construing and enforcing the provisions of these standards, the act of any person, firm or corporation, acting as an agent or representative acting on behalf of a TPS or electric or gas public utility shall be deemed to be the act of that TPS, gas or electric public utility.

(b) In the event a customer notifies the Board that slamming, as defined herein, has allegedly occurred, the supply portion of the bill that relates to the alleged slamming shall be considered in dispute pursuant to N.J.A.C. 14:3-7.13.

(c) Any TPS, gas or electric public utility that fails to comply with the procedures prescribed in these standards and collects charges, directly or indirectly, for electric power supply or gas supply services from a customer, as a result of its or its agent's, unauthorized activity, shall be liable to the customer's properly authorized TPS, electric public utility or gas public utility in an amount equal to all charges paid by such customer after such violation, as well as for additional amounts as prescribed by regulation and/or Board Order, in accordance with such procedures as the Board may proscribe. The remedies provided in this subsection are in addition to any other remedies available by law.

(d) In addition to any other penalties that might be imposed by the Board, a party found guilty of an unauthorized customer switch may also be liable for any direct costs incurred, as determined by the Board, by the duly authorized supplier and/or its LDC as a result of the unauthorized switch.

(e) A customer that has been found to have been the subject of an unauthorized switch shall not be liable to its authorized supplier and/or its LDC for any more charges than the customer would have been liable for had the unauthorized switch not occurred.

(f) If the customer cannot resolve or correct an unauthorized switch, the customer may file a complaint with the Board under the procedures set forth in Dispute Resolution.

(g) Beginning January 15, 2000, each electric public utility and gas public utility shall submit a quarterly report to the Board, Division of Customer Relations, containing all slamming complaints received, indicating the customer's name, address, telephone number, type of service, and the name of the TPS that requested the alleged unauthorized switch of the customer's electric power or gas supplier.

Amended by R.2001 d.46, effective February 5, 2001.
See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

In (f), the undesignated paragraph was recodified as (g).
Special amendment, R.2003 d.322, effective July 11, 2003 (to expire January 11, 2005).

See: 35 N.J.R. 3711(a).

In (f), deleted "under the procedures set forth in Dispute Resolution" following "with the Board".

Special amendment, R.2003 d.322, expired on January 11, 2005.

14:4-1A.7 Enforcement

(a) The Board may investigate upon its own initiative or upon complaint, any allegation of a violation of these standards.

(b) Any party determined by the Board, after notice and hearing, to have violated any provisions of these standards relating to changes in a customer's electric or gas supplier shall be subject to any one or more of the penalties permitted by the Act, including:

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

(c) All monies recovered from an administrative penalty imposed pursuant to this section shall be paid into the State Treasury to the credit of the General Fund.

(d) In considering the violations of the Act and/or the Board's Standards and Rules, the Board may consider every day of each violation against each customer as a separate offense.

Amended by R.2001 d.46, effective February 5, 2001.

See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

In (b), recodified (i) and (ii) as 1 and 2.

SUBCHAPTER 2. INTERIM LICENSING AND REGISTRATION STANDARDS
14:4-2.1 Scope

(a) These standards shall apply to electric power suppliers, gas suppliers, energy agents and private aggregators as defined below.

(b) Electric power suppliers and gas suppliers shall apply for and obtain a license from the Board pursuant to the standards and procedures herein.

(c) Energy agents and private aggregators shall register with the Board pursuant to the standards and procedures herein.

(d) No electric power supplier, gas supplier, energy agent or private aggregator shall contract, offer to contract, enroll, provide generation service or gas supply service, or arrange for a contract for the provision of these services without having obtained a license from or having registered with the Board, as appropriate.

Amended by R.2001 d.46, effective February 5, 2001.

See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

The undesignated paragraphs were codified as (a) through (d).

14:4-2.2 Definitions

As used in this rule:

“Act” means the “Electronic Discount and Energy Competition Act” (P.L. 1999, c.23).

“Board” means the New Jersey Board of Public Utilities or any successor agency.

“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 end-use 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 end-use retail customers, but does not take title to the gas.

“Customer” means any person that is an end user and is connected to any part of the transmission and distribution system within an electric public utility’s service territory or a gas public utility’s service territory within this State.

“Electric power supplier” means a person that is duly licensed pursuant to the provisions of this act to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers, and includes, load serving entities, marketers and brokers that offer or provide electric generation service to retail customers. The term excludes an electric public utility that provides electric generation service only as a basic generation service pursuant to section 9 of the Act.

“Electric public utility” means a public utility, as that term is defined in R.S. 48:2-13, that transmits and distributes electricity to end users within this State.

“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 of 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, and the provision of energy consumption measurement and billing services.

“Energy agent” means a person that is duly registered pursuant to the provisions of the Act, that arranges the sale of retail electricity or electric related services or retail gas supply or gas related services between government aggregators or private aggregators and electric power suppliers or gas suppliers, but does not take title to the electric or gas sold.

“Energy consumer” means a business or residential consumer of electric generation service or gas supply service located within the territorial jurisdiction of a government aggregator.

“Gas public utility” means a public utility, as that term is defined in R.S. 48:2-13, that distributes gas to end users within this State.

“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 measurement and billing services.

“Gas supplier” means a person that is duly licensed pursuant to the provisions of the Act to offer or provide gas supply service to retail customers, and includes, but is not limited to, marketers and brokers. A non-public utility affiliate of a public utility holding company may be a gas supplier, but a gas public utility or any subsidiary of a gas utility is not a gas supplier. In the event that 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 adopted by the board pursuant to subsection k of section 10 of the Act.

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

“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 contractual and legal obligation to provide electric generation service, and may include transmission and other services, to an end-use 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 an end-use customer or customers.

“Person” means an individual, partnership, corporation, association, trust, limited liability company, governmental entity or other legal entity.

“Private aggregator” means a non-government aggregator that is a duly organized business or nonprofit organization authorized to do business in this State that enters into a contract with a duly licensed electric power supplier for the purchase of electric energy and capacity, or with a duly licensed gas supplier for the purchase of gas supply service, on behalf of multiple end-use customers by combining the loads of those customers.

“Retail choice” means the ability of retail customers to shop for electric generation or gas supply service from electric power or gas suppliers, or opt to receive basic generation service as basic gas service, and the ability of an electric power or gas supplier to offer electric generation service or gas supply service to retail customers, consistent with the provisions of the Act.

14:4-2.3 Electric power supplier and gas supplier license application process

(a) Applications shall be made on forms provided by the Board.

1. Application forms can be obtained at the Board of Public Utilities’ offices in Newark, New Jersey; by writing to the Board at 2 Gateway Center, Newark, New Jersey 07102; by calling 973-648-2065 or through the BPU website at www.njin.net/njbpu.

2. All applications must satisfy the requirements of this section, and must be accompanied by an application fee of \$250, or as otherwise determined by the Board.

3. The Board will process all completed application requests and notify applicants of its determination within 60 days of the receipt of the application.

i. In cases where additional information is required from the applicant, the 60 day processing time period begins when the required additional information has been received and time-stamped by the Board.

ii. In cases where the Board has not completed its review process and notified the applicant of its determination within 60 days, or for other special circumstances, as determined by the Board, the Board shall issue the applicant a provisional electric power supplier license, valid for no longer than 90 days.

iii. Provisional licenses may be extended one time by the Board for an additional 90 days.

(b) After processing by the Board and upon a determination by the Board that the applicant has met all the requirements in this section, the Board shall provide a notice of acceptance to the applicant. Upon payment of a licensing fee the Board shall issue the applicant an electric power supplier or a gas supplier license. The initial fee, to cover portions of the licensing unit costs, environmental disclosure, and if determined by the Board, consumer education costs, for an electric power supplier license shall be \$1,000. The initial fee, to cover portions of the licensing unit costs, and, if determined by the Board, consumer education costs, for a gas supplier license shall be \$800.

(c) Electric power and gas supplier licenses shall be valid for a period of one year from date of issue.

Amended by R.2001 d.46, effective February 5, 2001.

See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

Rewrote (a) and in (b), substituted “this section” for “subsection 3.3”.

14:4-2.4 License renewal

(a) To renew a valid electric power or gas supplier license, the licensee must apply for renewal no later than 30 days before the expiration date of the current license.

1. The application for renewal must be on such form(s) as prescribed by the Board. Application forms can be obtained at the Board of Public Utilities’ offices in Newark, NJ, by writing to the Board, by calling 973-648-2065 or through the BPU website at www.njin.net/njbpu.

2. The renewal application shall include, at a minimum:

i. The number of customers, by customer class (i.e. utility specific rate schedule), currently being served by the licensee;

ii. The licensee's most recent 12 month and calendar year sales volumes in New Jersey, by customer class (i.e. utility specific rate schedule); including a copy of the licensee's latest tax report as required by the Department of the Treasury pursuant to P.L. 1997, c.162;

iii. A listing of the number of residential customers it serves in the State, by Zip plus 4;

iv. Any changes to the information contained in the licensee's most recent license application or renewal;

v. Proof that a surety bond, or other approved security, has been obtained pursuant to Section 4(e) and will be maintained throughout the period for which the license is valid;

vi. Such other information as may be required by Board Order; and

3. If a licensee has filed a completed renewal application in accordance with (a)1 and 2 above, the applicant's current license shall not expire until the renewal application is acted upon by the Board.

(b) After processing by Board Staff and upon a determination by the Board that the renewal application is complete and acceptable, and upon payment of a license renewal fee, the Board shall issue a one year license renewal.

1. Such renewal fee for electric power suppliers will be \$500 or a fee determined by apportioning a share of the Board's licensing unit, environmental disclosure, and, if determined by the Board, consumer education costs to each applicant based upon a percentage of the State's electric load served by the licensee, whichever is higher. Such renewal fee for gas suppliers will be \$400 or a fee determined by apportioning a share of the Board's licensing unit, and, if determined by the Board, consumer education costs to each applicant based upon a percentage of the State's gas load served by the licensee, whichever is higher.

Amended by R.2001 d.46. effective February 5, 2001.

See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

In (a)3, deleted "(a)" preceding "If a licensee" and substituted "(a)" for "subsections".

14:4-2.5 Electric power supplier and gas supplier application requirements

(a) Applications shall include:

1. Legal name as well as the name under which the electric power or gas supplier proposes to do business in New Jersey;

2. Mailing and business address(es);

3. Telephone number(s), facsimile number(s), e-mail address(es) and Internet address(es);

4. Statement describing the company's history, and a company profile;

5. A list of types of services and/or products which the company plans to offer in New Jersey to residential, commercial and industrial customers;

i. For applicants intending to market to residential customers, a sample residential contract.

6. Evidence of financial integrity including:

i. Two years of audited financial statements;

(1) If applicant has not been in business long enough to satisfy this requirement, it shall file:

(A) Income statements and balance sheets covering the life of the business; and

(B) Credit reports or ratings prepared by established credit reporting agencies regarding the credit and payment history of the applicant.

ii. A reference from a lending institution; and

iii. A list of any bankruptcy filings made by the applicant, or any officer or director of the applicant, within the past 24 months;

7. Statement disclosing any existing, pending or past adverse rulings, judgments, litigation, contingent liabilities, revocations of authority, administrative regulatory (State, FERC or SEC) investigations and any other matters relating to financial or operational status for the past 3 years that arise from the sale of electricity or natural gas, or materially affect current financial or operational status;

8. Ownership interests of the supplier;

9. Statement detailing any criminal activities of which the applicant has been charged or convicted, or of which the principal or corporate officers of the applicant have been charged or convicted;

i. Applicant may be required to authorize a release of criminal history record information from the New Jersey State Police.

10. The name and address of the in-state agent of the supplier that is authorized to receive service of process and the name and address of the in-state customer service agent of the supplier per N.J.A.C. 14:4-2.6(d);

11. For electric power suppliers, the quality of retail electric sales, kwh and revenues, by month and customer class, made in New Jersey during the 12 months preceding the application or license renewal. For gas suppliers, the quantity of retail natural gas sales, decatherms and revenues, by month and customer class, made in New Jersey during the 12 months preceding the application or license renewal;

12. A licensee must maintain a surety bond, in an amount prescribed in N.J.A.C. 14:4-2.6(e), to insure against a failure to pay taxes or assessments, or a failure to meet contractual commitments to deliver electric generation service or gas supply service;

13. For applications filed prior to December 1, 1999, a certification that applicant is "Y2K" ready or compliant; and

14. Other information as the Board may, through Board Order, deem necessary.

Amended by R.2001 d.46, effective February 5, 2001.

See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

Rewrote (a)6 and in (a) 10 through 12, updated N.J.A.C. references.

14:4-2.6 Condition for maintaining a license in good standing

(a) A license serving electric load in the franchise area of Public Service Electric & Gas Company, GPU Energy or Conectiv must meet the requirements of a Load Serving Entity as defined by the PJM Reliability Assurance Agreement. In addition, all electric power supplier applicants must meet all reliability standards of the Mid-Atlantic Area Council of the North American Electric Reliability Council or its successor, the PJM Interconnection, L.L.C. and/or the New York Independent System Operator, the Federal Energy Regulatory Commission, the Board or any other state, regional, federal or industry body with authority to establish reliability standards.

(b) A licensee serving natural gas load must meet all reliability standards of the Federal Energy Regulatory Commission, the Board or any other state, regional, federal or industry body with authority to establish reliability standards.

(c) A licensee serving natural gas load must meet the safety standards of the Liquefied Natural Gas Facilities: Federal Safety Standards: Part 193, Title 49 of the Code of Federal Regulations (Federal Code), The Natural Fuel Gas Code (ANSI Z223.1/NFPA 54, the Board of Public Utilities (BPU); and any other state, regional or industry body with authority to establish safety standards.

1. The gas supplied must be of pipeline quality with the following characteristics:

i. Minimum Heating Value:

(1) The minimum average heating value of any gas delivered into a distribution system in New Jersey shall not be less than one thousand (1,000) BTU per cubic foot of gas. The average heating value shall not be less than 1,000 BTU per cubic foot at 14.73 psia and 60 degrees Fahrenheit.

(2) When supplemental or substitute gas is distributed, the gas supplier will make every reasonable effort to maintain gas characteristics and quality so

that utilization performance will be satisfactory regardless of the heating value of the gas.

ii. Gas Purity:

(1) All gas supplied to customers in this State shall be substantially free from dangerous or objectionable quantities of impurities such as hydrogen sulfide, nitrogen or other combustible or noncombustible, noxious, or toxic gases or other impurities. A gas shall be considered free from undesirable impurities when the quantity of any impurity present is within the limits recognized as allowable in good practice.

(2) All gas supplied to customers shall not contain impurities which may cause excessive fumes when burned in a properly designed and adjusted burner.

2. National Standards and FERC approved tariffs of the interstate pipelines serving the state, including amendments thereto, shall, where applicable, supersede the requirements in (c)1i and ii above.

(d) A licensee must maintain an office within New Jersey, as defined by the Board, for the purposes of accepting service of process, maintaining such records as the Board requires and ensuring accessibility to the Board, consumers and electric and gas public utilities.

1. A licensee shall file with the Board a designation in writing of an agent, resident of this State, upon whom legal process and process for the production of any records, books, accounts, documents and other writings associated with the vendor's business within New Jersey may be served. Such designation shall set out the name of such agent and his or her places of residence and business.

2. Every licensee shall have a representative who will be accessible by phone on a timely basis, and in person when required, to the Board and its staff, and DCA and its staff. The duties of the vendor's representative shall include, but not be limited to, responding to inquiries, facilitating the resolution of billing problems, and assisting the Board and DCA in customer supplier related investigations.

i. Compliance with this provision is in addition to any rule, regulation or Board Order requiring the licensee to provide a toll free customer service number.

3. A licensee shall, at its New Jersey office, maintain summary records related to energy contracts or transactions entered into with New Jersey customers or services provided by the supplier to New Jersey customers. Copies of all contracts or other writings authorizing the provision of service by the supplier to each of its New Jersey customers, subject to reasonable confidentiality requirements allowed under State and federal statute, or as determined by the Board Order, shall be made available for inspection by the Board upon 48 hours notice.

4. A licensee shall, at its New Jersey office, maintain for a period of three years, a record of customer complaints and the resolution thereof.

5. A hard copy printout and/or on-line access of all items required by (d)3 and 4 above, at the suppliers' New Jersey office(s) from data bases located outside the State will meet the requirements of these subsections.

(e) A licensee must maintain a surety bond or equivalent financial instrument, as determined by the Board, to insure against a failure to pay taxes or assessments, or a failure to meet contractual commitments to customers to deliver electric generation service or gas supply service.

1. The amount of the bond required in order to be granted an initial license is \$250,000.

2. Modifications of this amount commensurate with the amount of anticipated business to be conducted in this state may be granted by the Board where substantial evidence is submitted in support of the modification.

i. A request for modification of this initial bonding amount may be made in conjunction with the initial application.

3. Bonding requirements for license renewals will be based on a percentage, as determined by the Board, of the licensee's sales information as reported in its license renewal application.

4. Bonding requirements may be increased at such time as the Board determines is necessary to protect the interests of the ratepayers of the State.

i. Prior to the filing of an annual license renewal application, licensee shall report to the Board at any time when its sales volumes have increased by 33% from its previously reported amount and the Board may increase its surety bond accordingly.

(f) The licensee must comply with such specific standards of conduct for electric power and gas suppliers, environmental disclosure requirements, renewable portfolio requirements, safety and service quality standards and consumer protection requirements, including slamming standards as the Board shall adopt.

(g) The licensee must provide the Board, six months after the effective date of its initial license, and thereafter in accordance with the Board's license renewal process, a listing of the number of residential customers it serves in the state, by Zip plus 4.

(h) The licensee must agree to provide through legal certification by an officer of the electric power or gas supplier such information as the Board or its staff, or the Division of Consumer Affairs or its staff shall require to assist the agencies in undertaking an investigation of a complaint against the electric power or gas supplier or in making any determination concerning revocation, suspension issuance or renewal of the supplier's license pursuant to Section 32 of P.L. 1999, c.32.

Amended by R.2001 d.46, effective February 5, 2001.

See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

Rewrote (c) and (d).

14:4-2.7 Energy agent registration process

(a) Registration shall be made on forms provided by the Board. Registration forms may be obtained at the Board of Public Utilities' offices in Newark, NJ, by writing to the Board, by calling 973-648-2065 or through the BPU website at www.njin.net/njbpu.

1. All registration forms must be accompanied by a registration fee of \$500, or as determined by the Board.

2. The Board Staff will process all completed registration forms and confirm with the registrant compliance with this rule within 60 days of the receipt of the registration form. The confirmation notice will also indicate the effective registration date.

i. In cases where additional information is required from the applicant, the 60 day processing time period begins when the required additional information has been received and time-stamped by the Board.

ii. In cases where the Board has not completed its review process and notified the applicant of its determination within 60 days, the registrant shall be assumed in compliance with this rule for the purpose of Board sanctions or penalties pursuant to N.J.A.C. 14:4-2.10.

(b) The energy agent registration application shall include

1. The applicant's name, address and telephone number and website address.

2. The applicant's business affiliation or a business profile.

3. Evidence of financial integrity including:

i. Income statements and balance sheets covering the past 2 years or the life of the business, whichever is shorter; and

ii. A reference from a lending institution.

4. Evidence of knowledge of the energy industry and/or evidence of the ability to aggregate large numbers of customers and prepare Requests for Proposals for commodity and energy-related services for large numbers of customers.

5. A list of licensed electric power or gas suppliers through which the registrant has arranged for the delivery of electric energy, natural gas and/or electric energy or gas services.

6. A statement disclosing any existing, pending or past adverse rulings, judgments, litigation, contingent liabilities, revocations of authority, administrative regulatory (State, FERC or SEC) investigations and any other matters relating to financial or operational status for the past three years that materially affect current financial or operational status;

7. Ownership interests of the energy agent;

8. A statement detailing any criminal activities of which the applicant, its subsidiaries, affiliates or parent has been charged or convicted, or of which the principal or corporate officers of the applicant, its subsidiaries, affiliates or parent has been charged or convicted;

i. Applicant may be required to authorize a release of criminal history record information from the New Jersey State Police.

(c) Energy agent registration shall be valid for one year.

1. An energy agent must apply for renewal within 30 days before the expiration date of the current registration.

i. The application for renewal must be on such form(s) as prescribed by the Board.

Application forms can be obtained at the Board of Public Utilities' offices in Newark, NJ, by writing to the Board, by calling 973-648-2065 or through the BPU website at www.njin.net/njbpu.

ii. The renewal application shall provide an update to all information contained in the energy agent's previous application or renewal and be accompanied by a renewal fee of \$200 or, as prescribed by the Board.

iii. If an energy agent has filed a completed renewal application in accordance with (a)2 above, the applicant's current registration shall not expire until the renewal application is acted upon by the Board.

(d) After processing by Board Staff and upon a determination by the Board that the renewal application is complete and acceptable, the Board shall issue a one year registration renewal.

Amended by R.2001 d.46, effective February 5, 2001.

See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

Rewrote (a) through (c).

14:4-2.8 Private aggregator registration process

(a) Registration shall be made on forms provided by the Board.

1. Registration forms can be obtained at the Board of Public Utilities' offices in Newark, NJ, by writing to the Board, by calling 973-648-2065 or through the BPU website at www.njin.net/njbpu.

2. All registration forms must be accompanied by a registration fee of \$500, or as determined by the Board.

3. The Board will process all completed registration forms and confirm with the registrant compliance with this rule within 60 days of the receipt of the registration form. The confirmation notice will also indicate the effective registration date.

i. In cases where additional information is required from the applicant, the 60 day processing time period begins when the required additional information has been received and time-stamped by the Board.

ii. In cases where the Board Staff has not completed its review process and notified the applicant of its determination within 60 days, the registrant shall be assumed in compliance with this rule for the purpose of Board sanctions or penalties pursuant to N.J.A.C. 14:4-2.10.

(b) The private aggregator registration application shall include:

1. The applicant's name, address, telephone number and website address;

2. The applicant's business affiliation or business profile;

3. Evidence of financial integrity:

i. Income statements and balance sheets covering for the past two years or the life of the business, whichever is shorter; and

ii. A reference from a lending institution;

4. Evidence of knowledge of the energy industry;

5. A list of licensed electric power and/or gas suppliers through which the registrant has arranged for the delivery of electric generation or gas supply service;

6. A statement disclosing any existing, pending or past adverse rulings, judgments, litigation, contingent liabilities, revocations of authority, administrative regulatory (State, FERC or SEC) investigations and any other matters relating to financial or operational status for the past three years that materially affect current financial or operational status;

7. Ownership interests of the supplier; and

8. A statement detailing any criminal activities of which the applicant, its subsidiaries, affiliates or parent has been charged or convicted, or of which the principal or corporate officers of the applicant, its subsidiaries, affiliates or parent has been charged or convicted.

i. The applicant may be required to authorize a release of criminal history record information from the New Jersey State Police.

(c) Private Aggregator registration shall be valid for one year.

1. A private aggregator must apply for renewal within 30 days before the expiration date of the current registration.

i. The application for renewal must be on such form(s) as prescribed by the Board. Application forms can be obtained at the Board of Public Utilities' offices in Newark, NJ, by writing to the Board, by calling 973-648-2065 or through the BPU website at www.njin.net/njbpu.

ii. The renewal application shall provide an update to all information contained in the energy agent's previous application or renewal and be accompanied by a renewal fee of \$200 or, as prescribed by the Board.

iii. If an energy agent has filed a completed renewal application in accordance with (a)3 above, the applicant's current registration shall not expire until the renewal application is acted upon by the Board.

