

## 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.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, Subchapters 1, 1A and 4A, 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Subchapter 6, Interim Government Energy Aggregation Program Standards, was repealed and special new rules adopted by R.2003 d.322, effective July 11, 2003.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).

#### CHAPTER TABLE OF CONTENTS

##### SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

- 14:4-1.1 Applicability and scope
- 14:4-1.2 Definitions

##### SUBCHAPTER 1A. INTERIM ANTI-SLAMMING STANDARDS

- 14:4-1A.1 Scope
- 14:4-1A.2 Definitions
- 14:4-1A.3 Change orders for gas or electric service
- 14:4-1A.4 TPS billing
- 14:4-1A.5 TPS change order procedures
- 14:4-1A.6 Unauthorized service termination and transfer (slamming)
- 14:4-1A.7 Enforcement

##### SUBCHAPTERS 2 THROUGH 4. (RESERVED)

##### SUBCHAPTER 4A. PUBLIC UTILITY HOLDING COMPANY STANDARDS

- 14:4-4A.1 Scope
- 14:4-4A.2 Definitions
- 14:4-4A.3 Asset investments

##### SUBCHAPTERS 5 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 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.

(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.

## SUBCHAPTERS 2 THROUGH 4. (RESERVED)

### 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.

SUBCHAPTERS 5 THROUGH 9. (RESERVED)