

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; 48:3-7; 48:3-9; 48:3-10; 48:3-48 et seq. and 48:3-78 et seq.

Source and Effective Date

R.2006 d.178, effective April 18, 2006.
See: 37 N.J.R. 3911(a), 38 N.J.R. 2176(a).

Chapter Expiration Date

Chapter 4, Energy Competition, expires April 18, 2011.

Chapter Historical Note

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

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

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

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

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

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

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

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

Subchapter 6, Interim Government Energy Aggregation Program Standards, was repealed and special new rules adopted by R.2003 d.322, effective July 11, 2003.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: 37 N.J.R. 388(a), 37 N.J.R. 2888(a).

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

Chapter 4, Energy Competition Standards, was renamed "Energy Competition" and Subchapter 1, General Provisions and Definitions, was

adopted as new rules by R.2006 d.178, effective May 15, 2006. Former Subchapter 1, Interim Anti-Slamming Standards, was readopted 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: 37 N.J.R. 3911(a), 38 N.J.R. 2176(a).

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

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

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

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SUBCHAPTERS 8 THROUGH 9. (RESERVED)

SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

14:4-1.1 Applicability and scope

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

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

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

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

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

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

(e) For the purposes of this chapter, a statement, action, or failure to act by a contractor, agent, or representative of 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

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

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

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

“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 nat-

ural 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;

(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. ENERGY LICENSING AND REGISTRATION

14:4-5.1 Scope, general provisions

(a) This subchapter shall apply to the following, as these terms are defined at N.J.A.C. 14:4-1.2:

- 1. Electric power suppliers;
- 2. Gas suppliers;
- 3. Energy agents, including energy consultants. An energy consultant is an energy agent that has met additional requirements in this subchapter, and is therefore eligible to access certain customer information;