2. After processing by the Board and upon a determination by the Board that the renewal application is complete and acceptable, the Board shall issue a one year registration renewal.

Amended by R.2001 d.46, effective February 5, 2001.
See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).
Rewrote the section.

14:4-2.9 Confidentiality

Except for sample contracts filed in compliance with N.J.A.C. 14:4-2.5(a)5i, and sales volumes and revenues, by customer class, filed in compliance with N.J.A.C. 14:4-2.4(a)2ii and 2.5(a)11, all information provided as a part of the Electric Power Supplier licensing process, the Gas Supplier licensing process, both license renewal processes, Energy Agent registration process, Private Aggregator registration process, and both registration renewal processes shall be considered public information by the Board and Board Staff.

Amended by R.2001 d.46, effective February 5, 2001.
See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).
Updated N.J.A.C. references.

14:4-2.10 Enforcement

(a) A failure to comply with the licensing or registration requirements of these Standards will subject the licensee or registrant to the authority of the Board pursuant to Sections 31, 32, 33, 34 and 35 of the Act.

(b) In considering violations of the Act and/or the Board's Standards and Rules, the Board may consider every day of each violation against each customer as a separate offense.

Amended by R.2001 d.46, effective February 5, 2001.
See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).
The undesignated paragraphs were codified as (a) and (b).

SUBCHAPTER 3. INTERIM RETAIL CHOICE CONSUMER PROTECTION STANDARDS

14:4-3.1 Scope

The following standards shall apply to all electric power suppliers, and gas suppliers. Except where specifically addressing residential customers, the consumer protections contained herein shall pertain to all customers.

14:4-3.2 Definitions

The following words and terms, when used in these standards, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the "Electric Discount and Energy Competition Act" (P.L. 1999, c.23).

"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.

"Basic gas supply service" 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 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 (BGS)" means electric generation service that is provided, pursuant to section 9 of the Act, to any customer that has not chosen an alternative electric power 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 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 or any successor agency.

"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 end-use 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 obligation to provide gas supply service to end-use retail customers, but does not take title to the gas.

"CFR" means the Code of Federal Regulations.

“Customer” means any person that is connected to any part of the transmission and distribution system within a LDC’s service territory within this State.

“Customer information” means individual proprietary information as defined below.

“Electric generation service” 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 or entity that is duly licensed pursuant to the provisions of the Act and pursuant to the Board’s licensing standards promulgated pursuant thereto, to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers, and includes load serving entities, marketers and brokers that offer or provide electric generation service to retail customers. The term excludes an electric public utility that provides electric generation service only as a basic generation service pursuant to section 9 of the Act.

“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, and the provision of energy consumption management measurement and billing services.

“Energy agent” means a person that is duly registered pursuant to the provisions of this act, that arranges the sale of retail electricity or electric related services or retail gas supply or gas related services between government aggregators or private aggregators and electric power suppliers or gas suppliers, but does not take title to the electric or gas sold.

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

“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 measurement and billing services.

“Gas supplier” means a person that is duly licensed pursuant to the provisions of the Act and pursuant to the Board’s licensing standards promulgated pursuant thereto, to offer and assume the contractual and legal responsibility to provide gas supply service to retail customers, and includes, but is not limited to, marketers and brokers. A non-public utility affiliate of a public utility holding company

may be a gas supplier, but a gas public utility or any subsidiary of a gas utility is not a gas supplier. In the event that 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 adopted by the board pursuant to subsection k of section 10 of the Act.

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

“Individual proprietary information” or “customer information” means, but is not limited to, a customer’s name, address, telephone number, electricity and/or gas usage, peak demand and payment history.

“LDC” means local distribution company, referring to the electric and/or gas public utility responsible for distributing power and/or gas to retail customers on behalf of electric power suppliers and/or gas suppliers.

“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 contractual and legal obligation to provide electric generation service, and may include transmission and other services, to an end-use 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 an end-use 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, such direct solicitation to include direct mailings, telemarketing, internet websites and in-person solicitation.

“Optional services” means services other than electric generation service and/or gas supply service.

“Private aggregator” means a non-government aggregator that is a duly-organized business or non-profit organization authorized to do business in this State enters into a contract with a duly licensed electric power supplier for the purchase of electric energy and capacity, or with a duly licensed gas supplier for the purchase of natural gas supply service, on behalf of multiple end-use customers by combining the loads of those customers.

“Redlining” means a procedure which 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.

"Retail sales" means the bundled service provided by the LDC.

"Slamming" means the unauthorized change of a customer's electric power supplier or gas supplier.

"Third Party Supplier (TPS)" means an electric power supplier or a gas supplier as those terms are defined herein, or a person acting on behalf of such suppliers.

"Transmission and distribution system" means any facility or equipment that is used for the transmission, distribution and/or delivery of electricity or gas to the end-use customers including, but not limited to, the land, structures, meters, lines, pipes, switches, valves and all other appurtenances thereof and thereto, owned or controlled by the electric or gas public utility, or LDC, respectively.

14:4-3.3 Advertising standards

(a) Any advertisements by a TPS which offers to customers optional services, 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 that such optional services are provided at an additional charge which is not reflected in the advertised cost per kWh or per therm, or the advertised percentage savings.

(b) 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 which a customer may call 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 other than electric generation or gas supply service; and

2. The LDC(s) in whose service territory(ies) the TPS is offering services.

Amended by R.2001 d.46, effective February 5, 2001.

See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

Rewrote the section.

14:4-3.4 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, must be provided:

1. 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 other than electric generation or gas supply service;

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' license number;

6. The LDC(s) in whose service territory(ies) the TPS is offering the advertised services;

7. Other materials or information which 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) In addition to the information in (a) above, the 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, shall also include either:

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. The estimated percentage savings on the total electric bill shall not include and shall only represent the savings above and beyond the rate reductions which all electric customers receive under the Act whether they switch suppliers or not; 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) The TPS shall comply with all FTC telemarketing rules, including the restriction on telemarketing between the hours of 9 pm. and 8 am.

(d) A TPS may not market to retail customers prior to its receipt from the Board of a supplier license, and in no event prior to August 1, 1999.

(e) The TPS must 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.

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

(g) 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.

(h) 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.

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

(j) 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.

1. 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 subsection or the Act.

i. However, once a TPS has received applications from specific groups, the decision to accept or reject any customer or groups 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.

2. Marketing to specific LDC service territory(ies) shall not be considered discriminatory pursuant to this subsection or the Act.

i. 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 groups 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.

Amended by R.2001 d.46, effective February 5, 2001.
See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).
Rewrote the section.

14:4-3.5 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, in compliance with the Licensing Standards, which shall be made available on a confidential basis to the Board and the Division of Consumer Affairs within 48 hours upon request, in the event of a formal investigation of the TPS' credit or income requirement practices;

(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 must be maintained in an interest bearing escrow account, and the customer must be provided a receipt.

14:4-3.6 Contracts

(a) A TPS shall not be permitted to 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 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 this document is to authorize a change in the customer's TPS, and includes 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 must 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 14 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 14 day confirmation period has expired, and the customer has not, directly or indirectly, rescinded his/her selection;

5. A statement of the TPS' termination rights, which shall explain the specific conditions under which the TPS may terminate service, and that at a minimum the TPS provide the customer with at least a separate 30 days' written notice of the termination and opportunity to remedy the termination condition; and

6. No statement which asks that any customers 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 must 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 explicitly permit a residential customer to terminate the contract, with 48 hour notice without penalty, as a result of a relocation within or outside the LDC's franchise area, disability and/or death;

(f) A TPS contract must clearly and conspicuously display the TPS' name and license number issued by the Board;

(g) In compliance with the Licensing Standards, 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 the Division of Ratepayer Advocate on a confidential basis; 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 the Division of Ratepayer Advocate on a confidential basis, within three (3) business days;

(h) 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 period;

(i) Where an affirmative written signature is not 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.

Amended by R.2001 d.46, effective February 5, 2001.

See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

In (b), recodified i through vi as 1 through 6.

14:4-3.7 Customer bills

(a) TPS bills must be in clear and conspicuous language and include the name, address and local and/or toll-free telephone number of the Board and TPS and toll-free customer service and emergency telephone numbers of the LDC.

(b) TPS bills must contain sufficient information to allow customers, to calculate their bills which information shall include but not be limited to kWh or therm usage billing period which shall include the start and end dates, billing date, next estimated meter reading date, remaining balance and payment(s) applied.

(c) A TPS or a LDC shall not charge a fee to residential customers to either commence and/or terminate electric generation service or gas supply service.

(d) If optional services are provided, the associated charge(s) shall be itemized separately on the customer's bill.

(e) The TPS and LDC's charges shall be separately identified on the bill if the customer chooses the one-bill option.

14:4-3.8 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 under certain conditions, e.g., 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.

14:4-3.9 Complaints

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

1. If the TPS has been advised that the customer is not satisfied with the TPS' response, the TPS must advise the customer that customer can contact the Secretary of the Board, at 973-648-3426, to request an Alternate Dispute Resolution procedure or to file a formal complaint.

(b) TPS shall maintain a record of the complaints received, how resolved, and still pending, for review by the Board upon request, within 3 days' notice.

Amended by R.2001 d.46, effective February 5, 2001.
See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

In (a), recodified i as l.

14:4-3.10 Termination

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

SUBCHAPTER 4. INTERIM ENVIRONMENTAL INFORMATION DISCLOSURE STANDARDS

Authority

N.J.S.A. 48:2-13 and 48:3-48 et seq.

Source and Effective Date

R.2002 d.313, effective August 21, 2002.
See: 34 N.J.R. 1524(d), 34 N.J.R. 3230(a).

Subchapter Historical Note

Subchapter 4, Interim Environmental Information Disclosure Standards, was adopted as new rules by R.2000 d.408, effective September 11, 2000. See: 32 N.J.R. 3617(a).

Subchapter 4, Interim Environmental Information Disclosure Standards, was readopted as R.2002 d.313, effective August 21, 2002. See: Source and Effective Date.

14:4-4.1 Scope

(a) Each electricity supplier or basic generation service provider serving retail customers in the State is required to disclose to such customers, including residential, commercial

and industrial customers, a uniform, common set of information about the environmental characteristics of the energy purchased by the customer. The environmental information must be published in a standardized label format attached hereto as Appendices A, B, and C, incorporated herein by reference, and distributed as part of the customer's billing materials or in other mailings determined by the Board, and on customer contracts and marketing materials. This disclosure requirement is mandatory and applies to every electricity supplier and every electricity product, regardless of whether or not the supplier is making an environmental claim about the electricity product. The environmental information to be disclosed to the customer includes the following, as illustrated in Appendices A, B, and C:

1. Fuel mix associated with the generation of the electricity, including categories for coal, gas, hydroelectric (large), nuclear, oil and renewable energy, or regional average default values as determined by the New Jersey Board of Public Utilities (herein the "Board");

2. Air emissions, in pounds per megawatt hour, of sulfur dioxide, carbon dioxide, oxides of nitrogen, and any other pollutants that are associated with the generation of the electricity and that the Board may determine to pose an environmental or health hazard, or emissions default values determined by the Board; and

3. The electricity supplier's support of energy efficiency, as reflected in the number of discrete emission reduction credits that are based on energy conservation measures and that are retired pursuant to rules and regulations adopted pursuant to P.L. 1995, c.188.

(b) For the label in Appendix A, the environmental information shall be values based on actual data; for the label in Appendix B, the environmental information shall be a commitment by the supplier as to the electricity to be provided over the next year; and for the label in Appendix C, the environmental information shall be default values or averages determined in accordance with this subchapter.

(c) Electricity suppliers shall be permitted to elect whether to sell their entire portfolio of electricity supply as a single electricity product or to disaggregate their portfolio into distinct electricity products in accordance with N.J.A.C. 14:4-4.6(e).

(d) Environmental disclosure pertains to electricity purchases and not installed capacity purchases.

14:4-4.2 Implementation schedule

(a) The environmental disclosure standards set forth in this subchapter will be effective as regulations immediately upon adoption by the Board (adopted September 11, 2000) and will be effective for a period not to exceed 18 months. The Board may thereafter, in accordance with the procedures of the Administrative Procedure Act (P.L. 1968, c.410 (C.52:14B-1 et seq.)) readopt these standards, adopt these

standards with amendments, or replace these standards with new standards.

(b) As of September 11, 2000, each electricity supplier is required to disclose environmental information to retail customers in its marketing activities in the State and when it solicits retail customers in New Jersey.

(c) The Environmental Disclosure Program will be incrementally implemented. The Phase I period is projected to end by January 1, 2002, with the commencement of Phase II of environmental disclosure. Phase I shall consist of two parts: Phase I-A, during which electricity suppliers shall implement environmental disclosure independently; and Phase I-B, during which the Program Administrator shall assist in the implementation of environmental disclosure in accordance with the terms set forth in Appendix D, incorporated herein by reference. Notwithstanding the projected start date for Phase II, the Board recognizes the importance of having a full tracking system in place and functioning as early as feasible, and seeks means to implement Phase II as soon as possible. Phase II shall be implemented after successful testing of the full tracking system.

14:4-4.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Basic generation service” means electric generation service that is provided by a utility to any retail customer that has not chosen an alternative electric power supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any retail customer that cannot obtain such service from a non-utility 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.

“Benchmark” means a reference point, describing emissions levels, to allow customers to make comparisons among alternative electricity products offered by suppliers. That is, a point of comparison for the air emissions associated with the electricity product being offered or sold to the customer. Initially, and until modified by Board order in consultation with the NJDEP, the specific benchmarks shall be based on the most recent data available from the Energy Information Administration and shall reflect the average emission rate of all electric generating units in New Jersey for SO₂ (that is, 2.5 pounds per megawatt hour) and CO₂ (that is, 1,213 pounds per megawatt hour); and NO_x (that is, 3.0 pounds per megawatt hour). In the case of NO_x, the benchmark set forth in Appendix F, incorporated herein by reference, takes into account the effect on this average of the new NO_x standards that first applied during the 1999 ozone season.

“Bilateral contract” or “bilateral wholesale contract” means a unit or system contract, or a contract for specified resources, between an electricity supplier and a generating company or between an electricity supplier and a wholesale power marketer.

“Contract for specified resources” means a contract between an electricity supplier and a generating company or wholesale power marketer:

1. In which the types of generating resources that may supply the electricity are specified, along with any other environmental criteria applicable to those resources;
2. Which requires the generating company or wholesale power marketer to deliver the resources into the PJM control area, or for Orange & Rockland, into the New York Power Pool (NYPP); and
3. Which requires that the generating company or wholesale power marketer be able to identify after the fact, and establish an audit trail to verify, the specific generating unit or units used to supply the contracts and to establish that the energy was generated and delivered into the PJM control area, or for Orange & Rockland, into the NYPP, and was not sold more than once.

“Customer” means any person that is connected to any part of the transmission and distribution system within an electric public utility’s service territory within New Jersey and that takes electricity directly from the transmission and distribution grid.

“Default values” means the fuel mix and air emissions information set forth by the Board that electricity suppliers shall be allowed to disclose to retail customers in place of the actual fuel mix and air emissions information data, when required to do so pursuant to this subsection. Initially, and until modified by Board order in consultation with the NJDEP, the default value for fuel mix (energy source) shall be the PJM average. The default value for air emissions shall be the PJM average adjusted, as set forth in Appendix F. Electricity suppliers with new electricity products and electricity suppliers newly serving retail customers in New Jersey, who elect not to make an environmental claim for their products, shall use the default values. Also, electricity suppliers making prospective environmental claims for new products and electricity suppliers disclosing actual generation data for existing products with a record of generation may use the default values, but only for that portion of the electricity supplier’s energy portfolio that is purchased from the spot market or wholesale market, and only if and for as long as contractual information that can trace the energy to its originating system or unit is not available.

“Electric generating unit” means a unit that generates electricity, if the owner or operator of the unit sells any portion of the electricity generated by the unit (or where the electricity produced by the unit is co-mingled at the facility at which the unit is located with electricity produced by another unit, sells any portion of the co-mingled electricity).

“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 within this State.

“Electricity supplier” or “electric power supplier” means a person that is duly licensed by the Board to offer or

provide electric generation service to retail customers in New Jersey, and includes, but is not limited to, load serving entities and electric public utilities that provide electricity to end-users, including basic generation service providers.

“Energy Information Administration” means the Energy Information Administration of the United States Department of Energy.

“Environmental characteristics” means, in respect to electricity that is supplied to a retail customer:

1. The fuel mix used to provide the energy; and
2. The amount of emissions associated with electric generating resources which produced the electricity.

“Generating company” means a company that owns electric generating resources.

“Fossil fuel” means natural gas, petroleum, coal, or any form, of solid, liquid, or gaseous fuel derived from such material.

“Fuel” means the material used in an electric generating unit to provide the energy to produce electricity.

“Generator” means a device that produces electricity.

“Incumbent utility” means, in New Jersey, the following electric public utilities: Atlantic Electric Company, GPU Energy, Rockland Electric Company and Public Service Electric and Gas Company or, as applicable, their corporate successors.

“Imported power” means electricity sold into the PJM control area from another control area.

“Load-serving entity,” or “LSE” means an electric utility providing basic generation service, or an entity or organization that is licensed to serve retail load in New Jersey, otherwise referred to as an electricity supplier.

“Marketer” means a duly licensed electricity supplier that has no owned generation, but that takes title to electricity and/or electric-generating capacity from electric power generators and other wholesale suppliers, and procures transmission and distribution services from T & D facilities, and then resells the electricity to retail customers.

“On-site generation facility” means a generation facility, and equipment and services appurtenant to electric sales by such facility to the end use customer located on the property or on property contiguous to the property on which the end user is located. An on-site generation facility shall not be considered a public utility. The property of the end use customer and the property on which the on-site generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an easement, public thoroughfare, transportation or utility-owned right-of-way.

“Owned generation” means electric power produced by electric generating resources located within the PJM control area that are owned by an electricity supplier. However, an electricity supplier that is an unregulated affiliate of an

incumbent utility shall not be considered an owner of electric generating resources that are owned by such utility.

“Person” means an individual, partnership, corporation, association, trust, limited liability company, governmental entity or other legal entity.

“PJM ISO” means PJM Interconnection L.L.C., the independent system operator which serves a control area that includes portions of Pennsylvania, New Jersey, Maryland, Virginia and all of Delaware and the District of Columbia.

“Program Administrator” means the office, to be established by the Board, to implement and oversee New Jersey’s environmental information disclosure program.

“Renewable energy” means electric energy produced from a source of energy that is replenishable and that has minimal associated adverse environmental impacts. For the limited purpose of these interim standards, renewable energy shall include electric energy produced from Class I and Class II renewables as defined in P.L. 1999, c.23, which includes: solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, hydroelectric facilities, methane gas from landfills, sewage and agricultural waste digesters, biomass provided that the biomass is cultivated and harvested in a sustainable manner, and resource recovery facilities, provided that such facility is located where retail competition is permitted and provided that the NJDEP has determined that such facility meets the highest environmental standards and minimizes any impacts to the environment and local communities. With respect to energy produced by resource recovery facilities, all electricity produced by facilities permitted in New Jersey by the NJDEP shall be considered as renewable energy. In addition, energy generated by a facility located outside of New Jersey may also be considered renewable energy if:

1. The owner or operator of the source provides documentation to the NJDEP that the facility would, taking into consideration the age and type of the unit, meet the applicable requirements of N.J.A.C. 7:27; and
2. After reviewing the documentation submitted, the NJDEP makes a finding that it is satisfied that the unit does meet the applicable requirements of N.J.A.C. 7:27.

For the limited purposes of these interim standards, in respect to hydroelectric power, only electricity produced by hydroelectric facilities, located where retail competition is permitted, and with a capacity of 30 megawatts or less shall qualify as renewable energy until the NJDEP has issued more specific criteria that hydroelectric facilities must meet to ensure that such facility meets the highest environmental standards.

“Residual control area average” means the weighted average fuel mix and emissions associated with the electricity supplied to customers in the PJM control area, as deter-

mined by the Program Administrator. In determining this average, the Program Administrator shall take into consideration both the electricity generated in the PJM control area and electricity imported into the control area; and shall exclude the following:

1. Electricity exported from the PJM control area;
2. Both electricity produced by owned generation and electricity purchased by an electricity supplier under a bilateral contract, provided that the electricity is specifically ascribed to the electricity supplier, pursuant to the disclosure rules set forth herein, as electricity used to meet the supplier's retail load; and
3. Electricity purchased by a supplier through a conversion transaction.

"Retail customer" means any person that is connected to any part of the transmission and distribution system within an electric public utility's service territory within this State. This term includes customers of a private aggregator or governmental aggregator, but does not include wholesale customers that take electricity directly from the transmission and distribution grid.

"Retail load" means the demand of retail customers for electricity.

"Schedule" means the process by which a generator, electricity supplier, or wholesale power marketer informs the PJM ISO or the NYPP ISO (in the case of Rockland Electric), or the PJM ISO or NYPP ISO itself determines, that a specific generating unit or units will operate for a specific period of time.

"Spot market" means the regional market administered by the PJM ISO in which electricity is scheduled by the PJM ISO for purchase and sale on the basis of a bid price. This term does not include the scheduling of bilateral contracts for the purchase and sale of hourly energy based on bid prices submitted by market participants other than the PJM ISO.

"System contract" means a bilateral contract between an electricity supplier and a generating company, or between an electricity supplier and a wholesale power marketer, pursuant to which the supplier purchases a share of a generating company's system power which is specifically identified in the contract and is backed by the generating company's assets, excluding power that is sold pursuant to unit contracts or contracts for specified resources.

"System power" means all of the electric power generated by all units which are owned by a single generating company and located within the control area from which the power is being sold, excluding power that is sold pursuant to unit contracts or contracts for specified resources.

"Transmission and distribution system" ("TDS") means, with respect to an electric public utility, any facility or equipment that is used for the transmission, distribution or delivery of electricity to the customers of the electric public utility including, but not limited to, the land, structures, meters, lines, switches and all other appurtenances thereof and thereto, owned or controlled by the electric public utility within New Jersey.

"Unit contract" means a contract between an electricity supplier and a generating company, or between an electricity supplier and a wholesale power marketer:

1. In which the generating unit or units are specified and receipt of electricity is tied to the performance of such unit or units;
2. For electricity for which the supplier has scheduled transmission into the PJM control area, or in Rockland & Orange's case, into the NYPP control area; and
3. With respect to which the control area operator in the generator's control area is able to verify the electricity being supplied was generated by the specified unit or units.

For the purposes of environmental disclosure, any contracts entered into under Federal PURPA or other similar state authority between an electric public utility serving retail load in New Jersey and an independent power producer shall be considered a unit contract.

"Wholesale electricity" means power sales or purchases that do not meet the definition of unit or system contracts, or contracts for specified resources.

(b) The following are measurements, abbreviations, and acronyms used in this subchapter:

Board or BPU	New Jersey Board of Public Utilities
Btu	British thermal unit
CO ₂	carbon dioxide
DER	Discrete Emission Reduction (credits)
EIA	Energy Information Administration
hr	hour
ISO	Independent System Operator
kWh	kilowatt hour
lb	pound
LSE	load-serving entity
mmBtu	million Btu
MWh	megawatt hour
NJDEP	New Jersey Department of Environmental Protection
NO _x	nitrogen oxides (or oxides of nitrogen)
NUG	Non-utility generator
NYPP	New York Power Pool
OMET	open market emission trading
PJM	Pennsylvania/New Jersey/Maryland (control area)
SO ₂	sulfur dioxide
T & D	transmission and distribution
ton	2000 pounds
USEPA	US Environmental Protection Agency

14:4-4.4 Requirements of the rules

(a) Pursuant to the mandates embodied in P.L. 1999, c.23, the interim rules for environmental disclosure to retail customers require every electric service supplier to provide the following:

1. Standardized environmental information: Environmental disclosure information distributed to retail customers shall contain the following information:

i. Fuel mix, expressed in percent of the electricity provided that has been produced from each fuel;

ii. Air emissions, expressed in pounds of emissions per megawatt-hour of electricity supplied (lbs/MWh); and

iii. The electricity supplier's support of energy efficiency, expressed in kilowatt-hours (kWh) saved per year;

2. Fuel mix (energy source) information:

i. Electricity suppliers shall disclose to retail customers the fuels in the fuel mix associated with the generation of the electricity product being provided or offered using the following energy resource categories: coal, gas, hydroelectric (large), nuclear, oil, and renewable energy, including captured methane gas, fuel cells, geothermal, hydroelectric (small), solar, solid waste, wind and wood or other biomass. (See Appendix E.)

ii. An electricity supplier making a prospective offer for a "renewable energy" product may not be able to predict the exact percentages of each renewable resource it will provide. In this case, the electricity supplier may list a percentage of its fuel mix as being from "renewable energy," without providing specific percentages for wind, solar, hydroelectric or other generating resources. In disclosure for existing products, based on a historical record, specific percentages shall be given for each renewable resource.

iii. If an electric power supplier or basic generator service provider arranges with a customer for the installation and use of fuel cells, geothermal technology, solar technology, or other renewable energy technologies as listed in N.J.A.C. 14:4-4.3 to generate electricity, then the supplier may claim the equivalent amount of electricity generated by the customer-generator as part of its renewable energy fuel mix. This shall not include renewable energy technologies funded through the Societal Benefits Charge;

3. Air emissions information: Each electricity supplier shall report for each electricity product it sells in New Jersey, the emissions of sulfur dioxide (SO₂), oxides of nitrogen (NO_x) and carbon dioxide (CO₂), based on a weighted average (expressed in lbs/MWh). Other air pollutants such as mercury or fine particles may be required later by decision of the Board, after consultation with the New Jersey Department of Environmental Protection

(NJDEP). The supplier will present the product's emissions data in the uniform label format, relative to a New Jersey benchmark. Initially, and until modified by Board order in consultation with the NJDEP, the specific benchmarks shall be based on 1996 emissions data from the U.S. Department of Energy's Energy Information Administration publication EIA-0629 "State Electricity Profiles," and shall approximate the average of all electric generating units in New Jersey for SO₂ (that is, 2.5 pounds per megawatt hour), CO₂ (that is, 1,213 pounds per megawatt hour) and NO_x (that is, 3.0 pounds per megawatt hour). (See Appendix F.) In the case of NO_x, the average derived from the 1996 Department of Energy data has been adjusted to take into account the new NJDEP ozone season standards for NO_x emissions that first applied in 1999. Upon notice to electricity suppliers doing business in the State, the benchmark may be changed by the Board, in consultation with the NJDEP; and

4. Energy efficiency information: Each electricity supplier serving retail customers in New Jersey shall disclose to its retail customers, in accordance with the provisions set forth herein, the amount of electricity that has been saved through the supplier's investments in energy efficiency. This shall not include electricity saved under energy efficiency programs funded through the Societal Benefits Charge. The supplier shall report the amount of electricity savings, expressed in kilowatt-hours, represented by the retirement of emissions credits based on the implementation of electrical energy efficiency measures. Such credits may be discrete emission reduction (DER) credits, generated pursuant to New Jersey's open market emissions trading (OMET) program (N.J.A.C. 7:27-30), or allowances allocated from the Incentive Reserve under New Jersey's NO_x budget program. Documentation of the kWhs saved is a component of the quantification required for the generation or claiming of these credits; therefore, the value of the credits in kWhs can readily be determined by consulting this documentation. All electricity suppliers will be required to file each disclosure label with the Board or Program Administrator.

14:4-4.5 Determining the fuel and emissions characteristics

(a) For existing electricity products that have been offered for some period of time and are associated with a record of generation, the fuel mix and emissions information associated with such electricity products and disclosed on labels shall be based on "historical" data that reflect the generation of the power provided by the supplier in the preceding year. Initially in Phase I, incumbent utilities with owned generation shall be the only suppliers of existing products. These existing products include electricity the utility provides pursuant to its basic generation service obligations. During Phase I-A, until a Program Administrator is established and is technically and administratively able to assist energy suppliers, each electricity supplier of existing

products will develop for itself the environmental information to be set forth in its disclosure label(s) for each product offered. These disclosure labels shall reflect to the extent feasible the characteristics of the emissions and fuel mix information of the actual electric generating units or systems used by an electricity supplier to meet its retail load in the most recent 12-month period, or an approximation of such units or systems, developed pursuant to the methodologies set forth herein and N.J.A.C. 14:4-4.6.

1. Notwithstanding (a) above, where landfill gas or sewage or agricultural waste digester gas is co-fired in a fossil-fuel plant, a supplier may present the fuel mix and emissions characteristics associated with the landfill, sewage or agricultural waste digester gas alone, if the supplier has purchased the electricity generated from the landfill, sewage or agricultural waste digester gas separately and the fossil fuel generator has agreed not to reflect the fuel mix and emissions characteristics of the landfill, sewage or agricultural waste digester gas in disclosure regarding the fossil-fuel plant.

(b) For new products and for new market entrants in New Jersey, electricity suppliers will be permitted to disclose environmental information on a prospective basis for a period up to one year (four quarters). (See N.J.A.C. 14:4-4.6 for greater detail.) Alternatively, for a period of at least 18 months, through December 2000, these suppliers may use the default values for fuel mix and emissions information set forth by the Board. This choice shall be permitted for a limited period of time in recognition that suppliers of new electricity products, including suppliers newly serving retail customers in New Jersey, will not have an historical record on which to base disclosure.

1. If the new supplier, however, is making an environmental claim for its product, then it may not use the default values, but rather shall prospectively disclose fuel mix and emissions of the electricity it intends to provide for a period of at least 12 months. For products with environmental claims, the use of default values shall only be allowed for energy that is purchased from the spot market or wholesale electricity purchased by the supplier only if and as long as contractual information that can trace the energy to its originating system or unit is not available. (See (c) below.)

2. As of the beginning of the next quarter, once the 12-month or 18-month period (as applicable) has ended, the supplier will commence providing a label based on historical information, as described in the preceding paragraph. After 18 months (beginning January 2001), products that were newly introduced when retail competition commenced will become reclassified for the purpose of environmental disclosure as existing products, if the product's supplier elected to use default values on the product's disclosure label. After 12 months (four quarters), "new" products whose supplier used environmental claims on the initial disclosure label will become existing products as well.

(c) New market entrants and electricity suppliers introducing new products may base their disclosure labels on prospective environmental claims for a period of 12 months. After the 12 months, the supplier will revise its disclosure labels to reflect the environmental information associated with the actual electric generating units or systems that generated the power it supplied during those first 12 months, in accordance with the rules for disclosure based on historical information described herein. Also following the 12 months, for the electricity it supplied during the 12 month period, the electric supplier will document that it has met the fuel mix and emissions specifications set forth in its prospective claims using one or more of the following, as applicable:

1. The emissions and fuel mix characteristics of electricity generated by owned units or systems;

2. The emissions and fuel mix characteristics of electricity that the electricity supplier purchased through unit or system contracts or contracts for specified resources that the electricity supplier enter into for electricity generated within PJM or for imported power, where the electricity supplier has filed with the Board or Program Administration documentation which shows that the unit(s), specified resource(s) or system operated, that the electricity was transmitted to PJM and that the generating company has not sold the electricity to any other party; and

3. The default values for the fuel mix and emissions information set forth herein by the Board, until such time as the Board or Program Administrator makes available more specific or refined default values, including a spot market average or other alternative default environmental characteristics for energy purchased from the market on a spot basis.

(d) As with disclosure based on historical data, electricity suppliers will determine the environmental characteristics of owned generation and electric power purchased through bilateral contracts by reference to information supplied by the generator or to publicly available information and will ascribe the default environmental characteristics set forth to all other resources.

(e) In determining whether a supplier has succeeded in documenting that the electricity provided has met the environmental claim for the new product, electricity suppliers will be permitted a margin of error. In respect to a claim for fuel mix, the claim will be considered to be met if the actual percentage of each given fuel type does not differ from the amount claimed by an amount equal to the lesser of 20 percent of the percentage indicated for any given fuel type or five percent of the total product. Thus, if an electricity supplier indicated that its product would include 10 percent wind power, it would be permitted to include between eight percent and 12 percent wind power. A product advertised as "90 percent hydropower" could range between 85 percent and 95 percent. In no case would the electricity supplier be allowed to serve its retail customers with power generated from fuels other than those claimed on the label. No margin of error for fuel mix shall be permitted for products comprised of 100 percent of a specified resource. In respect to emissions, an emissions claim will not be considered to be met if the emissions exceed the claim by more than five percent. Providing more than the specified percentage of resources defined herein as "renewable energy" shall not constitute noncompliance with an environmental claim.

(f) A new market entrant that does not choose to base disclosure labels on prospective environmental claims shall disclose the default claim set forth by the Board for the emissions and fuel mix information for all products it sells in New Jersey for a period of 18 months, after which time it will update its disclosure labels to reflect actual electric generating units or systems that generated the power it supplied during those first 18 months, in accordance with the rules for disclosure based on historical information described herein. Initially, and until modified by Board order in consultation with the NJDEP, the default value for fuel mix (energy source) shall be the PJM average. The default value for air emissions shall be the adjusted PJM average set forth in Appendix F. The default values can be used by electricity suppliers until January 2001 for new electricity products or by electricity suppliers newly serving retail customers in New Jersey that do not have an historical record on which to base disclosure. Electricity suppliers making prospective environmental claims or electricity suppliers with existing products with a record of generation shall use the default values set forth herein only for that portion of the electricity supplier's energy portfolio that is purchased from the spot market or wholesale market, and only if and for as long as contractual information that can trace the energy to its originating system or unit is not available.

14:4-4.6 Methodology for developing a disclosure label

(a) During Phase I, each electricity supplier shall disclose the emissions and fuel mix associated with the electricity used to meet its retail load (except for new products) using information that is readily available to the supplier and verifiable by the Board or Program Administrator. The electricity will fall in one of the following categories:

1. Electricity generated by units owned by the supplier;
2. Electricity purchased by the supplier through bilateral unit contracts (including imported power);
3. Electricity purchased by the supplier through bilateral system contracts or contracts for specified resources (including imported power);
4. Wholesale electricity purchased by the supplier; and
5. Electricity purchased by the supplier from the spot market administered by the PJM ISO.

(b) With respect to electricity where its point of generation is known by the supplier (that is, owned generation or electricity generated or controlled by another company with which the supplier has a bilateral contract; and unit or system power scheduled with the PJM ISO for sale to the supplier), the supplier shall use the actual emission rates and fuel characteristics for the most recent year for which they are available pertaining to the specific electric generating units in determining the fuel mix and emissions values to be disclosed on its label. (See (d) below.) The supplier can determine these characteristics utilizing information that is reported to, and made available by, the US Environmental Protection Agency (USEPA) and Energy Information Administration (EIA), or information supplied by the generator that is made available to and is verifiable by the Board or Program Administrator. Each electricity supplier that is relying on publicly available information to determine the actual emission rates and fuel characteristics associated with electricity supplied will use 1996 data, the most recent year for which data is available, to develop its disclosure labels until the Board or the Program Administrator provides notice that more recent data is available. The source of publicly available information shall be the USEPA's Emissions and Generation Resource Integrated Database (EGRID) which can be accessed at: www.epa.gov/acidrain/egrid/egrid.htm.

1. These 1996 emission rates and fuel characteristics shall be applied to the actual generating units or systems used by the electricity supplier to meet its retail load for the 12-month period being reported on the label. If the electricity supplier has more recent data than the 1996 emission rates and fuel characteristics, and the more recent information can be verified by the Board or Program Administrator, this data may be used instead of the 1996 EGRID data by the electricity power supplier or generation service provider.
2. In the case where information regarding emissions associated with NUG contracts is not available from the generator, the electricity supplier may calculate the emissions characteristics for the contract using the generation permit levels of the NUG, as allowed by the NJDEP, and a conservative estimated emission heat rate factor. (See Appendix G,) incorporated herein by reference.

(c) With respect to electricity where its point of generation can not be readily known by the supplier (that is, electricity purchased on the spot market or from a wholesale supplier), or if the electricity supplier of a new product chooses to disclose default information during the initial 18-month period of Phase I-A, default values set forth in Appendix F shall be used to determine the environmental information to be disclosed on the label. During Phase I, the default values for fuel mix shall initially be the average characteristics of the PJM control area and the default values for air emissions shall initially be the adjusted PJM average set forth in Appendix F, and used as explained in N.J.A.C. 14:4-4.5(b)2, until such time as the Board and/or the Program Administrator is able to provide more accurate or complete information.

(d) In developing disclosure labels, each category of electric generating resources shall be treated as follows:

1. Owned generation. An electricity supplier that owns electric generating units located in the PJM control area shall disclose the fuel mix and emissions associated with all electricity generated from those units, unless the electricity was sold in the wholesale market through a unit or system contract, or contract for specified resources. If, in the previous calendar year, an electricity supplier's owned generation exceeded its retail load, the electricity supplier shall ascribe the average environmental characteristics of its owned electric generating units (minus the electricity sold through unit or system contracts or contracts for specified resources to the wholesale market) to its retail sales. If, in the previous calendar year, the electricity supplier's owned generation was less than its retail load, the electricity supplier shall ascribe the average environmental characteristics of its owned generation (again subtracting the electricity sold through unit or system contracts or contracts for specified resources to the wholesale market) to the portion of its retail load that is equal to the electricity it generated during that period. The remaining retail load shall be ascribed the environmental characteristics of unit contracts, system contracts or the default values set forth herein, as applicable, until the Board or a Program Administrator makes available alternative default emissions and fuel mix information.

2. Unit contracts. An electricity supplier that purchases electric power through a unit contract shall ascribe the fuel mix and emissions associated with the specified unit or units to all electric power purchased through that contract. With respect to a unit contract for imported power, the electricity supplier may characterize this power with the electric generating unit's emissions and fuel mix information after filing the following with the Board or the Program Administrator: documentation that the unit or units generated the amount of electricity claimed during the specified period; documentation that the electricity was scheduled for transmission into the PJM control area, or in the case of Rockland & Orange, into the NYPP control area; and certification from the generating company that it has not sold the electricity claimed by the electricity supplier to any party other than that electricity supplier. The certification documentation shall be included in the annual certification completed by an independent entity as set forth in N.J.A.C. 14:4-4.9. In the event that the electricity supplier does not file such information, the supplier shall characterize the electricity with the average environmental characteristics of the generating units owned by the company from which the electricity was purchased.

3. Contracts for specified resources. An electricity supplier that purchases electric power through a contract for specified resources shall ascribe the fuel mix and emissions associated with the resources actually used to supply the contract. With respect to imported power, the electricity supplier may characterize this power with the electric generating unit's emissions and fuel mix information after filing the following with the Board or the Program Administrator: documentation that the unit or units generated the amount of electricity claimed during the specified period; documentation that the electricity was scheduled for transmission into the PJM control area, or in the case of Orange & Rockland, into the NYPP control area; and certification from the generating company or wholesaler supplying the electricity supplier that the electricity claimed by the electricity supplier has not been sold to any party other than that electricity supplier. The certification documentation shall be included in the annual certifications completed by an independent entity as set forth in N.J.A.C. 14:4-4.9. In the event that the electricity supplier does not file such information, the supplier shall characterize the electricity with the average environmental characteristics of the generating units owned by the company in the control area from which the electricity was purchased.

4. System contracts. Electricity suppliers that purchase electric power through bilateral system contracts shall characterize this power with the generating company's average fuel mix and emissions (less any electricity sold through unit contracts) if, in the previous calendar year, the generating company's owned generation exceeded its retail load. Such purchases shall be considered to be undifferentiated power obtained from a wholesale supplier and characterized by the default fuel mix and emissions set by the Board, if the seller's retail load exceeded its owned generation in the previous calendar year.

5. With respect to a system contract for imported power, an electricity supplier may characterize this power with the generating company's average emissions and fuel mix information after filing the following with the Board or the Program Administrator: documentation that the specified system generated the amount of electricity claimed during the specified period; documentation that the electricity was scheduled for transmission into the PJM control area, or in the case of Orange & Rockland, into the NYPP control area; and certification from the generating company that it has not sold the electricity claimed by the electricity supplier to any party other than that electricity supplier. The certification documentation shall be included in the annual certification completed by an independent entity as set forth in N.J.A.C. 14:4-4.9. In the event that the electricity supplier does not file such information, the supplier shall characterize the electricity with the average environmental characteristics of the generating units located in the control area from which the electricity was purchased.

6. Spot market purchases and wholesale electricity contracts. Electricity suppliers shall ascribe the default fuel mix and emissions set forth herein to all electricity purchased from the spot market or purchased through wholesale electricity contracts until such time as the Board or Program Administrator develops alternative default emissions and fuel mix information to ascribe to such purchases. If a supplier can confirm the environmental characteristics of the energy from an undifferentiated wholesale electricity contract, it may report this data to the Program Administrator.

(e) Except for new products for which such information is not available, suppliers shall base disclosure for a product on a weighted average of the characteristics of the various electric generating units contracted to produce the electricity over the period of a single calendar year. The average emission rate (pounds per MWh) of a generating unit can, for most units, be determined by reference to the most recent data reported to, and made available to the public by, the USEPA and the EIA.

(f) Each electricity supplier shall be permitted to differentiate its electricity supply portfolio into discrete retail

products. Such differentiation is subject to the following restrictions:

1. An electricity supplier's demonstration that a new electricity product supplied to New Jersey retail customers during a specific period met the environmental claims made for that product shall be based on owned generation or on one or more bilateral contracts. Any source of supply, where the generating unit or units are not so documented, shall be ascribed the default values for fuel mix or emissions characteristics set forth by the Board herein, until such time as the Board or Program Administrator develops alternative default emissions and fuel mix information.

2. The electricity supplier shall demonstrate its sources of electric supply, either from owned resources or through acquisitions in the wholesale market. The supplier shall be required to show that over a course of a given year its sources of supply were sufficient to meet its retail load for each of its products and for any wholesale sales it has made. The supplier shall also be able to demonstrate that no electricity has been double counted.

3. The weighted average of the fuel mix and emissions disclosed for all products sold by an electricity supplier (both products for which an environmental claim is made and product(s) based on the remainder of the supplier's portfolio) must correspond to the average fuel mix and emissions of the supplier's wholesale portfolio, minus the supplier's wholesale sales, or to the default fuel mix and emissions information provided by the Board or the Program Administrator.

(g) All electricity suppliers shall be required to disclose in the standard format authorized by the Board the amount of electricity saved as a result of their investment in energy efficiency measures in New Jersey, including an indication that no electricity has been saved if the supplier has not made any such investments. Electricity savings that result from energy efficiency programs subsidized by the State-mandated Societal Benefits Charge may not be included in the electricity savings disclosed to retail customers. In order to be eligible to claim the savings, electricity suppliers shall document electricity savings resulting from efficiency measures by generating and retiring discrete emission reduction ("DER") credits pursuant to New Jersey's Open Market Emissions Trading ("OMET") program or by retiring NO_x allowances allocated under the State's NO_x budget program on the basis of implementation of energy efficiency measures. (See N.J.A.C. 14:4-4.4(a)4 on energy efficiency information.) Electricity suppliers may also claim credit for energy efficiency by purchasing and retiring DER credits or allowances created through energy efficiency measures implemented by another company. Emission credits and allowances shall be translated into electricity savings based on the MWh savings reported in the documentation for the generation of the emission credits for the claim of the allowances.

14:4-4.7 Disclosure information updating and reporting requirements

(a) Each electricity supplier (except for suppliers of new products) will be required to update and distribute the environmental information on its label(s) semi-annually. The disclosure shall be based on data reflecting the product sold during the most recent 12-month period. Suppliers relying on historical information for disclosure shall be required to provide updated labels on April 1 and October 1. This information shall be based on four quarters' information, but recognizing that some period is needed for information gathering and processing, a three month lag will be allowed between the date that disclosure of an updated label is required and the last day of the period on which the label is based. For example, an updated label issued on April 1, 2000, shall be based on data reflecting the generation of power provided from January 1 through December 31, 1999. An updated label issued on October 1, 2000 shall be based on data reflecting the generation of power from July 1, 1999 to June 30, 2000. An updated label issued on April 1, 2001, shall be based on data reflecting the generation of power provided between January 1, 2000, and December 31, 2001. (See Appendix H, incorporated herein by reference.)

(b) For the limited purposes of these interim standards, suppliers of basic generation service shall develop and distribute to their basic generation customers, no later than September 15, 1999, environmental information as defined in N.J.A.C. 14:4-4.5 and 4.6 and illustrated in Appendix A. Thereafter, suppliers of basic generation service shall provide environmental information to basic generation customers according to the schedule as set forth in the preceding paragraph and in Appendix H.

(c) Each electricity supplier of a new product for which an environmental claim is made shall be required to update its label after a 12-month period for which power was supplied to the customer, as set forth in Appendix H. However, suppliers of new products shall distribute the label to their customers semi-annually, as set forth in Appendix H, whether making an environmental claim for the product or using the default label.

(d) A supplier that does not differentiate the electricity it supplies into distinct products on the basis of environmental characteristics shall disclose the same information on fuel mix, emissions and support of energy efficiency for all the electricity it sells. An electricity supplier that does create distinct products on the basis of environmental characteristics shall follow the rules for product differentiation set forth in N.J.A.C. 14:4-4.6(f) to develop different labels for different products, and shall document that the weighted average of all its products is consistent with the supplier's overall portfolio of electricity used to meet its total retail load.

(e) The electricity supplier shall develop the environmental information for the existing product's disclosure label by determining the fuel mix and emissions associated with the electric generating resources it relied on in the most recent four quarters to meet the retail load resulting from sales of that product. The supplier will base its calculation of this environmental information upon: actual information associated with generation from which the fuel use and emissions characteristics are readily known by the supplier; and default fuel mix and emission characteristics associated with generation from which fuel use and emissions characteristics are not readily known by the supplier. For existing products, the use of default values set forth herein shall only be allowed for energy that is purchased from the spot market or wholesale electricity purchases only if and as long as contractual information that can trace the energy to its originating system or unit is not available.

14:4-4.8 Environmental disclosure distribution

(a) Electricity suppliers will be required to disclose environmental information, in the uniform label format approved by the Board, to all prospective retail customers prior to signing them as customers. This does not apply in the case of a customer being returned to basic generation service provided by the local distribution company. Customers returned to basic generation service shall receive the next scheduled semi-annual report, as well as all subsequent reports. In addition, electricity suppliers shall include disclosure labels in: semi-annual mailings to all retail customers; all product-specific direct mail marketing materials or if a supplier offers only one product, in all direct mail marketing materials; all marketing materials that include a solicitation seeking to have the recipient sign up as a retail customer or that include an opportunity to enter into a contract, including those that are accessible to retail customers via computer; and any statement of terms and conditions sent to retail customers following sign-up.

1. Electricity suppliers shall be required to disclose that environmental information is available to the customer if electricity suppliers advertise in print advertisements such as newspapers published in New Jersey or newspapers that permit the purchase of advertising space for distribution in New Jersey in which a specific product is advertised. For specified products advertised, electricity suppliers shall indicate in all such materials that environmental information is available upon request, which, at a minimum, includes the environmental information provided in the standard label attached hereto as Appendices A, B, or C, and shall provide a toll-free telephone number through which retail customers can access this information, in addition to any mailing address or Internet web-site address.

2. In other marketing efforts (for example, broadcast, telemarketing) in which a specific product is advertised or offered, electricity suppliers shall inform retail customers that environmental information on the advertised products is available which, at a minimum, includes the environmental information provided in the standard label attached hereto as Appendices A, B or C, and shall provide a toll-free telephone number. If the electric power supplier or generation service provider maintains an Internet website, then the Internet address shall be provided.

(b) In April of each year, all New Jersey electric suppliers shall submit to the Board or the Program Administrator an annual report for the preceding calendar year (January through December) in accordance with guidelines established by the Board or the Program Administrator. In its report, each electricity supplier shall, on an annual basis, disclose all of the electricity products it has offered for sale in New Jersey, including the weighted average emissions performance (expressed in lbs/MWh) for NO_x, SO₂, and CO₂ and the weighted average fuel mix of all products sold to retail customers in New Jersey. An electricity supplier's annual report shall also include information, including the weighted average emissions performance (expressed in lbs/MWh) for NO_x, SO₂, and CO₂ and the weighted average fuel mix of the generating resources owned by all affiliated companies in the Eastern Interconnection. In addition, each electricity supplier shall report on other matters as required by the Board or the Program Administrator, such as whether it has succeeded in meeting any prospective claims it has made, and whether it has been found to be in violation of any requirements related to disclosure in the previous year.

1. An electricity supplier shall also inform all its retail customers annually that such a report is available upon request and shall provide a toll-free telephone number through which retail customers can obtain this information. An electricity supplier shall also provide to all its retail customers the Internet site address maintained by the Board or Program Administrator as set forth in (c) below to allow customer Internet access to its annual report.

(c) The Program Administrator shall maintain an Internet site with information relevant to environmental disclosure. The Administrator shall see that the disclosure labels of all products supplied in New Jersey by all New Jersey registered electricity suppliers are posted on the site. The Internet site shall include other related information such as each supplier's annual report and whether each company has met its claims, and whether it has been fined or penalized by any State agency in relation to State disclosure requirements.

14:4-4.9 Certification by an independent entity

(a) Prior to distributing disclosure information to customers and annually thereafter, each supplier of an existing product shall obtain a certified verification of the environ-

mental information to be disclosed from a certified public accountant (CPA) that is independent of such electricity supplier. Any electricity supplier of a new electricity product who makes a specific environmental claim on the product's disclosure label, including a claim of support for energy efficiency, shall, following the 12-month or longer period during which the claim is made, demonstrate that the claim was met within the allowable limits, and obtain a certified verification from an independent CPA that the demonstration is complete, accurate and true. Electricity suppliers of new electricity products who rely on the allowed default values for the initial 18-month period are not required to obtain verification or audit of the default emissions and fuel mix information.

(b) The CPA shall certify that the environmental information disclosed on the label has been properly determined, including that the supplier's wholesale portfolio information is based on an accurate calculation of the emissions of owned generation units and of units and/or systems for which the supplier has bilateral contracts; and that proper default values have been used for electricity obtained from wholesale electricity purchases and purchases through the spot market.

(c) Both for existing products and for verification that the product environmental claims have been met, the electricity supplier shall be required to file the CPA's certified verification with the Board or Program Administrator. Power purchase contracts do not need to be provided to the Board as supporting documentation, unless specifically requested by the Board or Program Administrator.

14:4-4.10 Verification and penalties

(a) Until a Program Administrator is able to execute its function, the Board will be responsible for periodically auditing compliance with environmental disclosure requirements, including the proper development and distribution of disclosure labels. When the Program Administrator is in place, it shall provide reports of such audits to the Board, the NJDEP, the Office of the Ratepayer Advocate, and the Division of Consumer Affairs, for their review. The Board shall set up a dispute resolution process through which electricity suppliers can obtain a review of the Program Administrator's calculations and findings.

1. Electricity suppliers that have made prospective claims shall provide to the Board or Program Administrator in their semiannual report a demonstration either that appropriate progress has been made toward meeting the claim or, after the end of the year, that the electricity provided met the environmental claims made. Following the 12-month period for which the claim was made, electricity suppliers shall have their demonstrations reviewed, verified, and certified by an independent CPA, prior to their submittals to the Board of Program Administrator. Actions taken by the Program Administrator or the Board to address a supplier's failure to meet environmental claims shall not be confidential.

2. With respect to prospective claims, while electricity suppliers shall be allowed a full calendar year to meet an environmental claim, they shall report on their progress to the Program Administrator quarterly. To do this, electricity suppliers shall "close the books" on each product after each three-month period and calculate the extent to which it has met the environmental claims for the product. This assessment shall be done with a simple average. For example, to demonstrate progress toward meeting a fuel mix claim, an electricity supplier that has provided electricity in the first two quarters based on purchases of natural gas to meet 20 percent and 30 percent, respectively, of its retail load for a particular product would average these percentages to show that it is on target to create an annual product consisting of 25 percent natural gas.

3. If the Program Administrator determines that any supplier has failed to meet its obligations, including its obligation to meet its environmental claims over the calendar year, the Program Administrator shall refer the matter to the Board for further action.

(b) The Program Administrator shall refer violations of disclosure requirements to the Board for their consideration and possible proceedings before the Board, the Office of Administrative Law, the Division of Consumer Affairs, or other venue. Where applicable and appropriate, the Board shall consult the Attorney General, the NJDEP, the Division of Consumer Affairs, and the Office of Ratepayer Advocate, in respect to these referrals.

1. Any party determined by the Board, after notice and hearing, to have violated any provision of these standards relating to environmental disclosure shall be subject to any one or more of the following penalties consistent with provisions of P.L. 1999, c.23:

- i. Suspension or revocation of the electric power supplier's license;
- ii. Financial penalties as permitted by law; and
- iii. Prohibition on accepting new customers.

2. In determining the appropriate sanction, the Board shall consider the following criteria and any other factors deemed appropriate and material to the supplier's failure to comply:

- i. The good faith efforts, if any, of the entity charged in attempting to achieve compliance;
- ii. The gravity of the violation or failure to comply with the requirements defined herein;
- iii. The number of past violations by the entity charged regarding this standard and other standards adopted by the Board; and
- iv. The appropriateness of the sanction or fine to the size of the company charged.

APPENDIX A

Label Based on Actual Generation Data

Environmental Information for the Electricity Product
 Electricity supplied from January through December, 1998

(insert Product Identification and company name)

Electricity can be generated in a number of ways with different impacts on the environment. The standardized environmental information shown below allows you to compare this electricity product with electricity products offered by other electric suppliers.

Energy Source

(insert company name) relied on these energy resources to provide the electricity product.

Coal	35%
Gas	10%
Hydroelectric (large)	3%
Nuclear	46%
Oil	5%
Renewable energy	
Captured methane gas	0%
Fuel cells	0%
Geothermal	0%
Hydroelectric (small)	0%
Solar	0%
Solid waste	0%
Wind	0%
Wood or other biomass	1%
<hr/>	
Renewable energy sources subtotal	1%
TOTAL	100%

Air Emissions

The amount of air pollution associated with the generation of the electricity product is shown. This amount is compared to a New Jersey benchmark. The benchmark approximates the average emission rate for all electricity generation in New Jersey.

CO₂ is a "greenhouse gas" which may contribute to global climate change. SO₂ and NO_x react to form acids found in acid rain. NO_x also reacts to form ground level ozone, an unhealthy component of "smog."

Pollutant	Percentage of Benchmark
CO ₂	90%
NO _x	110%
SO ₂	100%

0% 100% Benchmark greater pollution

Energy Conservation

The electricity generation and associated air emissions were avoided through (insert company name) investments in conservation measures. Energy conservation measures means less electricity needs to be generated and pollution is avoided.

Avoided generation	Avoided Air Emissions
___ KWh	___ tons CO ₂
	___ tons NO _x
	___ tons SO ₂

See your Terms of Service for further information regarding this label. You may also call XYZ Energy Supplier for additional information or a copy of the Terms of Service at (800) 555-5555.

APPENDIX B

Label for New Product Based on an Environmental Claim

Environmental Information for the Electricity Product (Insert Product Identification)

(This is a new energy product. The data shown below are prospective values based on the guarantees for electricity to be supplied from January through December, 2000.)

(insert Product Identification and company name)

Electricity can be generated in a number of ways with different impacts on the environment. The standardized environmental information shown below allows you to compare this electricity product with electricity products offered by other electric suppliers.

Energy Source

(insert company name) guarantees that these energy resources will be used to generate this new electricity product

*38% of the renewable energy sources used to produce the product will be a combination of (list the renewable sources that will be used.)

Coal	.0%
Gas	40%
Hydroelectric (large)	20%
Nuclear	0%
Oil	2%
Renewable energy	
Captured methane gas*	18%
Fuel cells*	0%
Geothermal*	0%
Hydroelectric (small)*	15%
Solar*	3%
Solid waste*	0%
Wind*	2%
Wood or other biomass*	0%
TOTAL	
	100%

Air Emissions

(insert company name) guarantees that the amount of air pollution associated with the generation of the electricity product will not exceed the amount shown. This amount is compared to the New Jersey benchmark. The benchmark approximates the average emission rate for all electricity generation in New Jersey.

CO₂ is a "greenhouse gas" which may contribute to global climate change. SO₂ and NO_x react to form acids found in acid rain. NO_x also reacts to form ground level ozone, an unhealthy component of "smog."

Pollutant	Percentage of NJ Benchmark
CO ₂	90%
NO _x	70%
SO ₂	30%

Energy Conservation

(insert company name) will invest in energy conservation measures sufficient to avoid the electricity generation shown and the associated air emissions. Energy conservation measures means less electricity needs to be generated and pollution is avoided.

Avoided generation Avoided Air Emissions

___ KWh ___ tons CO₂

 ___ tons NO_x

 ___ tons SO₂

*See your Terms of Service for further information regarding this label. You may also call 1-72 Energy Supplier for additional information or a copy of the Terms of Service at (800) 565-5555.

APPENDIX C

Label for New Product Based on Default Information

Environmental Information for the Electricity Product (Insert Product Identification)
 (This is a new energy product. (insert company name) has made no guarantee as to the environmental characteristics of the energy to be supplied from January through December, 2000. The data shown below are default values, and do not necessarily reflect the energy that (insert company name) will supply.)

(Insert Product Identification and company name)

Electricity can be generated in a number of ways with different impacts on the environment. The standardized environmental information shown below allows you to compare this electricity product with electricity products offered by other electric suppliers.

Energy Source

Default values are shown which represent 1996 regional averages.

Coal	...49...%
Gas	...7...%
Hydroelectric (large)	...2...%
Nuclear	...34...%
Oil	...6...%
Renewable energy	
Captured methane gas	...0...%
Fuel cells	...0...%
Geothermal	...0...%
Hydroelectric (small)	...0...%
Solar	...0...%
Solid waste	...2...%
Wind	...0...%
Wood or other biomass	...0...%
Renewable energy sources subtotal	...0...%
TOTAL	100%

Air Emissions

The emission data given are default values and represent the average amount of air pollution associated with the generation of electricity in the region. This amount is compared to the New Jersey benchmark. The benchmark approximates the average emission rate for all electricity generation in New Jersey.

CO₂ is a "greenhouse gas" which may contribute to global climate change. SO₂ and NO_x react to form acids found in acid rain. NO_x also reacts to form ground level ozone, an unhealthy component of "smog."

NJ Benchmark 100%	126%	153%	306%
CO ₂	NO _x	SO ₂	

↑ greater pollution
↓ lesser pollution

Energy Conservation

(Insert company name) is not investing in energy conservation measures for this electricity product. Energy conservation measures means less electricity needs to be generated and pollution is avoided.

Avoided generation	Avoided Air Emissions
0 kWh	_0_ tons CO ₂
	0 tons NO _x
	0 tons SO ₂

See your Terms of Service for further information regarding this label. You may also call your Energy Supplier for additional information at a copy of the Terms of Service at (800) 555-5555.

APPENDIX D

Role of the Parties

Board of Public Utilities. Until the Program Administrator is established, the Board, in consultation with the NJDEP, will undertake responsibility for implementation of Phase I. If an independent Program Administrator is appointed, the Board, in consultation with the NJDEP, will assume an oversight role.

Electricity suppliers. New Jersey electricity suppliers must create disclosure labels and provide them to current and prospective retail customers. Each electricity supplier must also report semi-annually to the Board or Program Administrator; these reports will include notice of any new unit or system contracts. During Phase I-A, each electricity supplier will independently develop the environmental information to be disclosed on each of its product's label, including determining the electric generating units or systems used to meet its retail load, where this can be readily known, and the environmental characteristics associated with such units or systems. Electricity suppliers must maintain documentation to support disclosure labels, including (if applicable) a demonstration of how it performed product differentiation and how it met any environmental claims made about electricity products in New Jersey. Suppliers of existing products must have their environmental information verified by an independent verifier. Suppliers of new products, if they base their labels on environmental claims, must demonstrate that these claims are met and have these demonstrations verified by an independent verifier. During Phase I-B, the Program Administrator will assist in the implementation of environmental disclosure in accordance with the terms set forth in Appendix A.

PJM ISO. In Phase I, the Board and the Program Administrator will rely on PJM ISO generation and load data to verify disclosure labels.

The New Jersey Department of Environmental Protection (NJDEP) will work with the Board in developing and updating New Jersey emissions benchmark(s) for disclosure labels and the default fuel mix and emissions values that the supplier of a new product shall disclose if no environmental claim is made for a new product, or when information about actual resources is unavailable. It will also work with the Board to develop processes for dispute resolution and processes for developing policy to address issues as they arise. The NJDEP will also aid in developing emissions and fuel mix data for New Jersey electric generating units that do not provide data to EPA. The NJDEP will also support environmental disclosure by working with representatives of environmental agencies in other states in the region to the end of achieving consistency, to the extent feasible, in the approaches taken to environmental disclosure in the various states.

Independent Verifiers—Certified Public Accountants (CPAs) who are licensed in New Jersey will provide verification services. During Phase I, a supplier of an existing product will be required to have the environmental information it intends to disclose on a product label verified before the information is used. If a supplier of a new product bases its label on environmental claims, the supplier must retrospectively demonstrate that these claims are met and have this demonstration verified by an independent verifier. In all cases, the CPA who performs the verification must be independent of the electricity supplier for whom it performs the verification.

Program Administrator. As soon as practicable following adoption of this proposal, the Board will appoint a Program Administrator to assist with the implementation of the disclosure program. The duties of the Program Administrator will include, but not necessarily be limited to, the following:

1. Review the disclosure labels developed by electricity suppliers for proper format, clarity and accuracy;
2. Verify that the electric power provided by electricity suppliers who have based disclosure labels on prospective information, met the fuel mix and emissions characteristics prospectively claimed;
3. Confirm that suppliers who based their labels for products on environmental claims, retrospectively demonstrated that these claims were met and that the demonstration was verified by an independent verifier;
4. Serve as a repository for the documentation that suppliers are required under N.J.A.C. 14:4-4.6 and 4.9, to submit for unit contracts and system contracts;
5. Develop and update the default values to be used by suppliers;
6. Answer questions market participants might have regarding disclosure requirements;
7. Provide information to electricity suppliers on energy efficiency, including opportunities for obtaining and retiring emission credits;
8. Provide information to electricity suppliers on the retirement of emission credits generated under NJDEP's Open Market Emission Trading Program;
9. Establish a semiannual reporting system for suppliers, and update the system as environmental disclosure evolves and the reporting needs change;
10. Provide guidelines to suppliers for the preparation of annual reports; and
11. Maintain an Internet website which displays disclosure labels for all products sold in New Jersey as well as other relevant information.

APPENDIX E

Definitions of Fuel Types

<p>Coal</p> <p>Coal—Steam Turbine Pumped Storage Hydro Powered by Coal</p> <p>Gas</p> <p>Natural Gas—Steam Turbine Natural Gas—Simple Combustion Turbine Natural Gas—Combined Cycle Combustion Turbine</p>	<p>Hydro</p> <p>Nuclear</p> <p>Oil</p>	<p>LPG</p> <p>Pumped Storage Hydro Powered by Gas Pondage Hydro Run-of-River Hydro Boiling & Pressurized Water Reactors Pumped Storage Hydro Powered by Nuclear Oil—Steam Turbine Oil—Simple Combustion Turbine</p>
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APPENDIX G

New Jersey Non-Utility Generator Environmental Disclosure Default Methodology

The environmental disclosure provisions in New Jersey require electric power suppliers to disclose information about the environmental characteristics of their energy to all customers. During Phase I of the program, environmental characteristics disclosed by electric power providers are to be based on public available emissions and fuel mix information from the U.S. Environmental Protection Agency (EPA) and Energy Information Administration (EIA). However, emissions and fuel mix information for non-utility electric generating facilities (NUGs) are currently held confidential by EIA. In order for electric power suppliers to account for energy from NUG contracts in calculating their environmental disclosure information, they will need to either receive actual emissions information from their NUG energy sources directly, or, in cases where such information cannot be obtained, apply reasonable default emissions and fuel mix assumptions to NUG energy.

The discussion below identifies reasonable emissions and fuel mix assumptions that could be used as defaults for purchases from NUGs located in the State of New Jersey. The methodology utilizes aggregate information from EIA to identify a reasonable fuel mix default, emissions data from New Jersey DEP to identify reasonable emission rate defaults for NO_x and SO₂, and EPA greenhouse gas emissions factors to identify reasonable emission rate defaults for CO₂.

Default Fuel Mix Methodology

An appropriate default fuel mix can be estimated using publicly available EIA data. Although EIA does not publish NUG emissions or fuel mix data at the facility level, they do provide fuel mix information aggregated at the State level. EIA information indicates that a reasonable fuel mix default for New Jersey NUGs is:

Coal	6%
Oil	2%
Gas	85%
Landfill gas	2%
MSW	5%

The percentages above for gas and oil are calculated directly from the EIA information on New Jersey NUG generation.

EIA holds confidential the information on coal and hydro generation in New Jersey because there are only two coal and a few small hydro NUG facilities in the State. However, the total coal & hydro generation number can be back calculated based on subtracting all other sources from the State NUG generation total. This calculation reveals 1,095,000 MWh of coal and hydro generation, which is equal to 6% of the NUG generation total. Indications are that very little NUG hydro generation exists in New Jersey, so it can be conservatively assumed that all this generation is coal.

EIA lumps landfill gas, Municipal Solid Waste (MSW), and wood together in one category that comprises 7% of the New Jersey NUG generation total. Additional data from EIA on renewable generation sources indicates that there is no NUG wood or wood waste generation in the State.² Unfortunately, EIA information does not provide a basis for differentiating landfill gas generation from MSW combustion. However, it is likely that MSW accounts for the majority of this category, based on the generally smaller size of landfill gas generating capacity. A reasonable assumption would be that 70% of the 7% is actually MSW, making MSW 5% of the State NUG total and landfill gas 2%.

Default Methodology for NO_x and SO₂

New Jersey DEP collects annual fuel consumption and NO_x and SO₂ emissions data from all significant stationary combustion sources in the State. Unfortunately, the database containing this information does not identify which sources are NUGs. However, based on a review of published EIA lists as well as a list of NUG sources included in the New Jersey NO_x Budget allocation, 25 NUG sources have been identified from the DEP database (see Exhibit 1).³

The information collected by DEP on these sources includes the type and quantity of fuel burned during the year and the tons on NO_x and SO₂ emitted during the year. This information along with generic fuel heat content information obtained from EIA⁴ provides a basis for estimating the Btus of fuel consumed by each facility. Knowing the annual emissions and annual Btus provides a basis for developing lbs/mmBtu NO_x and SO₂ emission rates. These rates can then be converted to lbs/MWh based on assumptions about the heat rate (efficiency) of power generation facilities. Typical coal fired power plants operate with an efficiency of about 10,000 Btu/kWh, new natural gas combined cycle facilities operate at efficiencies of 8,000-9,000 Btu/kWh and stoker boilers typically used for MSW combustion operate in the 12,000-14,000 Btu/kWh range. For the conversions here, 10,000 Btu/kWh is assumed for coal and oil, 9,000 Btu/kWh is assumed for gas and 13,000 Btu/kWh is assumed for MSW combustion. The table below illustrates 1997 DEP data for fuel consumption and emissions by fuel type as well as the emissions rates calculated based on this data (see Exhibit 1 for further detail).

# Plants using	Fuel Consumption				Emissions			Emission Rates			
	Fuel Type	Fuel Units	Fuel Use	mmBtu	NO _x tons	SO ₂ tons	NO _x lb/mmBtu	SO ₂ lb/mmBtu	NO _x lb/MWh	SO ₂ lb/MWh	
14	2FO	MGALS	9,581	1,328,833	148	107	0.22	0.161	2.23	1.61	
4	6FO	MGALS	11,852	1,774,121	2,015	802	2.27	0.904	22.71	9.04	
1	GSOLN	MGALS	0.42	52	0	0	1.68	0.088	16.82	0.88	
7	KERO	MGALS	2,138	288,689	12	6	0.08	0.042	0.82	0.42	
19	NG	MMCF	115,577	118,119,595	3,666	93	0.06	0.002	0.56	0.01	
4	PG	MMCF	66,082	66,081,867	5,148	1,635	0.16	0.049	1.40	0.45	
2	BIT Coal	TONS	958,817	19,679,719	1,729	1,419	0.18	0.144	1.58	1.30	
3	MSW	TONS	1,427,048	14,270,479	1666.58	267.79	0.23	0.038	3.04	0.49	
				221,543,356	14,384	4,330	0.13	0.04			

Exhibit 1
New Jersey NUG Average NO_x and SO₂ Emission Rates by Fuel Type

# Plants using	Fuel Consumption				Emissions			Emission Rates			
	Fuel Type	Fuel Units	Fuel Use	mmBtu	NO _x tons	SO ₂ tons	NO _x lb/mmBtu	SO ₂ lb/mmBtu	NO _x lb/MWh	SO ₂ lb/MWh	
14	2FO	MGALS	9,581	1,328,833	148	107	0.22	0.161	2.23	1.61	
4	6FO	MGALS	11,852	1,774,121	2,015	802	2.27	0.904	22.71	9.04	
1	GSOLN	MGALS	0.42	52	0	0	1.68	0.088	16.82	0.88	
7	KERO	MGALS	2,138	288,689	12	6	0.08	0.042	0.82	0.42	
19	NG	MMCF	115,577	118,119,595	3,666	93	0.06	0.002	0.56	0.01	
4	PG	MMCF	66,082	66,081,867	5,148	1,635	0.16	0.049	1.40	0.45	
2	BIT Coal	TONS	958,817	19,679,719	1,729	1,419	0.18	0.144	1.58	1.30	
3	MSW	TONS	1,427,048	14,270,479	1666.58	267.79	0.23	0.038	3.04	0.49	
				221,543,356	14,384	4,330	0.13	0.04			

Conversion Factors
MGALS=(x)Barrels

Fuels with unknown heat content that were not estimated

23.81	# Plants	Fuel Type	Fuel Units	Fuel Use	NO _x	SO ₂
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Plant Heat Rates*		2	4FO	MGALS	4,044	0.04	0.06
Btu/MWh Gas	9,000	13	DF	MGALS	280	13.59	1.53
Btu/MWh Oil & Coal	10,000	1	PETRO	MGALS	1,760	95.00	71.00
Btu/MWh MSW	13,000	1	SOLV	MGALS	270	2.13	1.56
		1	BUTA	MMCF	68	2.35	0.06
		1	SOLID	TONS	603	5.40	3.80
Fuel Heat Content**						118.51	78.00
	mmBtu/Barrel				Percent of Total	1%	2%
2FO	5.825						
6FO	6.287						
Gasoln	5.206						
Kcro	5.670						
	mmBtu/mmCF						
NG	1,022						
PG (estimate)	1,000						
	mmBtu/ton						
BIT Coal	20,525						
MSW (estimate)	10						

*Plant heat rates estimated based on typical efficiencies reported for utility facilities.

**With the exception of PG and MSW, which are estimated, fuel heat content is taken from EIA Annual Energy Outlook 1999, Appendix H (incorporated herein by reference as Appendix I).

Although some of the data in the table above appear anomalous (residual fuel oil emissions rates are unreasonably high) the data provides a basis for identifying potential default NO_x and SO₂ emission rate characteristics for New Jersey NUGs. Cutting it up by major fuel type and rounding to tenths, the data indicate that the following emission rates would be reasonable for NUG defaults for coal, oil and gas generation:

	NO _x (lbs/MWh)	SO ₂ (lbs/MWh)
Coal	2.0	1.5
Oil	3.0	2.0
Gas	1.0	0.05

For MSW, the heat content was estimated to be 50% of the heat content of coal. Based on this estimation, the NO_x emission rate for MSW is higher than coal (3.0 lbs/MWh) and the SO₂ emissions rate is lower (0.5 lbs/MWh). These data are somewhat less certain than that for coal and oil due to estimations of both plant efficiency and the heat content of waste that could be somewhat variable. Nonetheless, since the rates are in the ballpark of rates for coal, the data suggest that assigning MSW emissions rates compatible with coal is not unreasonable.

If an overall average emissions rate is desired for the default, then treating landfill gas and MSW as gas and coal, respectively, the weighted average NO_x and SO₂ emissions rates for NUG generation in New Jersey based on the fuel mix identified above and rounded up to the nearest tenth would be:

NO_x: = 1.2 lbs/MWh

SO₂: = 0.3 lbs/MWh

Default Methodology for CO₂

Although actual CO₂ emissions data is not available for New Jersey NUG sources, relatively accurate CO₂ lb/MWh emission rate estimates can be derived based on fuel type and power plant efficiency. EPA's Inventory of Greenhouse Gas Emissions and Sinks provides emissions factors for

estimating CO₂ emissions rates for coal, oil and gas combustion, as follows:⁵

coal:	207 lbs/mmBtu
oil:	168 lbs/mmBtu
gas:	117 lbs/mmBtu

Assuming efficiencies of 9,000 Btu/kWh for combined cycle gas and 10,000 Btu/kWh for relatively new oil and coal facilities, appropriate default emissions rates would be:

Coal:	2,070 lbs/MWh
Oil:	1,680 lbs/MWh
Gas:	1,053 lbs/MWh

Although no specific factors are readily available for CO₂ emissions associated with burning landfill gas or MSW, it is probably appropriate to treat landfill gas as natural gas and MSW as coal for this purpose.

If an overall average emissions rate is desired for the default, then treating landfill gas and MSW as gas and coal, respectively, the weighted average CO₂ emissions rate for NUG generation in New Jersey rounded to the nearest hundred would be:

= 1,200 lbs/ MWh

Reasonable NUG defaults Summary

Fuel Mix

Coal	6%
Oil	2%
Gas	85%
Landfill gas	2%
MSW	5%

Emission Rates

	NO _x (lbs/MWh)	SO ₂ (lbs/MWh)	CO ₂ (lbs/MWh)
Coal	2.0	1.5	2,070
Oil	3.0	2.0	1,680
Gas	1.0	0.05	1,053
Weighted Average	1.2	0.3	1,200

⁵EIA data available at: <http://www.eia.doe.gov/cneuf/electricity/epuv2/epuv2t58.txt>

²Sec. Energy Information Administration, "Challenges of Electric Power Industry Restructuring for Fuel Suppliers," September 1998. (Available at: <http://www.eig.doe.gov>).

³Since this list is probably not inclusive of all NUGs in the state, it was not used as the basis for determining the NUG fuel mix above. However, the Btu's of fuel consumed by fuel type according to this list indicates a very similar fuel mix as that identified using EIA generation data. The fuel mix of the 25 plants is: 83% gas, 9% coal, 1.5% oil, and 6% MSW.

⁴Sec Energy Information Administration, Annual Energy Outlook 1999, Appendix H. The heat content values used in this analysis are provided in Exhibit 1.

⁵Sec U.S. Environmental Protection Agency, "Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-1993," 1994. All EPA data provided in kg C/mmBtu. Conversion based on 3.67 kg CO₂/kg C and 2.205 lbs CO₂/kg CO₂. EPA provides separate emissions factors for distillate and residual fuel oil, which are averaged together to obtain a composite number for oil of 168 lbs/mmBtu.

APPENDIX H

Label Update and Distribution Timing Requirements

HISTORICAL LABEL	
Date label must be updated & distributed to customers	Reporting period on label
September 15, 1999	July 1, 1998-June 30, 1999
April 1, 2000	January 1, 1999-December 31, 1999
October 1, 2000	July 1, 1999-June 30, 2000
April 1, 2001	January 1, 2000-December 31, 2000
October 1, 2001	July 1, 2000-June 30, 2001

First historical label	April 1, 2001	Jan. 1, 2000 through December 31, 2000.	April 1, 2001
Future historical labels	The next semiannual time set forth in the HISTORICAL table above.		

NEW PRODUCT LABEL (CLAIM)

	Date of label update	Reporting period on label	Distribution to customer
Initial prospective label	Commencement of marketing	12 month period for which power will first be provided in New Jersey	Commencement of marketing & six months after power is first provided.
First historical label	3 months after the end of the 12 month period	The same time period used on the prospective label (above).	3 months after the end of the 12 month period
Future historical labels	The next semiannual time set forth in the HISTORICAL table above.		

NEW PRODUCT LABEL (DEFAULT)

	Date of label update	Reporting period on label	Distribution to customer
Initial prospective label	Commencement of marketing	Until December 31, 2000.	Commencement of marketing, then each six months thereafter until the first historical label is used.

APPENDIX I

Conversion Factors

Table-1. Heat Rates

Fuel	Units	Approximate Heat Content
Coal¹		
Production	million Btu per short ton	21,287
Consumption	million Btu per short ton	20,856
Coke Plants	million Btu per short ton	26,800
Industrial	million Btu per short ton	22,105
Residential and Commercial	million Btu per short ton	23,011
Electric Utilities	million Btu per short ton	20,525
Imports	million Btu per short ton	25,000
Exports	million Btu per short ton	26,174
Coal Coke	million Btu per short ton	24,800
Crude Oil		
Production	million Btu per barrel	5,800
Imports	million Btu per barrel	5,948
Petroleum Products		
Consumption ²	million Btu per barrel	-5,362
Motor Gasoline ²	million Btu per barrel	5,206
Jet Fuel (Kerosene)	million Btu per barrel	5,670

Distillate Fuel Oil	million Btu per barrel	5,825
Residual Fuel Oil	million Btu per barrel	6,287
Liquefied Petroleum Gas		
Gas	million Btu per barrel	3,625
Kerosene	million Btu per barrel	5,670
Petrochemical		
Feedstocks	million Btu per barrel	5,630
Unfinished Oils	million Btu per barrel	5,800
Imports ²	million Btu per barrel	-5,493
Exports ²	million Btu per barrel	-5,769
Natural Gas Plant Liquids		
Production ²	million Btu per barrel	-3,885
Natural Gas		
Production, Dry	Btu per cubic foot	1,028
Consumption	Btu per cubic foot	1,028
Non-electric Utilities	Btu per cubic foot	1,029
Electric Utilities	Btu per cubic foot	1,022
Imports	Btu per cubic foot	1,022
Exports	Btu per cubic foot	1,022
Electricity Consumption	Btu per kilowatt-hour	3,412

¹Conversion factors vary from year to year. 1996 values are reported.

² Conversion factors vary from year to year. 2000 values are reported.

Source: Energy Information Administration, AE099 National Energy Modeling System run AE099B.D100198A.

SUBCHAPTER 4A. PUBLIC UTILITY HOLDING COMPANY STANDARDS

14:4-4A.1 Scope

This subchapter sets forth requirements that apply to electric and/or gas public utilities that operate in New Jersey and are owned by a public utility holding company. The subchapter is intended to protect New Jersey utility ratepayers from the risks presented by the ownership of a New Jersey electric or gas public utility by a public utility holding company.

14:4-4A.2 Definitions

(a) As used in this subchapter, “Board,” “electric public utility,” “electricity related services,” “existing products and/or services,” “gas public utility,” “gas related services,” “person,” “public utility holding company,” and “shared services” have the same meaning as used in N.J.A.C. 14:4-1.2.

(b) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Public utility holding company system” means a public utility holding company, together with its subsidiary companies.

“Subsidiary” or “subsidiary company” of a public utility holding company means:

1. Any company, for which 10 percent or more of the outstanding voting securities of the company are directly or indirectly owned, controlled, or held with power to vote, by the public utility holding company; and

2. Any person over whose management or policies the public utility holding company has a controlling influence that is sufficient to make it necessary for the rate protection of utility customers that such person be subject to the obligations, duties, and liabilities imposed by this subchapter upon subsidiary companies of public utility holding companies. This shall apply regardless of whether the public utility holding company exercises its influence directly or indirectly, either alone or pursuant to an arrangement or understanding with one or more other persons. The Board shall make this determination after notice and opportunity for hearing.

“Voting security” means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

“Nonutility associate” means a subsidiary company, in a public utility holding company system, that is not an electric or gas public utility or utility associate. Examples of entities excluded from this definition include, but are not limited to:

1. Entities that are developing facilities that will engage in public utility or utility associate activities; and
2. Entities that are directly related and subordinate to, or that directly support, public utility or utility associate activities, including, but not limited to:
 - i. Entities that provides fuel to generating plants;
 - ii. Entities created to facilitate tax advantages;
 - iii. Entities created to facilitate financing transactions;
 - iv. Captive insurance and other risk management entities; or
 - v. Entities that hold or manage emission allowances or other environmental allowances or credits.

“Utility associate” means a subsidiary company, in a public utility holding company system, that directly or indirectly derives or will derive substantially all of its revenues (greater than 70 percent) from:

1. Producing, generating, transmitting, delivering, distributing, storing, selling, marketing, and/or furnishing natural gas, heating oil, electricity, propane, thermal energy and/or steam energy to wholesale and/or retail customers;
2. Gas and/or electricity related services, including, but not limited to:
 - i. Energy management services and demand side management activities;
 - ii. Development and commercialization of electro-technologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, clean coal technologies, and similar innovations;
 - iii. Ownership, repair, maintenance, replacement, operation, sale, installation and servicing of refueling, recharging and conversion equipment and facilities relating to electric and compressed natural gas powered vehicles;
 - iv. Sale of electric and gas appliances including equipment to promote new technologies, or new applications for existing technologies, that use gas or electricity and equipment that enables the use of gas or electricity as an alternate fuel and the installation and servicing thereof;
 - v. Production, conversion, servicing, sale and distribution of:

(1) Thermal energy products and resources, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products;

(2) Alternative fuels, such as coal gasification facilities and other synthetic fuels technologies, hydrogen fuel, landfill gas recovery, refuse derived fuels, biomass derived fuels, ethanol, methanol, and other alternative fuels technologies; and

(3) Renewable energy resources;

vi. Sale of technical, operational, management and other similar kinds of services and expertise relating to distribution, transmission, and generation, including engineering, development, design and rehabilitation, construction, maintenance and operation, fuel procurement, delivery and management and environmental licensing, testing and remediation;

vii. Ownership, operation and servicing of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities, including activities related to nuclear fuels;

viii. Development and commercialization of technologies or processes that utilize coal waste or by-products as an integral component of such technology or process;

ix. Nuclear decommissioning trust activities;

x. Securitization activities, financing activities and tax advantaged transactions related to electric or gas public utility and utility associate activities;

xi. Development activities relating to other authorized electric or gas related activities or utility associate activities;

xii. Local community development investments relating to other authorized electric or gas related activities;

xiii. Revenues from sales of assets that were related to other authorized electric or gas related activities;

xiv. Captive insurance and other risk management activities;

xv. Holding and managing emission allowances or other environmental allowances or credits; or

xvi. Other utility-related activities, as determined on a case-by-case basis by the Board;

3. Existing products and/or services and similar services provided by a subsidiary that is not a public utility; and/or

4. Shared services.

14:4-4A.3 Asset investments

(a) Each electric or gas public utility and its public utility holding company shall ensure that the aggregate assets of all nonutility associates in the public utility holding company system do not exceed 25 percent of the aggregate assets of all public utilities and utility associates in the public utility holding company system.

(b) The Board may adjust the percentage level in (a) above up to an additional 10 percentage points higher, not to exceed 35 percent, upon petition by an electric or gas public utility. The Board shall consider any petitions filed pursuant to this provision on a case-by-case basis. Any adjustment to the percentage level must not compromise safe, adequate and proper service.

(c) Each electric or gas public utility or its public utility holding company shall file all of the following in their annual report with the Board:

1. A listing of names and total assets for each subsidiary in the public utility holding company system;

2. The assets of all nonutility associates as a percentage of total assets of all public utilities and utility associates in the public utility holding company system;

3. An annual certification by the chief executive officer as authorized by the board of directors, of the public utility holding company and electric or gas public utility, if applicable, that the percentage of assets in nonutility associates does not contravene this subchapter; and

4. All information required in the annual report pursuant to (c)1-3 above, shall be as of the end of the previous fiscal year.

SUBCHAPTER 5. AFFILIATE RELATIONS, FAIR COMPETITION AND ACCOUNTING STANDARDS AND RELATED REPORTING REQUIREMENTS

14:4-5.1 Scope

(a) These standards shall apply as follows:

1. N.J.A.C. 14:4-5.3 through 5.5 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, as defined herein;

2. N.J.A.C. 14:4-5.6 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. 14:4-5.7 through 5.9 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) The Board reserves the right to promulgate any additional interim standards as may be required to effectuate the intent of the Act.

(c) 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 these standards or part(s) thereof, for transactions between the electric and/or public utility and its affiliate(s) solely in its role of serving its jurisdictional areas wholly outside of New Jersey.

1. The applicant has the burden of proof to establish the appropriateness of the requested exemption.

14:4-5.2 Definitions

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

“Act” means the “Electric Discount and Energy Competition Act” (P.L. 1999, c.23), N.J.S.A. 48:3-49 et seq.

“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 herein and in the Act.

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

“Board” means the New Jersey Board of Public Utilities or any successor agency.

“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.

“Comprehensive resource analysis” or “CRA” means an analysis including, but not limited to, an assessment of existing market barriers to the implementation of energy efficiency and renewable technologies that are not or cannot be delivered to customers through a competitive marketplace.

“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.

“Customer” means any person that is an end user and is connected to any part of the transmission and distribution system within an electric public utility’s service territory or a gas public utility’s service territory within this State.

“Customer information” means information data regarding a utility customer which the electric and/or gas public utility learned, acquired or developed while in the business of providing electric and/or gas public utility services.

“Dth” means decatherms or ten therms.

“EBB” means an electric and/or gas public utility’s electronic bulletin board.

“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 within this State.

“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 CRA 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, and the provision of energy consumption measurement and billing services.

“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 the effective date of the adoption of these standards.

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

“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 N.J.S.A. 48:3-58(b) of the Act, which separate business unit shall be a related competitive business segment of an electric public utility or gas public utility as defined herein and in the Act.

“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 within this State.

“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 CRA 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 measurement and billing services.

“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.

“kW” means kilowatts or 1,000 watts.

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

“Long term” means a transaction in excess of 31 days.

“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.

“Person” means an individual, partnership, corporation, association, trust, limited liability company, governmental entity or other legal entity.

“Products” means goods as defined in the Uniform Commercial Code, N.J.S.A., all other real, personal and intellectual property of whatever being or nature.

“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 which is a public utility holding company by virtue of this definition, unless the Securities and Exchange Commission, or its successor, by order declares such company not to be a public utility holding company under the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79 et seq., or its successor; or 2. Any person that the Securities and Exchange Commission, 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 1935 or its successor.

“Ratepayer Advocate” or “RA” means the Division of Ratepayer Advocate or any successor agency.

“Regulatory asset” means an asset recorded on the books of an electric public utility or gas public utility pursuant to the Statement of Financial Accounting Standards, No. 71, entitled “Accounting for the Effects of Certain Types of Regulation,” or any successor standard and as deemed recoverable by the Board.

“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 which 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, insur-

ance, 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.

“Slamming” means the unauthorized change of a consumer’s electric power supplier or gas supplier.

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

“Therm” means 100,000 BTUs.

“Transmission and distribution system” means any facility or equipment that is used for the transmission, distribution and/or delivery of electricity or natural gas to the end-use customers including, but not limited to, the land, structures, meters, lines, pipes, switches and all other appurtenances thereof and thereto, owned or controlled by the electric and/or gas public utility, or local distribution company (LDC), respectively within this State.

Amended by R.2002 d.313, effective September 16, 2002.

See: 34 N.J.R. 1524(d), 34 N.J.R. 3230(a).

Added “Comprehensive resource analysis”; deleted “Demand side management”; in “Electric related service” and “Gas related service”, substituted “CRA” for “demand side management”; in “Transmission and distribution system” substituted “local distribution company (LDC)” for “LDC”.

14:4-5.3 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:

1. 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; and

2. 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.

(b) 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. 14:4-5.5(g) and (h) (joint purchases), in N.J.A.C. 14:4-5.5(i) and (j) (corporate support) or N.J.A.C. 14:4-5.6(a) through (f) (competitive utility products and/or services), provided the transactions specified in N.J.A.C. 14:4-5.6 (competitive utility products and/or services) comply with all other applicable rules.

(c) 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 subsection 5.4 {Joint purchases}, subsection 5.5 {Corporate support} and subsection 6.1 {Competitive Utility Products and/or Services} below, provided the transactions specified in N.J.A.C. 14:4-5.6, 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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 (o) through (q) below.

(h) 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.

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

(j) 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.

(k) 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.

(l) 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.

(m) Except as otherwise provided by these standards, 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, including, but not limited to, the administration of CRA programs, 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.

(n) Provided it is in compliance with these standards, and subject to the provisions of N.J.A.C. 14:4-5.4(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.

(o) 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 (d) or (e) above; and

8. Procedures by which a non-affiliated entity may request a comparable offer.

(p) 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.

(q) All records maintained pursuant to the standards in (o) and (p) above shall also conform to FERC rules where applicable.

Amended by R.2002 d.313, effective September 16, 2002.
See: 34 N.J.R. 1524(d), 34 N.J.R. 3230(a).

In (m)5, substituted "CRA" for "demand side management".

14:4-5.4 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. 14:4-5.5(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), said 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. Said 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 which 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 said 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, which 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 RA review upon 72 hours' notice, or at a time mutually agreeable to the electric and/or gas public utility and the Board and/or RA.

(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.

14:4-5.5 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).

(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 permitted under this subsection or 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 these standards.

i. Prevention of unauthorized access to computer and information systems must be specifically addressed as part of an electric and/or gas public utility's compliance plan submitted pursuant to N.J.A.C. 14:4-5.7(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 must 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 these standards 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. 14:4-5.4 and this section, respectively, set forth herein, as well as other applicable Board pricing and reporting requirements.

(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 these standards, 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. 14:4-5.7(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 these standards, and to ensure the electric and/or gas public utility is not utilizing joint corporate support services as a conduit to circumvent these standards.

(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 [LDC's NAME HERE], 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 [RELATED COMPETITIVE BUSINESS SEGMENT'S NAME HERE] 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 these standards, 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; 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 which 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 are 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 these standards are 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.

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. 14:4-5.7(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 these standards.

(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 which 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.

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 which 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 which said related competitive business segment of the public utility holding company would otherwise be precluded from having pursuant to these standards.

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 these standards 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 these standards or 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.

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 these standards 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 as determined by the Board.

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.2002 d.313, effective September 16, 2002.

See: 34 N.J.R. 1524(d), 34 N.J.R. 3230(a).

In (q)2i, substituted "(d)" for "(e)".

14:4-5.6 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 these standards, 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, except where pre-empted by Federal law.

1. A public utility holding company may offer any competitive service, including, but not limited to, electric generation service, telecommunications services, and cable service, to retail customers of an electric public utility that is owned by the holding company, but only through a related business segment of the holding company that is not an electric public utility or a related business segment of the electric public utility. Competitive services shall be offered in compliance with all Board rules and regulations for carriers of these services.

2. A public utility holding company may offer a competitive service to retail customers of a gas public utility that is owned by the holding company, but only through a related business segment of the holding company that is not a related business segment of the gas public utility; provided however, that in the event that a gas public utility is not part of a holding company legal structure, competitive services may be offered by a related competitive business of that gas public utility as long as that related competitive business segment is structurally separated from the gas public utility, and provide that interactions between the gas public utility and the related competitive business segment are in compliance with these standards.

(b) An electric and/or gas public utility or its related competitive business segment may only offer to provide the following competitive products and/or services:

1. Metering, billing or administrative services that are deemed competitive by the Board pursuant to N.J.S.A. 48:3-56;

2. Products and/or services related to customer and public safety and reliability of non-competitive utility services as determined by the Board;

3. Competitive products and/or services that have been offered by an electric and/or gas public utility in the State prior to January 1, 1993 or that have been approved by the Board prior to February 9, 1999, to be offered by any electric and/or gas public utility in the State;

4. Products and/or services that are substantially similar, as determined by the Board, to competitive services that have been offered by any electric and/or gas public utility in the State prior to January 1, 1993 or that have been approved by the Board prior to February 9, 1999 to be offered by any electric and/or gas public utility in the State and, in the case of electric public utilities, for which a request for approval by the public utility seeking to offer such service had been filed with the Board on or before July 1, 1998; or

5. Competitive services to non-residential customers using existing public utility employees.

(c) For a competitive product and/or service that has been offered by an electric and/or gas public utility prior to January 1, 1993 or that has been approved by the Board prior to February 9, 1999, the electric and/or gas public utility may continue offering such product or service, subject to the provisions of these standards and applicable law and shall not be required to seek further approval to offer said product and/or service, provided, however, that if the electric and/or gas public utility does not have a tariff for the service on file with the Board, the electric and/or gas public utility shall file with the Board within 60 days of final adoption of these standards a tariff setting forth the pricing terms, and other terms and conditions of the product and/or service.

(d) For any new competitive product and/or service which an electric and/or gas public utility or its related competitive business segment intends to offer, consistent with these standards, the electric and/or gas public utility must file a proposed public tariff to the Board for its review and approval for the new product and/or service, along with the information in the attachment (Appendix A).

(e) Copies of the petition for approval, including proposed tariff and other required information, shall be certified and shall be accompanied by a certificate of service demonstrating that the petition was served on the Division of the Ratepayer Advocate simultaneous to its submission to the Board.

(f) All tariffs for competitive services filed with the Board shall be in the public records unless the rates contained therein are determined to be proprietary, in which case said tariffs shall be filed under seal and made available under the terms of an appropriate protective agreement as provided by Board Order. The public utility shall have the burden of proof by affidavit and motions to demonstrate the need for proprietary treatment. The rates shall become public upon Board approval.

(g) The Board may approve a proposed new competitive product and/or service filing if the electric and/or gas public utility has demonstrated and the Board determines that:

1. The proposed product and/or service is competitive, consistent with the standards for competitive products and/or services set forth in the Act and as determined by the Board;

2. The provision of the proposed product and/or service by the electric and/or gas public utility will not adversely impact the electric and/or gas public utility's ability to offer its non-competitive services to customers in a safe, adequate and proper manner, and that in all instances where resources are jointly deployed by the electric and/or gas public utility to provide competitive and non-competitive services and resource constraints arise, the provision of safety-and reliability-related and non-competitive services receives the higher priority;

3. The competitive product and/or service will be offered in a non-discriminatory manner to all customers; and

4. The price which the electric and/or gas public utility or its related competitive business segment will charge for the competitive products and/or service will equal or exceed the fully allocated cost to the electric and/or gas public utility or its related competitive business segment to provide the competitive product and/or service, and will not otherwise result in cross-subsidization.

(h) Notwithstanding any other provisions of these standards, the Board may determine that any service shall remain regulated for purposes of public safety and welfare. Notwithstanding the other provisions of these standards an electric and/or gas public utility shall continue to offer safety-related services, as determined by the Board, free of charge to its customers or as otherwise determined by the Board.

(i) All electric and/or gas public utility employees who are directly involved in the provision of non-competitive services as well as competitive services, or who are involved in the provision of more than one competitive service, must maintain complete and accurate time logs to track and record the amount of time spent in the performance of each service. For those employees who travel to remote or customer locations in the provision of competitive services, time logs shall account for and allocate as time to the competitive service all time spent traveling to and from each competitive service job, as well as the time spent performing related diagnostics, repair and/or installation, and allocated share of downtime.

(j) Each electric and/or gas public utility is responsible for and has an ongoing obligation to track, monitor and update, as necessary, its fully allocated cost of providing each competitive product and/or service offering by itself or its related competitive business segment, and to ensure that the price it or its related competitive business segment charges for each such competitive product and/or service at all times equals or exceeds the fully allocated cost of providing such competitive products and/or services and to file the notification required by (t) and (u) below.

(k) Each electric and/or gas public utility is responsible for and has an ongoing obligation to ensure that its related competitive business segment's offering of competitive products and/or services does not adversely impact its ability to provide safe, adequate and proper electric and/or gas public utility service.

(l) Each electric and/or gas public utility is responsible for and has an ongoing obligation to ensure that it or its related competitive business segment's competitive products and/or services are offered in a non-discriminatory manner to all customers.

(m) An electric and/or gas public utility employee engaged in providing non-competitive, regulated services shall not violate these rules regarding cost allocation and fair competition and shall not:

1. Solicit competitive services business on behalf of the public utility or its related competitive business segment, or provide business leads to the public utility's or its related competitive business segment's employees engaged in the offering of competitive services;

2. Share market analysis reports or other type(s) of proprietary or non-publicly available reports, including, but not limited to, market, forecast, planning or strategic reports, with the public utility's employees involved in the offering of competitive products and/or services, or with employees of a related competitive business segment of the public utility, unless such information is made available on a non-discriminatory basis to all other service providers and the information is kept open to public inspection, or as otherwise authorized by the Board;

3. Represent or imply that a customer will receive preferential treatment as a consequence of obtaining competitive products and/or services from the public utility or its related competitive business segment as opposed to a non-affiliated service provider;

4. Provide a customer preferential treatment as a consequence of obtaining competitive products and/or services from the public utility or its related competitive business segment as opposed to a non-affiliated service provider;

5. Process any request for non-competitive services offered by the electric and/or gas public utility on a preferential or discriminatory basis for a customer taking competitive products and/or services from the public utility or its related competitive business segment, as opposed to taking such products and/or services from a non-affiliated provider;

6. Condition or otherwise tie the provision of any non-competitive services provided by the public utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any non-competitive products and/or services provided by the public utility to the taking of any competitive products and/or services from the public utility or its related competitive business segment; or

7. Assign customers to which the public utility currently provides products and/or services to its related competitive business segment, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors.

(n) Each electric and/or public utility and/or its related competitive business segment shall maintain, within its general ledger, separate subledgers for each competitive service and/or product offered. The subledgers shall contain assets, revenue and expense accounts as necessary to record all

transactions of each competitive product and/or service offered. Each electric and/or gas public utility and/or its related competitive business segment shall also track the following:

1. Total customers;
2. Total revenues received by the utility;
3. Dedicated assets;
4. Carrying costs on dedicated assets;
5. Portion of shared assets allocated to the competitive service(s);
6. Dedicated expenses incurred in the start-up, promotion, and provision of service;
7. Fully allocated shared expenses;
8. Total margins, defined as the difference between the total revenues received and the total expenses;
9. Net revenues, defined as the difference between total revenues and dedicated expenses; and
10. Any such other item as the Board may determine.

(o) Each electric and/or gas public utility shall file with the Board, by no later than 45 days following the close of each calendar year, an annual financial report and, no later than six months thereafter each year, a semi-annual financial report, providing information on the financial performance of each competitive product and/or service offering made by the public utility and/or its related competitive business segment, utilizing the information compiled pursuant to (n) above.

(p) Each electric and/or gas public utility is responsible in the preparation of its annual and semi-annual reports to be filed in accordance with (o) above, to reflect the most current cost information available to report the financial performance of it and/or its related competitive business segment's competitive product and/or service offerings.

(q) All transfers, leases or rental of utility assets from an electric and/or gas public utility to a related competitive business segment of the public utility, for purpose of the asset becoming a dedicated asset of the related competitive business segment of the public utility, shall be recorded at the greater of book cost or fair market value and shall be subject to approval by the Board.

(r) The revenues received by an electric and/or gas public utility or its related competitive business segment(s) for the provision of a competitive product and/or service shall be treated in the following manner:

1. The level of gross revenues representing the fully allocated cost of providing the service shall be recorded in the respective competitive service revenue account and treated above-the-line for ratemaking purposes and credited to ratepayers in a manner to be determined by the Board.

2. For electric public utilities and related competitive business segments of electric public utilities except as set forth in (r)3 below, pursuant to N.J.S.A. 48:3-55(b), 50 percent of the total margins shall be recorded in respective competitive service revenue accounts and treated above-the-line for ratemaking purposes and credited to ratepayers via a credit to the market transition charge, or distribution service charge in a manner to be determined by the Board.

3. For a related competitive business segment of an electric public utility, 25 percent of the total margins shall be recorded in respective competitive service revenue accounts and treated above-the-line for ratemaking purposes and credited to ratepayers of the electric public utility via a credit to the market transition charge, or distribution service charge in a manner to be determined by the Board.

4. For gas public utilities, the total margins shall be treated above-the-line for ratemaking purposes and credited to ratepayers in a manner to be determined by the Board.

(s) Revenues received by an electric and/or gas public utility as the result of a transfer of services or a transfer, lease or rental of assets to an affiliate shall be recorded in respective competitive service revenue account and credited to ratepayers in a manner to be determined by the Board.

(t) Each electric and/or gas public utility is required to file a public tariff with the Board for each competitive product and/or service it or its related competitive business segment offers in the State, setting forth the pricing terms and other terms and conditions associated with these competitive products and/or services.

(u) Subsequent to the filing of an initial tariff for an existing competitive product and/or service offering pursuant to (c) above, or subsequent to the initial approval by the Board for the offering of a new competitive product and/or service by an electric or gas public utility or its related competitive business segment pursuant to (r)2 above, respectively, an electric and/or gas public utility or its related competitive business segment may make modifications to the pricing terms or other terms and conditions of a competitive product and/or service offering without further approval of the Board, provided that the electric and/or gas public utility must notify the Board of the proposed change at least 30 days prior its intended implementation, such notification to include:

1. A proposed revised tariff with changes in pricing and/or other terms and conditions clearly identified; and

2. An affidavit from an officer of the electric and/or gas public utility, including justification, that the proposed changes do not render the product and/or service offering in non-compliance with the standards for approval set forth in (g) and (h) above.

(v) Any change by an electric and/or gas public utility or its related competitive business segment of a previously Board-approved competitive product and/or service offering, which change shall include, but is not limited to, an expansion of the product and/or service offering outside of the electric and/or gas public utility's franchise area, shall require the review and prior approval of the Board.

(w) An electric and/or gas public utility proposing a substantive change in offering by itself or its related competitive business segment must submit to the Board, at least 60 days prior to the intended effective date of the change in offering, information sufficient to demonstrate that the change in offering will not adversely impact the ability of said electric and/or gas public utility to provide safe, adequate and proper electric and/or gas public utility service.

(x) In the event that the Board determines that an electric and/or gas public utility or its connected competitive business segment has offered a competitive product and/or service without the prior approval of the Board pursuant to (a) through (f), (g) and (h), or (v) and (w) above, or without the prior notification to the Board pursuant to (t) and (u) above, such electric and/or gas public utility or its related competitive business segment shall immediately be required to cease and desist such unauthorized product and/or service offerings for a period of at least 90 days as determined by the Board and, subject to further hearings of the Board, may be subject to further penalties as determined by the Board pursuant to N.J.A.C. 14:4-5.9(b).

(y) In the event that the Board determines as a result of the audit performed pursuant to N.J.S.A. 48:3-56, N.J.A.C. 14:4-5.7 (e) through (g) or by other means, after providing the electric and/or gas public utility an opportunity to be heard, pursuant to Section 8(f)3 of the Act, that an electric and/or gas public utility or its related competitive business segment has violated any provision(s) of this section of these standards, the Board may take one or more of the following actions:

1. Order a reimbursement, including interest, to competitive product and/or service offering customers of any overcharges resulting from the violation;
2. Order a reimbursement to electric and/or gas public utility ratepayers, including interest, of any cross-subsidy(ies) found to have been provided to the competitive product and/or service offerings;
3. Impose a penalty of up to \$10,000 for each such violation;
4. For a first violation:

i. Order a violating electric and/or gas public utility to cease some or all competitive product and/or service offerings and form a related competitive business segment of the public utility to perform the competitive product and/or service offerings; or

ii. Order a violating related competitive business segment of an electric and/or gas public utility to cease some or all competitive product and/or service offerings and permit further competitive offerings only through a related competitive business segment of the public utility holding company; and

5. For a second and subsequent violations:

i. Order a violating related competitive business segment of the previously-violating public utility to cease some or all competitive product and/or service offerings and permit further competitive offerings only through a related competitive business segment of the public utility holding company.

Amended by R.2002 d.313, effective September 16, 2002.

See: 34 N.J.R. 1524(d), 34 N.J.R. 3230(a).

In (r)2, substituted "N.J.S.A. 48:3-55(b)" for "subsection b of section 7 of the Act"; in (y), "N.J.S.A. 48:3-56" for "Section 8 of the Act" and "(e) through (g)" for "(f) through (h)" in the introductory paragraph.

14:4-5.7 Regulatory oversight

(a) Each electric and/or gas public utility shall file its compliance plan with the Board and provide a copy of said plan to the RA, at least once in every 12 month period or upon changes to the plan, and thereafter, within 12 months of the revised plan.

(b) Said compliance plan shall demonstrate that there are adequate procedures in place to ensure compliance with these standards and shall include the electric and/or gas public utility's dispute resolution procedure pursuant to N.J.A.C. 14:4-5.8(a).

1. Said compliance plan shall contain an accurate list of all affiliates of an electric and/or gas public utility, including the business name and address, name and business telephone number of at least one officer of each affiliate and a brief description of the business of each affiliate.

i. The information required by (b)1 above shall be updated within five business days of any change(s) thereto as well as make a public posting thereof.

(c) Absent Board action to the contrary, the electric and/or gas public utility's compliance plan shall be in effect between its filing and the Board's decision.

(d) Upon the creation of a new affiliate which is covered by these standards, the electric and/or gas public utility shall immediately notify the Board as well as make a public posting thereof.

(e) At the discretion of the Board, the electric and/or gas public utility shall have an audit prepared by an independent auditor, to be selected by the Board, which verifies that the electric and/or gas public utility is in compliance with these standards.

1. The scope of the audit shall be established by the Board and shall take into consideration the electric and/or gas public utility's level of activity with its affiliates.

(f) An audit performed by an independent auditor shall be at the electric and/or gas public utility's expense.

(g) After December 31, 2000, subsequent audits will be performed at least every two years thereafter.

Amended by R.2002 d.313, effective September 16, 2002.
See: 34 N.J.R. 1524(d), 34 N.J.R. 3230(a).
Rewrote the section.

14:4-5.8 Dispute resolution

(a) An electric and/or gas public utility shall establish and file annually with the Board a dispute resolution procedure, including the establishment of a telephone complaint hotline, to address complaints alleging violations of these standards.

1. The procedure shall be included in the electric and/or gas public utility's annual compliance plan.

(b) At a minimum, the procedure shall designate a person to conduct an investigation of the complaint and communicate the results of the investigation to the complainant, in writing, within thirty days after the complaint is received, including a description of any action taken.

(c) An electric and/or gas public utility shall report any violation of these standards to the Board, with a copy provided to the RA, within five business days of becoming aware of any such violation(s).

(d) The electric and/or gas public utility shall maintain a log of all resolved and pending complaints. The log shall be subject to review by the Board and RA and shall contain, at minimum, a summary of the complaint, the manner in which the complaint was resolved, or an explanation why the complaint remains pending.

Amended by R.2002 d.313, effective September 16, 2002.
See: 34 N.J.R. 1524(d), 34 N.J.R. 3230(a).
In (a), inserted "annually" following "file" and added 1.

14:4-5.9 Violations and penalties

(a) If, as a result of an audit conducted pursuant to N.J.A.C. 14:4-5.7(e) through (g) or by any other means, the Board determines that an electric and/or gas public utility has committed violations of N.J.A.C. 14:4-5.3, 5.4, 5.5, 5.7 or 5.8 which are not substantial violations, the Board is authorized to impose a penalty of up to \$10,000 for each such violation upon said electric and/or gas public utility.

(b) If, as a result of an audit conducted pursuant to N.J.A.C. 14:4-5.7(e) through (g) or by any other means, the Board determines after providing the electric and/or gas public utility notice of a public hearing and an opportunity to be heard, that an electric and/or gas public utility has committed violations of N.J.A.C. 14:4-5.3, 5.4, 5.5, 5.7 or 5.8 which are substantial in nature, the Board is authorized to take some or all of the following actions:

1. Impose a penalty of up to \$10,000 for each such violation(s).

2. Order appropriate reimbursement to electric and/or gas public utility ratepayers, including interest.

3. For a first violation:

i. Order a violating electric and/or gas public utility to cease some or all competitive product and/or service offerings and form a related competitive business segment of the public utility to perform the competitive product and/or service offerings; or

ii. Order a violating electric and/or gas public utility to cease some or all competitive product and/or service offerings through a related competitive business segment of the public utility holding company; and

4. For a second violation:

i. Initiate a hearing to reconsider its approval of the formation of the public utility holding company.

Amended by R.2002 d.313, effective September 16, 2002.
See: 34 N.J.R. 1524(d), 34 N.J.R. 3230(a).

In (a) and (b), amended the N.J.A.C. references in the introductory paragraphs.

APPENDIX A

SECTION 1 Timing and Review

1. Time for Filing of Petition
 - a. The EDC/GDC shall file a petition at least sixty (60) days prior to the offering of any new maintenance, repair, replacement parts, service contract, power conditioning or equipment sales and/or lease or any other tariffed or non-tariffed EDC/GDC competitive services.
 - b. The EDC/GDC shall provide Staff a draft petition at least two weeks prior to filing of said petition with the Board, so that EDC/GDC representative(s) may discuss the salient aspects of said filing with Board staff at a mutually agreed to time.
2. Conditions for Review
 - a. The following conditions must be satisfied prior to Staff's review of said petition:
 - i. All filing requests are met and acknowledged by letter from Board Staff;
 - ii. Copies of the filing are served on the Division of the Ratepayer Advocate and other interested parties; and
 - iii. All confidentiality issues are resolved.

SECTION 2 Petition Filing and Confidentiality

1. Required Petition Contents

- a. Said Petition must include the following to show that the competitive service offering(s) will not impair the EDC/GDC's ability to provide safe, adequate and proper service and that the service shall be offered on a non-discriminatory basis:
- i. Dispatching schedules;
 - ii. A prioritization schedule which would show how the EDC/GDC will handle emergency, same day customer originated orders and proposed appliance service orders;
 - iii. Detailed description of how new competitive service offering(s) will affect this schedule, meter reading schedules, routine maintenance, etc.;
 - iv. Titles, competitive and non-competitive service responsibilities and number of all employees who are anticipated to be involved in the proposed competitive service offering(s);
 - v. Detailed description of how the proposed competitive service offering(s) will be marketed throughout demographic segments of the customer base;
 - vi. Indicate where the proposed competitive service offering(s) will be marketed;
 - vii. Detailed description of the proposed competitive service offering(s), including a list of the parts covered under said offering(s);
 - viii. Draft bill inserts shall state that:
 1. The Board has not approved the rates;
 2. "All prices may vary and will depend upon contractor and type of work performed" if rates vary;
 3. These services are also available from independent contractors;
 4. The EDC/GDC will provide free of charge, such services as gas leak investigations and other safety related services.
 - ix. Derivation of the proposed charge(s) for each competitive service offering, which shall include calculations, working papers, statistical data and other information utilized. Said proposed charge(s) should exceed the fully allocated current cost of providing the proposed competitive service offering(s), which shall include the current cost of all equipment, vehicles, labor, fringe benefits, and overheads and administration expenses, other assets utilized and costs incurred, directly or indirectly, all current promotional, advertising and marketing costs, and the current fully loaded labor cost of management involved with this proposed competitive service offering(s);
 - x. Estimate of market penetration which may be defined as the estimated number of orders or calls;
 - xi. Estimated three year proforma revenue and expense statements relating to the proposed competitive service offering(s) which shall include all relevant calculations, working papers, surveys and other data in support of the projected revenues and expenses based upon a fully loaded labor rate and all promotional expenses;
 - xii. A comparison of proposed charges with those of other EDC/GDCs and independent contractors for the same type(s) of service and specifically provide service charges for the following:
 1. EDC/GDC itself;
 2. 5 to 10 in-State independent contractors;
 3. Any out-of-State utility affiliates;
 4. Any out-of-State independent contractors;
 5. Any New Jersey EDC/GDC that offers the proposed competitive services offering(s) outside of its franchise area.
 - xiii. Detailed explanation of the accounting treatment of revenues and costs of proposed competitive service offerings including whether the proposed competitive service offering(s) will be above or below the line;
 - xiv. Accounts and Account Numbers that will be utilized in booking the revenues and expenses pertaining to the proposed competitive service offerings to ensure that there is strict separation and allocation of the EDC/GDC's revenues, costs, assets, risks and functions between competitive business segment and EDC/GDC;
 - xv. Detailed explanation of how prices will be conveyed to customers if subcontractors are used;
 - xvi. Complete list of all competitive service offering(s) currently offered by the EDC/GDC, the date of implementation, date of Board Order and Docket Number;
 - xvii. In the alternative to xvi above, Competitive Service Tariffs, Competitive Service Schedules, etc., shall be maintained similar to EDC/GDC tariffs, rates schedules, etc., and should provide a full description of the service, current rates and may be filed in redacted and unredacted versions, with the date of the Board Order approving the current tariff as well as the respective Docket Number reflected on the bottom of the tariff sheet;
 - xviii. Detailed description of the procedures the EDC/GDC will utilize to resolve any consumer complaints, dissatisfaction, etc., if the proposed competitive service offering(s) will be performed rendered by a participating subcontractor;
 - xix. Copies of a standard contract between the EDC/GDC and customer, the subcontractor and the customer, and EDC/GDC and the subcontractor which shall include provisions guaranteeing work quality assurance, customer satisfaction, warranties on parts and labor, response to customer complaints, pricing and response time, as agreed by the participating subcontractors.
2. Petition Confidentiality
- a. If the EDC/GDC claims that certain information contained in said Petition should be treated as confidential and proprietary, the EDC/GDC must file a motion requesting confidentiality which motion shall include:
 - i. Redacted Petition;
 - ii. Unredacted Petition with appropriate staff;
 - iii. All relevant documents, pages, etc., marked as confidential; and
 - iv. Detailed explanation as to why the information should be treated as confidential.

SUBCHAPTER 6. GOVERNMENT ENERGY
AGGREGATION PROGRAMS

Authority

N.J.S.A. 48:3-92, 93.1 through 93.3, and 94; 48:3-85.

Source and Effective Date

R.2005 d.253, effective July 8, 2005.
See: 37 N.J.R. 388(a), 37 N.J.R. 2888(a).

Subchapter Expiration Date

Subchapter 6, Government Energy Aggregation Programs, expires on January 9, 2006

Subchapter Historical Note

Subchapter 6, Interim Government Energy Aggregation Program Standards, was readopted by 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 special new rules adopted by R.2003 d.322, effective July 11, 2003. See: 35 N.J.R. 3711(a).

Subchapter 6, Government Energy Aggregation Programs, was readopted by R.2005 d.253, effective July 8, 2005. See: Source and Effective Date. See, also, section annotations.

14:4-6.1 Scope

(a) This subchapter governs the establishment of an energy aggregation program for the purchase of electric and gas utility services by a government aggregator. An energy aggregation program is a government operated purchasing cooperative through which multiple energy consumers purchase energy together. An energy aggregation program established under this subchapter may include the purchase of one or more of the following:

1. Electric generation service, as defined at N.J.A.C. 14:4-6.2;
2. Gas supply service, as defined at N.J.A.C. 14:4-6.2;
3. Electric related service, as defined at N.J.A.C. 14:4-6.2, including appliance repair; and/or
4. Gas related service, as defined at N.J.A.C. 14:4-6.2, including appliance repair.

(b) This subchapter applies to government entities, local distribution companies (LDCs), and third party suppliers (TPSs), as those terms are defined at N.J.A.C. 14:4-6.2.

(c) This subchapter authorizes the establishment by a government aggregator of any of the following three types of energy aggregation programs:

1. A stand-alone energy aggregation program, as defined at N.J.A.C. 14:4-6.2;
2. A multi-government energy aggregation program, as defined at N.J.A.C. 14:4-6.2; and
3. A government-private energy aggregation program, as defined at N.J.A.C. 14:4-6.2.

14:4-6.2 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. 14:4-4.3 shall apply to this subchapter, unless the context clearly indicates otherwise.

“Appliance repair service” means the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user’s premises.

“Basic gas supply service” (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 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.

“Board” means the New Jersey Board of Public Utilities or any successor agency.

“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, and includes agreements and arrangements related to the provision of the retail electric energy and capacity.

“Electric public utility” has the meaning assigned to this term at N.J.A.C. 14:4-1.2. An electric public utility is a type of LDC, as defined herein.

“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; billing and bill payment services, as authorized by the Board pursuant to N.J.S.A. 48:3-94a(4)(b).

“Energy aggregation program” means an arrangement for the procurement of energy and/or energy related services, in which a lead agency contracts with a TPS, so as to provide for the energy needs of participants in the program. An energy aggregation program established by a government aggregator is a type of cooperative purchasing system, as defined 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.

“Gas public utility” has the meaning assigned to this term at N.J.A.C. 14:4-1.2.

“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; the provision of energy consumption measurement, analysis, and information management; billing and bill payment services, as authorized by the Board pursuant to N.J.S.A. 48:3-94a(4)(b).

“Gas supplier” has the meaning assigned to this term at N.J.A.C. 14:4-1.2.

“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.

“Government energy aggregation program” means a program under which a government aggregator that is a municipality or county enters into a written contract for the provision of electric generation service or gas supply service on behalf of residential or non-residential customers within its geographic boundaries.

“Government-private” means, with regard to an energy aggregation program, a program that provides energy not only for the facilities of the municipality or county that establishes the energy aggregation program (the lead agency), but also for residential and/or non-residential customers within the geographic boundary of one or more of the participating municipalities or counties. A government-private energy aggregation program shall be established only by a municipality or county. There are two types of government-private energy aggregation programs, designated Option 1 program and Option 2, in accordance with N.J.A.C. 14:4-6.4(g).

“Lead agency” means the government aggregator that establishes and manages an energy aggregation program.

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

“Multi-government” means, with regard to an energy aggregation program, a program that provides energy for the facilities of the government aggregator that establishes

the program, as well as for facilities of other government entities.

“Non-residential customer” means a commercial, industrial or institutional energy customer that is not a government entity that 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.

“Option administrator” means the person, as defined at N.J.A.C. 14:4-2.2, responsible for receiving and recording customer submittals indicating that the customer wishes to opt-in or opt-out of the energy aggregation program.

“Opt-in” means for a gas or electric customer to affirmatively indicate a choice to participate in a program from which the customer would be automatically excluded unless the customer affirmatively indicated the intention to participate.

“Opt-out” means for a gas or electric customer to affirmatively indicate a choice not to participate in a program in which the customer would be automatically included unless the customer affirmatively indicated the intention not to participate.

“Stand-alone” means, with regard to an energy aggregation program, a program that provides energy only for the facilities of the government aggregator that establishes the energy aggregation program.

“Third-party supplier” (TPS) has the meaning assigned to this term at N.J.A.C. 14:4-1.2.

“12-month historical usage” means the amount of gas or electricity used by a customer or group of customers during the most recent 12-month period for which data are available, including electric interval data if available and requested.

14:4-6.3 General provisions

(a) A government aggregator may establish an energy aggregation program to purchase electric generation service, electric related service, gas supply service or gas related service, as these terms are defined at N.J.A.C. 14:4-6.2. The energy aggregation program may purchase these services either separately or bundled, for use by one or more of the following:

1. The government aggregator’s own facilities (stand-alone program);
2. Facilities of other government aggregators (multi-government program); and/or

3. If the government aggregator is a municipality or county, residential and/or non-residential customers (government-private program).

(b) Unless otherwise specified, any obligation of a government aggregator, TPS, or LDC under this chapter may be performed on behalf of the government aggregator, TPS, or LDC by a contractor, consultant, or other designee. Any such designee shall execute a confidentiality agreement or provide other guarantee(s) of compliance with the consumer protection standards at N.J.A.C. 14:4-3, and the customer information requirements at (f) below.

(c) For any energy aggregation program, the lead agency, as defined at N.J.A.C. 14:4-6.2, is responsible for responding to specific inquiries regarding the particular energy aggregation program, in accordance with the LDC aggregation agreement.

(d) The LDC is responsible for responding to general inquiries regarding the establishment and operation of government energy aggregation programs.

(e) In contracting for services under this subchapter, a government aggregator shall comply with all applicable requirements of 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., the County College Contracts Law, N.J.S.A. 18A:64A-25.1 et seq., and N.J.A.C. 14:4-6.8, as applicable.

(f) All customer information provided to a government aggregator, or its designee, by an LDC under this subchapter shall be deemed confidential or is exempt from the public disclosure requirements of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. Such information shall not be used or disseminated by any person for any purpose other than the facilitation of the aggregation program.

(g) A government entity shall be included in an energy aggregation program only if the government entity indicates its desire to participate in the program by opting-in.

(h) A non-residential customer, as defined at N.J.A.C. 14:4-6.2, shall be included in an energy aggregation program only if the non-residential customer indicates its desire to participate in the program by opting-in in accordance with N.J.A.C. 14:4-6.5 or 6.6.

(i) If a residential customer is located within the geographic boundaries of a municipality or county that establishes a government-private energy aggregation program, the residential customer shall automatically be included in the program unless the customer indicates its desire not to participate in the program by opting-out in accordance with N.J.A.C. 14:4-6.5 and 6.6.

(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 default provider for any customer that does not choose one of the providers.

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 non-residential 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. To advise potential customers of the option to obtain these services through the energy aggregation program, the municipality or county shall:

1. Explain this service as an option in its written notice to customers, pursuant to N.J.A.C. 14:4-5, if an Option 1 program; or

2. Issue a public notice at the time of the passage of the resolution or ordinance required under (c) above, if an Option 2 program. The public notice shall provide residential and non-residential customers 30 days to opt-in to the appliance repair services component of the energy aggregation program.

(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; or

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 with other, more widely accessible forms of communication.

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 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 found on the Board's website at www.bpu.state.nj.us. 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 post on its website a form for use in notifying customers under (c) above at www.bpu.state.nj.us. 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. This information shall be provided in an ASCII file or other form specified by the Board secretary:

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 the Ratepayer Advocate for comments prior to advertising for bids. Any such voluntary submittal shall provide at least 15 calendar days for the Board and/or the Ratepayer Advocate 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 the Ratepayer Advocate for comments prior to executing the contract. Any such voluntary submittal shall provide at least 15 calendar days for the Board and/or the Ratepayer Advocate 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 non-residential 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 days after the resolution or ordinance authorizing the program.

(c) Each participating municipality in 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 www.bpu.state.nj.us. 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 days 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 non-residential 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 the Ratepayer Advocate for their comment at least 30 days prior to advertising for bids. The Board and the Ratepayer Advocate 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 the Ratepayer Advocate.

(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 the Ratepayer Advocate for their comment. The Board and the Ratepayer Advocate 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 the Ratepayer Advocate. However, the lead agency shall not execute the contract until the earlier of the following dates:

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

(n) After the requirements for Board and Ratepayer Advocate comments at (l) and (m) above are met, the lead agency may execute a contract with the selected TPS(s), which 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, which 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 necessary 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 www.bpu.state.nj.us. 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 a LDC aggregation agreement with each LDC that serves customers in the municipality, using the applicable form agreement found on the Board's website at www.bpu.state.nj.us. 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 rule; 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.

Amended by R.2002 d.313, effective September 16, 2002.
See: 34 N.J.R. 1524(d), 34 N.J.R. 3230(a).
Rewrote the section.

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 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, as applicable:

1. For a government-private energy aggregation program, the lead agency shall select the most advantageous proposal, price and other factors considered; and

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.

Amended by R.2005 d.253, effective August 1, 2005.
See: 37 N.J.R. 388(a), 37 N.J.R. 2888(a).

In last sentence of (a), deleted "include bid specifications and shall, at a minimum," following "bids shall".

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 charged 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 using a worksheet provided by the Board on its website at www.bpu.state.nj.us, and shall not exceed the applicable amount specified at (e) or (f) below.

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

1. The cost of basic generation service, as defined at N.J.A.C. 14:4-6.2, 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. 14:4-8, 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 determined by the Board.

(f) The benchmark price for gas supply service shall be the rate for basic gas supply service, as defined at N.J.A.C. 14:4-6.2.

(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. 14:4-8.2, that exceeds the applicable percentage required under the renewable portfolio standards at N.J.A.C. 14:4-8.3; 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 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.

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:

i. Provisions allocating the risks associated with providing services, between the TPS and the customer receiving the services;

ii. Provisions allocating risks associated with circumstances or occurrences beyond the control of the parties to the contract;

iii. Provisions defining default, and establishing remedies in case of default by a party to the contract; and

iv. Provisions allocating 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. 14:4-3;

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.

14:4-6.11 After an energy aggregation program has begun operating

(a) If there is a change in TPS or pricing structure during the operation of a government-private energy aggregation program, all participating residential customers shall be promptly notified of their right to decline continued participation, as follows:

1. Under an Option 1 program, this notice shall be provided by the LDC(s) that provided the 30-day notice to residential customers required under N.J.A.C. 14:4-6.5(c); and

2. Under an Option 2 program, this notice shall be provided by the lead agency or each participating municipality, whichever provided the 30-day notice to residential customers required under N.J.A.C. 14:4-6.6(q).

(b) The notice required under (a) above shall be provided using a form notice provided by the Board on its website at www.bpu.state.nj.us. The entity responsible for providing the notice shall promptly provide a written certification to the Board that the notice was provided.

(c) If a residential customer is included in government-private energy aggregation program because the customer did not affirmatively opt-out of the energy aggregation program, the customer may switch to another TPS, or to basic generation service or basic gas supply service, at any time without penalty.

(d) If a non-residential customer is included in a government-private energy aggregation program because the customer affirmatively opted-in to the program, the customer

may switch to another TPS, or to basic generation service or basic gas supply service, only if this is authorized in the contract with the TPS.

(e) Additional residential and/or non-residential customers may opt-in to an energy aggregation program after it has begun operating, if this is authorized in the contract with the TPS.

SUBCHAPTERS 7 THROUGH 8. (RESERVED)

SUBCHAPTER 9. NET METERING AND INTERCONNECTION STANDARDS FOR CLASS I RENEWABLE ENERGY SYSTEMS

Authority

N.J.S.A. 48:2-13 and 48:3-49 et seq., in particular 48:3-51 and 48:3-87.

Source and Effective Date

R.2003 d.260, effective June 9, 2003.
See: 35 N.J.R. 94(a), 35 N.J.R. 2892(a).

Subchapter Historical Note

Subchapter 9, Net Metering, Safety and Power Quality Standards for Wind and Solar Photovoltaic Systems, was adopted as R.2001 d.231, effective June 15, 2001. See: 35 N.J.R. 94(a), 35 N.J.R. 2892(a).

Subchapter 9, Net Metering, Safety and Power Quality Standards for Wind and Solar Photovoltaic Systems, was readopted as R.2003 d.260, effective June 9, 2003. See, Source and Effective Date. See, also, section annotations.

14:4-9.1 Scope

(a) This subchapter sets forth net metering requirements that apply to electric power suppliers, basic generation service providers and electric distribution companies, as defined at N.J.A.C. 14:4-9.2, which have residential or small commercial customers who generate electricity using class I renewable energy.

(b) This subchapter also sets forth requirements for the interconnection of customer-generator facilities, including those that generate class I renewable energy, with electric distribution systems, as those terms are defined at N.J.A.C. 14:4-9.2.

Amended by R.2004 d.391, effective October 4, 2004.
See: 35 N.J.R. 5356(a), 36 N.J.R. 4489(c).

Rewrote the section.

14:4-9.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Annualized period” means a period of 12 consecutive monthly billing periods. A customer-generator’s first annualized period begins on the first day of the first full monthly billing period after which the customer-generator’s facility is interconnected and is generating electricity.

“Applicant” means a person who has filed an application to interconnect a customer-generator facility to an electric distribution system.

“Area network” means a type of electric distribution system served by multiple transformers interconnected in an electrical network circuit, which is generally used in large metropolitan areas that are densely populated, in order to provide high reliability of service. This term has the same meaning as the term “secondary grid network” as defined in IEEE standard 1547 Section 4.1.4 (published July 2003), as amended and supplemented, which is incorporated herein by reference. IEEE standard 1547 can be obtained through the IEEE website at www.ieee.org.

“Avoided cost of wholesale power” means the average locational marginal price of energy in the applicable utility’s transmission zone. This cost can be obtained through the website maintained by PJM Interconnection at www.pjm.com.

“Basic generation service” has the meaning assigned to this term at N.J.A.C. 14:4-8.2.

“Board” means the New Jersey Board of Public Utilities or any successor agency.

“Class I renewable energy” has the meaning assigned to this term in N.J.A.C. 14:4-8.2.

“Customer-generator” means a residential or small commercial customer that generates electricity, on the customer’s side of the meter.

“Customer-generator facility” means the equipment used by a customer-generator to generate, manage, and monitor electricity. A customer-generator facility typically includes an electric generator and/or an equipment package, as defined herein.

“Electric distribution company” or “EDC” means an electric public utility, as the term is defined in N.J.S.A. 48:2-13, that transmits or distributes electricity to end users within New Jersey. 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. An electric distribution system generally carries less than 69 kilovolts of electricity.

“Electric power supplier” has the meaning assigned to this term at N.J.A.C. 14:4-8.2.

“Equipment package” means a group of components connecting an electric generator with an electric distribution system, and includes all interface equipment including switchgear, inverters, or other interface devices. An equipment package may include an integrated generator or electric source.

“Fault current” means electrical current that flows through a circuit and is produced by an electrical fault, such as to ground, double-phase to ground, three-phase to ground, phase-to-phase, and three-phase. A fault current is several times larger in magnitude than the current that normally flows through a circuit.

“Good utility practice” has the same meaning as is assigned to this term in the Amended and Restated Operating Agreement of PJM Interconnection (October 2003), as amended and supplemented, which is incorporated herein by reference. The Operating Agreement can be obtained on the PJM Interconnection website at www.pjm.com. As of October 4, 2004, the Operating Agreement defines this term as “a practice, method, policy, or action engaged in and/or accepted by a significant portion of the electric industry in a region, which a reasonable utility official would expect, in light of the facts reasonably discernable at the time, to accomplish the desired result reliably, safely and expeditiously.”

“IEEE standards” means the standards published by the Institute of Electrical and Electronic Engineers, available at www.ieee.org.

“Interconnection agreement” means an agreement between a customer-generator and an EDC, which governs the connection of the customer-generator facility to the electric distribution system, as well as the ongoing operation of the customer-generator facility after it is connected to the system. An interconnection agreement shall follow the standard form agreement developed by the Board and posted on the Board’s website at www.bpu.state.nj.us.

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

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

“Net metering” means a system of metering electricity in which the EDC:

1. Credits a customer-generator at the full retail rate for each kilowatt-hour produced by a class I renewable energy system installed on the customer-generator’s side of the electric revenue meter, up to the total amount of electricity used by that customer during an annualized period; and
2. Compensates the customer-generator at the end of the annualized period for any remaining credits, at a rate equal to the supplier/provider’s avoided cost of wholesale power.

“Point of common coupling” has the same meaning as assigned to the term under IEEE Standard 1547 Section 3.0 (published July 2003), as amended and supplemented, which is incorporated herein by reference. IEEE Standard 1547 Section 3.0 can be obtained through the IEEE website at www.ieee.org. As of October 4, 2004, IEEE Standard 1547 defined this term as “the point in the interconnection of a customer-generator facility with an electric distribution system at which the harmonic limits are applied.”

“Solar electric generation” has the meaning assigned to this term at N.J.A.C. 14:4-8.2.

“Small commercial customer” means a non-residential electrical customer with less than 10 MW of peak demand, as determined by the most recently measured annual peak demand on the customer’s demand meter, or by the peak load contribution for the customer as submitted by the EDC to the PJM RTO for load planning purposes.

“Spot network” has the same meaning as assigned to the term under IEEE Standard 1547 Section 4.1.4 (published July 2003), as amended and supplemented, which is incorporated herein by reference. IEEE standard can be obtained through the IEEE website at www.ieee.org. As of October 4, 2004, IEEE Standard 1547 defined “spot network” as “a type of electric distribution system that uses two or more inter-tied transformers to supply an electrical network circuit.” A spot network is generally used to supply power to a single customer or a small group of customers.

“Supplier/provider” means an electric power supplier or a basic generation service provider.

Amended by R.2004 d.391, effective October 4, 2004.
See: 35 N.J.R. 5356(a), 36 N.J.R. 4489(c).
Rewrote the section.

14:4-9.3 Net metering general provisions

(a) All electric distribution companies (EDCs) and supplier/providers, as defined at N.J.A.C. 14:4-9.2, shall offer net metering to their residential and small commercial customers, as defined at N.J.A.C. 14:4-9.2, that generate electricity, on the customer’s side of the meter, using class I renewable energy sources, provided that the generating capacity of the customer-generator’s facility does not exceed two MW, and does not exceed the amount of electricity supplied by the electric power supplier or basic generation service provider to the customer over an annualized period.

(b) The EDC shall develop a tariff providing for net metering. Each supplier/provider and EDC shall make net metering available to eligible customer-generators on a first-come, first-served basis.

(c) If, in a given monthly billing period, a customer-generator supplies more electricity to the electric distribution system than the EDC or supplier/provider delivers to the customer-generator, the EDC and supplier/provider shall

credit the customer-generator for the excess. To do this, the EDC or supplier/provider shall reduce the customer-generator’s bill for the next monthly billing period to compensate for the excess electricity from the customer-generator in the previous billing period.

(d) The EDC and supplier/provider shall carry over credit earned under (c) above from monthly billing period to monthly billing period, and the credit shall accumulate until the end of the annualized period, as defined at N.J.A.C. 14:4-9.2.

(e) At the end of each annualized period, the supplier/provider shall compensate the customer-generator for any excess kilowatt hours generated, at the electric power supplier’s or basic generation service provider’s avoided cost of wholesale power, as defined at N.J.A.C. 14:4-9.2.

(f) If a customer-generator switches electric suppliers, the electric power supplier or basic generation service provider with whom service is terminating shall treat the end of the service period as if it were the end of the annualized period.

(g) Each supplier/provider or EDC shall submit an annual net metering report to the Board. The report shall be submitted by June 30th of each year, and shall include the following information for the one-year period ending May 31st of that year:

1. The total number of customer-generator facilities;
2. The total estimated rated generating capacity of its net metering customer-generators;
3. The total estimated net kilowatt-hours received from customer-generators; and
4. The total estimated amount of energy produced by the customer-generators, which shall be calculated using protocols approved by the Board.

(h) A customer-generator that is eligible for net metering owns the renewable attributes of the electricity it generates on or after October 4, 2004 unless there is a contract with an express provision that assigns ownership of the renewable attributes.

(i) A customer-generator that owns renewable attributes may trade or sell the attributes to another person, or may apply to the Board in accordance with N.J.A.C. 14:4-8.9 for issuance of Solar Renewable Energy Certificates, or SRECs, based on solar electric generation. Once the PJM’s Generation Attribute Tracking System (GATS), or another tracking system approved by the Board, is operational, the owner of renewable attributes may apply for issuance of class I renewable energy RECs. If RECs or SRECs are issued, the customer-generator or other recipient of the RECs or SRECs may trade or sell the REC or SREC, or may trade or sell the REC or SREC through an aggregator, or through a trading program authorized by the Board.

(j) A supplier/provider or EDC shall provide net metering at non-discriminatory rates that are identical, with respect to rate structure, retail rate components, and any monthly charges, to the rates that a customer-generator would be charged if not a customer-generator, except that a supplier/provider or EDC may use a special load profile for the customer-generator, which incorporates the customer-generator's real time generation, provided the special load profile is approved by the Board.

(k) A supplier/provider or EDC shall not charge a customer-generator any fee or charge; or require additional equipment, insurance or any other requirement; unless the fee, charge, or other requirement is specifically authorized under this subchapter, or the fee would apply to other customers that are not customer-generators.

(l) Nothing in this subchapter shall abrogate any person's obligation to comply with all applicable Federal or State laws, or codes.

Amended by R.2003 d.260, effective July 7, 2003.

See: 35 N.J.R. 94(a), 35 N.J.R. 2892(a).

Rewrote (c)1.

Amended by R.2004 d.391, effective October 4, 2004.

See: 35 N.J.R. 5356(a), 36 N.J.R. 4489(c).

Rewrote the section.

Amended by R.2005 d.287, effective September 6, 2005.

See: 37 N.J.R. 1405(a), 37 N.J.R. 3444(a).

In (a), substituted "amount of electricity supplied by the electric power supplier or basic generation service provider to the customer over an annualized period" for "customer's peak electric needs".

14:4-9.4 Meters and metering

(a) A customer-generator facility used for net metering shall be equipped with metering equipment that can measure the flow of electricity in both directions at the same rate. This is typically accomplished through use of a single bi-directional meter.

(b) A customer-generator may choose to use an existing electric revenue meter if the following criteria are met:

1. The meter is capable of measuring the flow of electricity both into and out of the customer-generator's facility at the same rate; and
2. The meter is accurate to within plus or minus five percent when measuring electricity flowing from the customer-generator facility to the electric distribution system.

(c) If the customer-generator's existing electric revenue meter does not meet the requirements at (b) above, the EDC shall install a new revenue meter for the customer-generator,

at the company's expense. Any subsequent revenue meter change necessitated by the customer-generator, whether because of a decision to stop net metering or for any other reason, shall be paid for by the customer-generator.

(d) The electric distribution company shall not require more than one meter per customer-generator. However, an additional meter may be installed under either of the following circumstances:

1. The electric distribution company may install an additional meter at its own expense if the customer-generator consents; or
2. The customer-generator may request that the EDC install a meter, in addition to the revenue meter addressed in (c) above, at the customer-generator's expense. In such a case, the EDC shall charge the customer-generator no more than the actual cost of the meter and its installation.

Amended by R.2003 d.260, effective July 7, 2003.

See: 35 N.J.R. 94(a), 35 N.J.R. 2892(a).

Deleted (b) and recodified former (c) through (d) as new (b) through (e), added a new (e) and recodified former (e) as (d) with minor changes; deleted (f).

Repeal and New Rule, R.2004 d.391, effective October 4, 2004.

See: 35 N.J.R. 5356(a), 36 N.J.R. 4489(c).

Section was "Safety and power quality standards for customer-generator facilities".

14:4-9.5 General interconnection provisions

(a) Each EDC shall provide the following three review procedures for applications for interconnection of customer-generator facilities:

1. Level 1: An EDC shall use this review procedure for all applications to connect inverter-based customer-generator facilities, which have a power rating of 10 kW or less, and which meet the certification requirements at N.J.A.C. 14:4-9.6. Level 1 interconnection review procedures are set forth at N.J.A.C. 14:4-9.7;
2. Level 2: An EDC shall use this review procedure for applications to connect customer-generator facilities with a power rating of two MW or less, which meet the certification requirements at N.J.A.C. 14:4-9.6. Level 2 interconnection review procedures are set forth at N.J.A.C. 14:4-9.8; and
3. Level 3: An EDC shall use this review procedure for applications to connect customer-generator facilities with a power rating of two MW or less, which do not qualify for either the level 1 or level 2 interconnection review procedures. Level 3 interconnection review procedures are set forth at N.J.A.C. 14:4-9.9.

(b) Each EDC shall designate an employee or office from which an applicant can obtain basic application forms and information through an informal process. On request, this employee or office shall provide all relevant forms, documents, and technical requirements for submittal of a complete application for interconnection review under this section, as well as specific information necessary to contact the EDC representatives assigned to review the application.

(c) Upon request, the EDC shall meet with an applicant who qualifies for level 2 or level 3 interconnection review, to assist them in preparing the application.

(d) An application for interconnection review shall be submitted on a standard form, available from the EDC and posted on the Board's website at www.bpu.state.nj.us. The application form will require the following types of information:

1. Basic information regarding the applicant and the electricity supplier(s) involved;
2. Information regarding the type and specifications of the customer-generator facility;
3. Information regarding the contractor who will install the customer-generator facility;
4. Certifications and agreements regarding utility access to the customer-generator's property, emergency procedures, liability, compliance with electrical codes, proper operation and maintenance, receipt of basic information; and
5. Other similar information that is necessary to determine compliance with this chapter.

(e) An EDC shall not be responsible for the cost of determining the rating of equipment owned by a customer-generator, or of equipment owned by other local customers.

(f) The provisions of this subchapter that apply to interconnection are primarily intended for customer-generator facilities that are eligible for net metering; that is, renewable generation facilities with a capacity for no greater than two megawatts, which generate electricity for retail transactions. However, these provisions may be used for review of other interconnections at the discretion of the EDC.

(g) If the interconnection of a customer-generator facility is subject to interconnection requirements of FERC or PJM, the provisions of this subchapter that apply to interconnection apply to that facility only to the extent that they do not conflict with the interconnection requirements of FERC or PJM.

(h) If an applicant for interconnection disagrees with an EDC's determination of fact or need regarding matters covered in this subchapter, or if any person has a complaint regarding matters covered herein, the applicant or other

person may file an informal complaint with the Board under N.J.A.C. 14:1-5.13, or may file a petition with the Board under N.J.A.C. 14:1-5.

New Rule, R.2003 d.260, effective July 7, 2003.

See: 35 N.J.R. 94(a), 35 N.J.R. 2892(a).

Repeal and New Rule, R.2004 d.391, effective October 4, 2004.

See: 35 N.J.R. 5356(a), 36 N.J.R. 4489(c).

Section was "Application for a net metering interconnection".

14:4-9.6 Certification of customer-generator facilities

(a) In order to qualify for the level 1 and the level 2 interconnection review procedures described at N.J.A.C. 14:4-9.7 and 9.8, a customer-generator facility must be certified as complying with the following standards, as applicable:

1. IEEE 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems (published July 2003), as amended or supplemented, and which is incorporated by reference herein. IEEE Standard 1547 can be obtained through the IEEE website at www.ieee.org; and
2. UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems (January 2001), as amended or supplemented, which is incorporated by reference herein. UL 1741 can be obtained through the Underwriters Laboratories website at www.ul.com.

(b) An equipment package shall be considered certified for interconnected operation if it has been submitted by a manufacturer to a nationally recognized testing and certification laboratory, and has been tested and listed by the laboratory for continuous interactive operation with an electric distribution system in compliance with the applicable codes and standards listed in (a) above.

(c) If the equipment package has been tested and listed in accordance with this section as an integrated package, which includes a generator or other electric source, the equipment package shall be deemed certified, and the EDC shall not require further design review, testing or additional equipment.

(d) If the equipment package includes only the interface components (switchgear, inverters, or other interface devices), an interconnection applicant must show that the generator or other electric source being utilized with the equipment package is compatible with the equipment package and consistent with the testing and listing specified for the package. If the generator or electric source being utilized with the equipment package is consistent with the testing and listing performed by the nationally recognized testing and certification laboratory, the equipment package shall be deemed certified, and the EDC shall not require further design review, testing or additional equipment.

(e) A certified equipment package does not include equipment provided by the EDC.

New Rule, R.2004 d.391, effective October 4, 2004.
See: 35 N.J.R. 5356(a), 36 N.J.R. 4489(c).

14:4-9.7 Level 1 interconnection review

(a) Each EDC shall adopt a level 1 interconnection review procedure. The EDC shall use the level 1 review procedure only for an application to interconnect a customer-generator facility that meets all of the following criteria:

1. The facility is inverter-based;
2. The facility has a capacity of 10 kW or less; and
3. The facility has been certified in accordance with N.J.A.C. 14:4-9.6.

(b) For a customer-generator facility described at (a) above, the EDC shall approve interconnection under the level 1 interconnection review procedure if all of the applicable requirements at (c) through (g) below are met. An EDC shall not impose additional requirements not specifically authorized under this section.

(c) The aggregate generation capacity on the distribution circuit to which the customer-generator facility will interconnect, including the capacity of the customer-generator facility, shall not contribute more than 10 percent to the distribution circuit's maximum fault current at the point on the high voltage (primary) level that is nearest the proposed point of common coupling.

(d) A customer-generator facility's point of common coupling shall not be on a transmission line, a spot network, or an area network.

(e) If a customer-generator facility is to be connected to a radial distribution circuit, the aggregate generation capacity connected to the circuit, including that of the customer-generator facility, shall not exceed 10 percent (15 percent for solar electric generation) of the circuit's total annual peak load, as most recently measured at the substation.

(f) If a customer-generator facility is to be connected to a single-phase shared secondary, the aggregate generation capacity connected to the shared secondary, including the customer-generator facility, shall not exceed 20 kilovolt-amps (kVA).

(g) If a single-phase customer-generator facility is to be connected to a transformer center tap neutral of a 240 volt service, the addition of the customer-generator facility shall not create an imbalance between the two sides of the 240 volt service of more than 20 percent of nameplate rating of the service transformer.

(h) An applicant shall submit an application for level 1 interconnection review on a standard form, available from the EDC and posted on the Board's website at www.bpu.state.nj.us. See N.J.A.C. 14:4-9.5(d). An applicant may choose to simultaneously submit an EDC's standard form interconnection agreement executed by the applicant.

(i) Within three business days after receiving an application for level 1 interconnection review, the EDC shall provide written or e-mail notice to the applicant that it received the application and whether the application is complete. If the application is incomplete, the written notice shall include a list of all of the information needed to complete the application.

(j) Within 10 business days after the EDC notifies the applicant that the application is complete under (i) above, the EDC shall notify the applicant that:

1. The customer-generator facility meets all of the criteria at (c) through (g) above that apply to the facility, and the interconnection will be finally approved upon completion of the process set forth at (k) through (o) below; or
2. The customer-generator facility has failed to meet one or more of the applicable criteria at (c) through (g) above, and the interconnection application is denied.

(k) If a customer-generator facility meets all of the applicable criteria at (c) through (g) above, the EDC shall, within three business days after sending the notice of approval under (j)1 above, do the following:

1. Notify the applicant if an EDC inspection of the customer-generator facility for compliance with this subchapter is required prior to starting operation of the facility; and
2. Execute and send to the applicant a level 1 interconnection agreement, unless:
 - i. The EDC does not require an interconnection agreement for customer-generator facilities that qualify for level 1 interconnection review; or
 - ii. The applicant has already submitted such an agreement with its application for interconnection, in accordance with (h) above.

(l) An applicant that receives an interconnection agreement under (k) above shall execute the agreement and return it to the EDC at least five business days prior to starting operation of the customer-generator facility (unless the EDC does not so require). The applicant shall indicate the anticipated start date for operation of the customer-generator facility. If the EDC requires an inspection of the customer-generator facility, the applicant shall not begin operating the facility until completion of the inspection.

(m) Upon receipt of the executed interconnection agreement from the customer-generator, and satisfactory completion of an inspection if required, the EDC shall approve the interconnection, conditioned on approval by the electrical code officials with jurisdiction over the interconnection.

(n) If an EDC does not notify a level 1 applicant in writing or by e-mail whether the interconnection is approved or denied within 20 business days after the receipt of an application, the interconnection shall be deemed approved. The 20 days shall begin on the date that the EDC sends the written or e-mail notice or application receipt required under (i) above.

(o) A customer-generator shall notify the EDC of the anticipated start date for operation of the customer-generator facility at least five days prior to starting operation, either through the submittal of the interconnection agreement or in a separate notice.

(p) If an application for level 1 interconnection review is denied because it does not meet one or more of the applicable requirements in this section, an applicant may resubmit the application under the level 2 or level 3 interconnection review procedure, as appropriate.

New Rule, R.2004 d.391, effective October 4, 2004.
See: 35 N.J.R. 5356(a), 36 N.J.R. 4489(c).

14:4-9.8 Level 2 interconnection review

(a) Each EDC shall adopt an level 2 interconnection review procedure. The EDC shall use the level 2 interconnection review procedure for an application to interconnect a customer-generator facility that meets both of the following criteria:

1. The facility has a capacity of two megawatts or less; and
2. The facility has been certified in accordance with N.J.A.C. 14:4-9.6.

(b) For a customer-generator facility described at (a) above, the EDC shall approve interconnection under the level 2 interconnection review procedure if all of the applicable requirements at (c) through (l) below are met. An EDC shall not impose additional requirements not specifically authorized under this section.

(c) The aggregate generation capacity on the distribution circuit to which the customer-generator facility will interconnect, including the capacity of the customer-generator facility, shall not cause any distribution protective equipment (including, but not limited to, substation breakers, fuse cutouts, and line reclosers), or customer equipment on the electric distribution system, to exceed 90 percent of the short circuit interrupting capability of the equipment. In addition, a customer-generator facility shall not be connected to a circuit that already exceeds 90 percent of the short circuit interrupting capability, prior to interconnection of the facility.

(d) If there are posted transient stability limits to generating units located in the general electrical vicinity of the proposed point of common coupling (for example, within three or four transmission voltage level busses), the aggregate generation capacity (including the customer-generator facility) connected to the distribution low voltage side of the substation transformer feeding the distribution circuit containing the point of common coupling shall not exceed 10 MW.

(e) The aggregate generation capacity connected to the distribution circuit, including the customer-generator facility, shall not contribute more than 10 percent to the distribution circuit's maximum fault current at the point on the high voltage (primary) level nearest the proposed point of common coupling.

(f) If a customer-generator facility is to be connected to a radial distribution circuit, the aggregate generation capacity connected to the electric distribution system by non-EDC sources, including the customer-generator facility, shall not exceed 10 percent (or 15 percent for solar electric generation) of the total circuit annual peak load. For the purposes of this paragraph, annual peak load shall be based on measurements taken over the 12 months previous to the submittal of the application, measured at the substation nearest to the customer-generator facility.

(g) If a customer-generator facility is to be connected to three-phase, three wire primary EDC distribution lines, a three-phase or single-phase generator shall be connected phase-to-phase.

(h) If a customer-generator facility is to be connected to three-phase, four wire primary EDC distribution lines, a three-phase or single phase generator shall be connected line-to-neutral and shall be effectively grounded.

(i) If a customer-generator facility is to be connected to a single-phase shared secondary, the aggregate generation capacity on the shared secondary, including the customer-generator facility, shall not exceed 20 kilovolt-amperes (kVA).

(j) If a customer-generator facility is single-phase and is to be connected to a transformer center tap neutral of a 240 volt service, the addition of the customer-generator facility shall not create an imbalance between the two sides of the 240 volt service, which is greater than 20 percent of the nameplate rating of the service transformer.

(k) A customer-generator facility's point of common coupling shall not be on a transmission line.

(l) If a customer-generator facility's proposed point of common coupling is on a spot or area network, the interconnection shall meet the following requirements, in addition to the requirements in (c) through (k) above:

1. For a customer-generator facility that will be connected to a spot network circuit, the aggregate generation capacity connected to that spot network from customer-generator facilities, including the customer-generator facility, shall not exceed five percent of the spot network's maximum load;

2. For a customer-generator facility that utilizes inverter based protective functions, which will be connected to an area network, the customer-generator facility, combined with other exporting customer-generator facilities on the load side of network protective devices, shall not exceed 10 percent of the minimum annual load on the network, or 500 kW, whichever is less. For the purposes of this paragraph, the percent of minimum load for solar electric generation customer-generator facility shall be calculated based on the minimum load occurring during an off-peak daylight period; and

3. For a customer-generator facility that will be connected to a spot or an area network that does not utilize inverter based protective functions, or for an inverter based customer-generator facility that does not meet the requirements of (l) 1 or 2 above, the customer-generator facility shall utilize reverse power relays or other protection devices that ensure no export of power from the customer-generator facility, including inadvertent export (under fault conditions) that could adversely affect protective devices on the network.

(m) An applicant shall submit an application for level 2 interconnection review on a standard form, available from the EDC and posted on the Board's website at www.bpu.state.nj.us. See N.J.A.C. 14:4-9.5(d). An applicant may choose to simultaneously submit an EDC's standard form interconnection agreement executed by the applicant.

(n) Within three business days after receiving an application for level 2 interconnection review, the EDC shall provide written or e-mail notice to the applicant that it received the application and whether the application is complete. If the application is incomplete, the written notice shall include a list of all of the information needed to complete the application.

(o) Within 15 business days after the EDC notifies the applicant that the application is complete under (n) above, the EDC shall perform an initial review of the proposed interconnection to determine whether the interconnection meets the applicable requirements at (c) through (l) above. During this initial review, the EDC may, at its own expense, conduct any studies or tests it deems necessary to evaluate the proposed interconnection. The initial review shall result in one of the following determinations:

1. The customer-generator facility meets the applicable requirements in (c) through (l) above. In this case, the EDC shall notify the applicant that the interconnection will be finally approved upon completion of the process set forth at (p) through (r) below. Within three business days after this notice, the EDC shall provide the applicant with an executable interconnection agreement;

2. The customer-generator facility has failed to meet one or more of the applicable requirements at (c) through (l) above, but the EDC has nevertheless determined that the customer-generator facility can be interconnected consistent with safety, reliability, and power quality. In this case, the EDC shall notify the applicant that the interconnection will be finally approved upon completion of the process set forth at (p) through (r) below. Within five business days after this notice, the EDC shall provide the applicant with an executable interconnection agreement;

3. The customer-generator facility has failed to meet one or more of the applicable requirements at (c) through (k) above, but the initial review indicates that additional review may enable the EDC to determine that the customer-generator facility can be interconnected consistent with safety, reliability, and power quality. In such a case, the EDC shall offer to perform additional review to determine whether minor modifications to the electric distribution system (for example, changing meters, fuses, or relay settings) would enable the interconnection to be made consistent with safety, reliability and power quality. The EDC shall provide to the applicant a nonbinding, good faith estimate of the costs of such additional review, and/or such minor modifications. The EDC shall undertake the additional review or modifications only after the applicant consents to pay for the review and/or modifications; or

4. The customer-generator facility has failed to meet one or more of the applicable requirements at (c) through (l) above, and the initial review indicates that additional review would not enable the EDC to determine that the customer-generator facility could be interconnected consistent with safety, reliability, and power quality. In such a case, the EDC shall notify the applicant that the interconnection application has been denied, and shall provide an explanation of the reason(s) for the denial, including a list of additional information and/or modifications to the customer-generator's facility, which would be required in order to obtain an approval under level 2 interconnection procedures.

(p) An applicant that receives an interconnection agreement under (o) 1 or 2 above shall:

1. Execute the agreement and return it to the EDC at least 10 business days prior to starting operation of the customer-generator facility (unless the EDC does not so require); and

2. Indicate to the EDC the anticipated start date for operation of the customer-generator facility.

(q) The EDC may require an EDC inspection of a customer-generator facility for compliance with this subchapter prior to operation, and may require and arrange for witness of commissioning tests as set forth in IEEE standard 1547 (published July 2003), as amended and supplemented, which is incorporated by reference herein. The EDC shall schedule any inspections or tests under this section promptly and within a reasonable time after submittal of the application. The applicant shall not begin operating the customer-generator facility until after the inspection and testing is completed.

(r) For an applicant that receives an interconnection agreement under (p)1 or 2 above, approval of interconnected operation of the customer-generator facility shall be conditioned on all of the following occurring:

1. The interconnection has been approved by the electrical code official with jurisdiction over the interconnection;
2. Any EDC inspection and/or witnessing of commissioning tests arranged under (q) above are successfully completed; and
3. The planned start date provided by the applicant under (q) above has passed.

(s) If an application for level 2 interconnection review is denied because it does not meet one or more of the requirements in this section, the applicant may resubmit the application under the level 3 interconnection review procedure.

New Rule, R.2004 d.391, effective October 4, 2004.
See: 35 N.J.R. 5356(a), 36 N.J.R. 4489(c).

14:4-9.9 Level 3 interconnection review

(a) Each EDC shall adopt a level 3 interconnection review procedure. The EDC shall use the level 3 review procedure for an application to interconnect a customer-generator facility that has a capacity less than two megawatts and does not qualify for the level 1 or level 2 interconnection review procedures set forth at N.J.A.C. 14:4-9.7 and 9.8.

(b) The EDC shall conduct an initial review of the application and shall offer the applicant an opportunity to meet with EDC staff to discuss the application. At the meeting, the EDC shall provide pertinent information to the applicant, such as the available fault current at the proposed interconnection location, the existing peak loading on the lines in the general vicinity of the customer-generator facility, and the configuration of the distribution lines at the proposed point of common coupling.

(c) The EDC shall provide an impact study agreement to the applicant, which shall include a good faith cost estimate for an impact study to be performed by the EDC. An impact study is an engineering analysis of the probable impact of a

customer-generator facility on the safety and reliability of the EDC's electric distribution system. An impact study shall be conducted in accordance with good utility practice, as defined at N.J.A.C. 14:4-9.2, and shall:

1. Detail the impacts to the electric distribution system that would result if the customer-generator facility were interconnected without modifications to either the customer-generator facility or to the electric distribution system;
2. Identify any modifications to the EDC's electric distribution system that would be necessary to accommodate the proposed interconnection; and
3. Focus on power flows and utility protective devices, including control requirements.

(d) If the proposed interconnection may affect electric transmission or delivery systems other than that controlled by the EDC, operators of these other systems may require additional studies to determine the potential impact of the interconnection on these systems. If such additional studies are required, the EDC shall coordinate the studies but shall not be responsible for their timing. The applicant shall be responsible for the costs of any such additional studies required by another affected system. Such studies shall be conducted only after the applicant has provided written authorization.

(e) After the applicant has executed the impact study agreement and has paid the EDC the amount of the good faith estimate required under (c) above, the EDC shall conduct the impact study and shall notify the applicant of the results as follows:

1. If the impact study indicates that only insubstantial modifications to the EDC's electric distribution system are necessary to accommodate the proposed interconnection, the EDC shall send the applicant an interconnection agreement that details the scope of the necessary modifications and an estimate of their cost; or
2. If the impact study indicates that substantial modifications to the EDC's electric distribution system are necessary to accommodate the proposed interconnection, the EDC shall provide an estimate of the cost of the modifications, which shall be accurate to within plus or minus 25 percent. In addition, the EDC shall offer to conduct a facilities study at the applicant's expense, which will identify the types and cost of equipment needed to safely interconnect the applicant's customer-generator facility.

(f) If an applicant requests a facilities study under (e)2 above, the EDC shall provide a facilities study agreement. The facilities study agreement shall describe the work to be undertaken in the facilities study and shall include a good faith estimate of the cost to the applicant for completion of the study. Upon the execution by the applicant of the facilities study agreement, the EDC shall conduct a facilities

study, which shall identify the facilities necessary to safely interconnect the customer-generator facility with the EDC's electric distribution system, the cost of those facilities, and the time required to build and install those facilities.

(g) Upon completion of a facilities study, the EDC shall provide the applicant with the results of the study and an executable interconnection agreement. The agreement shall list the conditions and facilities necessary for the customer-generator facility to safely interconnect with the EDC's electric distribution system, the cost of those facilities, and the estimated time required to build and install those facilities.

(h) If the applicant wishes to interconnect, it shall execute the interconnection agreement, provide a deposit of not more than 50 percent of the cost of the facilities identified in the facilities study, complete installation of the customer-generator facility, and agree to pay the EDC the amount required for the facilities needed to interconnect as identified in the facilities study.

(i) Within 15 business days after notice from the applicant that the customer-generator facility has been installed, the EDC shall inspect the customer-generator facility and shall arrange to witness any commissioning tests required under IEEE Standard 1547. The EDC and the applicant shall select a date by mutual agreement for the EDC to witness commissioning tests.

(j) Provided that the customer-generator facility passes any required commissioning tests satisfactorily, the EDC shall notify the applicant in writing, within three business days after the tests, of one of the following:

1. The interconnection is approved and the customer-generator facility may begin operation; or
2. The facilities study identified necessary construction that has not been completed, the date upon which the construction will be completed and the date when the customer-generator facility may begin operation.

(k) If the commissioning tests are not satisfactory, the customer-generator shall repair or replace the unsatisfactory equipment and reschedule a commissioning test pursuant to (i) above.

(l) Each EDC shall include in any tariff or published procedures for level 3 interconnection review each element of an impact study, including a description of the review the EDC will undertake for each element. An impact study shall include the following elements, as applicable:

1. A load flow study;
2. A short-circuit study;
3. A circuit protection and coordination study;
4. The impact on the operation of the electric distribution system;

5. A stability study (and the conditions that would justify including this element in the impact study);

6. A voltage collapse study (and the conditions that would justify including this element in the impact study); and

7. Additional elements, if approved in writing by Board staff prior to the impact study.

New Rule, R.2004 d.391, effective October 4, 2004.
See: 35 N.J.R. 5356(a), 36 N.J.R. 4489(c).

14:4-9.10 Interconnection fees

(a) An EDC or supplier/provider shall not charge an application or other fee to an applicant that requests level 1 interconnection review. However, if an application for level 1 interconnection review is denied because it does not meet the requirements for level 1 interconnection review, and the applicant resubmits the application under another review procedure in accordance with N.J.A.C. 14:4-9.7(p), the EDC may impose a fee for the resubmitted application, consistent with this section.

(b) For an level 2 interconnection review, the EDC may charge fees of up to \$50.00 plus \$1.00 per kilowatt of the customer-generator facility's capacity, plus the cost of any minor modifications to the electric distribution system or additional review, if required under N.J.A.C. 14:4-9.8(o)3 or 4. Costs for such minor modifications or additional review shall be based on EDC estimates and shall be subject to case by case review by the Board or its designee. Costs for engineering work done as part of any additional review shall not exceed \$100.00 per hour.

(c) For a level 3 interconnection review, the EDC may charge fees of up to \$100.00 plus \$2.00 per kilowatt of the customer-generator facility's capacity, as well as charges for actual time spent on any impact and/or facilities studies required under N.J.A.C. 14:4-9.9. Costs for engineering work done as part of an impact study or facilities study shall not exceed \$100.00 per hour. If the EDC must install facilities in order to accommodate the interconnection of the customer-generator facility, the cost of such facilities shall be the responsibility of the applicant.

New Rule, R.2004 d.391, effective October 4, 2004.
See: 35 N.J.R. 5356(a), 36 N.J.R. 4489(c).

14:4-9.11 Requirements after approval of an interconnection

(a) An EDC shall not require an applicant whose facility meets the criteria for interconnection approval under the level 1 or level 2 interconnection review procedure required pursuant to N.J.A.C. 14:4-9.7 and 9.8, to install additional controls or external disconnect switches not included in the equipment package, to perform or pay for additional tests, or to purchase additional liability insurance, except if agreed to by the applicant.

(b) An EDC shall not charge any fee or other charge for connecting to the EDC's equipment or for operation of a customer-generator facility for the purposes of net metering, except for the fees provided for under this subchapter.

(c) Once a net metering interconnection has been approved under this subchapter, the EDC shall not require a customer-generator to test or perform maintenance on its facility except for the following:

1. An annual test in which the customer-generator's facility is disconnected from the electric distribution company's equipment to ensure that the inverter stops delivering power to the grid;
2. Any manufacturer-recommended testing or maintenance; and
3. Any post-installation testing necessary to ensure compliance with IEEE 1547 or to ensure safety.

(d) When a customer-generator facility approved through a level 2 or level 3 review undergoes maintenance or testing in accordance with the requirements of this subchapter, the customer-generator shall retain written records documenting the maintenance and the results of testing. No recordkeeping is required for maintenance or testing performed on a customer-generator facility approved through a level 1 review.

(e) An EDC shall have the right to inspect a customer-generator's facility after interconnection approval is granted, at reasonable hours and with reasonable prior notice to the customer-generator. If the EDC discovers that the customer-generator's facility is not in compliance with the requirements of this subchapter, and the noncompliance adversely affects the safety or reliability of the electric distribution system, the EDC may require the customer-generator to disconnect the customer-generator facility until compliance is achieved.

New Rule, R.2004 d.391, effective October 4, 2004.
See: 35 N.J.R. 5356(a), 36 N.J.R. 4489(c).