

telephone call made in response to an express written, electronic, or telephonic request of a customer shall not be deemed a telemarketing sales call.

“Unsolicited advertisement” means any advertising claims of the commercial availability or quality of services provided by an electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer which is transmitted to a potential customer without that customer’s prior express invitation or permission.

Special amendment, R.2014 d.159, effective September 30, 2014 (to expire March 30, 2016).

See: 46 N.J.R. 2197(a).

Added definitions “Existing business relationship”, “Sales representative”, “Telemarketer”, “Telemarketing sales call”, and “Unsolicited advertisement”.

In accordance with N.J.S.A. 52:14B-5.1c, special amendment R.2014 d.159, expires on September 26, 2016.

See: 48 N.J.R. 709(a).

14:4-7.3 Advertising standards

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

(b) If the costs of the optional services are included in the advertised price per kWh or therm, or the advertised percentage savings, the advertisement shall provide a toll-free number, local telephone number or website where customers may obtain a detailed breakdown of the price per kWh or price per therm so the customers may view the rates with and without optional services included.

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

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

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

(d) In the advertisement of their services, electric power suppliers, gas suppliers, brokers, energy agents, marketers,

private aggregators, sales representatives, and telemarketers are prohibited from:

1. Making false or misleading advertising claims to a potential residential customer;

2. Contacting a potential residential customer by telephone for the purpose of making an unsolicited advertisement, if the electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer does not have an existing business relationship with the potential residential customer and the residential customer’s telephone number appears on the no telemarketing call list established and maintained by the Division of Consumer Affairs, pursuant to N.J.S.A. 56:8-127 or any successor statute, or the national do-not-call registry as maintained by the Federal Trade Commission.

(e) Any complaints related to violations of (d)2 above shall be forwarded to the Division of Consumer Affairs for further investigation.

Special amendment, R.2014 d.159, effective September 30, 2014 (to expire March 30, 2016).

See: 46 N.J.R. 2197(a).

Added (d) and (e).

In accordance with N.J.S.A. 52:14B-5.1c, special amendment R.2014 d.159, expires on September 26, 2016.

See: 48 N.J.R. 709(a).

14:4-7.4 Marketing standards

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

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

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

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

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

5. The TPS’s license number;

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

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

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

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

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

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

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

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

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

(f) The TPS shall clearly state in its solicitations to the customer, and in its marketing materials, whether in hard-copy, electronically or via internet website, that switching to

a competitive third-party supplier is not mandatory, and the customer has the option of remaining with the LDC for basic generation service or basic gas supply service.

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

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

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

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

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

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

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

(n) In the marketing of their services, electric power suppliers, gas suppliers, brokers, energy agents, marketers, private aggregators, sales representatives, and telemarketers are prohibited from:

1. Making false or misleading marketing claims to a potential residential customer;

2. Contacting a potential residential customer by telephone for the purpose of the marketing of their services, if the electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer does not have an existing busi-

ness relationship with the potential residential customer and the residential customer's telephone number appears on the no telemarketing call list established and maintained by the Division of Consumer Affairs or the national do-not-call registry as maintained by the Federal Trade Commission.

(o) Any complaints related to (n)2 above shall be forwarded to the Division of Consumer Affairs for further investigation.

Special amendment, R.2014 d.159, effective September 30, 2014 (to expire March 30, 2016).

See: 46 N.J.R. 2197(a).

Added (n) and (o).

In accordance with N.J.S.A. 52:14B-5.1c, special amendment R.2014 d.159, expires on September 26, 2016.

See: 48 N.J.R. 709(a).

14:4-7.5 Credit

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

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

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

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

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

14:4-7.6 Contracts

(a) A TPS shall not provide electric generation service or gas supply service to a retail customer without the customer's written signature on a contract or such alternative forms of verification identified in N.J.A.C. 14:4-2.3 and as the Board may permit to initiate such service(s), for switching TPSs or for renewal thereof. On or before the date the TPS submits a change order to an LDC, and within one business day of when a customer authorizes a contract renewal, the TPS shall send a copy of the TPS contract to the customer. The TPS may do this by an electronic method or by regular mail, at the option of the customer, or if the customer signed up in person, the TPS may hand deliver the contract to the customer.

(b) A TPS contract shall clearly and conspicuously state that the purpose of the document is to authorize a change in

the customer's TPS, and include explicit terms and conditions, which shall include, at a minimum:

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

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

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

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

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

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

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

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

(e) A TPS contract shall state that, for a residential customer, there is no charge for starting or stopping electric

generation service or gas supply service, if done within the terms of the contract. This subsection does not prohibit an early termination fee or other penalty for failure to adhere to a valid TPS contract.

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

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

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

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

(j) Where 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 conditions and pricing. This does not preclude the TPS from using any of the change order verification methods set forth in N.J.A.C. 14:4-2.3(c) to verify that the customer agrees to the renewal contract terms.

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

(l) The contract may not include provisions (sometimes referred to as "material change notices") that permit the TPS to change material terms of the contract without the customer's affirmative authorization unless the change is required by operation of law. "Material terms of a contract" include, but are not limited to, terms regarding the price, deliverability, time period of the contract, or ownership of the gas or electricity. "Non-material" terms include those regarding the address where payments should be sent or the phone number to be used for customer inquiries. Changing the price to reflect a change in the Sales and Use Tax or other State-

mandated charge would be permitted as a change required by operation of law.

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

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

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

Amended by R.2013 d.067, effective April 15, 2013.

See: 44 N.J.R. 1589(a), 45 N.J.R. 934(b).

In (a), inserted the second and third sentences; in (j), substituted "conditions" for "condition" and inserted the last sentence; and added (l).

14:4-7.7 Customer bills

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

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

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

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

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

4. The information required at (b)9 above.

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

14:4-7.8 Customer information

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

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

14:4-7.9 Complaints

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

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

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

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

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

(b) Residential customers may be terminated for non-payment at the time of the next meter reading, but with at least the minimum 30 days' written notice to the residential customer, which shall include a toll-free or local telephone number of the TPS and the Board, the effective date, the reason for the contractual termination, timetable for the residential customer to choose another TPS before defaulting to basic generation service or gas service, and 15 to 30 days notice to the LDC.

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

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

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

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

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

Added (e).

14:4-7.11 Presentation of New Jersey Sales Tax

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

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

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

14:4-7.12 Fixed rates

(a) If a TPS signs up a customer or renews a customer for a rate that the TPS characterizes as "fixed" or "firm," or the TPS uses other language to describe the rate as not variable:

1. The TPS must provide the time period for which the rate is fixed in that communication; and

2. The TPS may not charge the customer a rate that is higher than the fixed rate during the period for which it is fixed, except as permitted in N.J.A.C. 14:4-7.6(f), without the customer's affirmative consent.

New Rule, R.2013 d.067, effective April 15, 2013.

See: 44 N.J.R. 1589(a), 45 N.J.R. 934(b).

14:4-7.13 Penalties

(a) In addition to any other penalties, fines, or remedies authorized by law, an electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer that violates the provisions of N.J.A.C. 14:4-7.3(d)1 and 7.4(n)1 and collects charges for electric generation service or gas supply service from a residential customer who was subjected to false or misleading advertising or marketing claims by the electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer in violation of the provisions of N.J.A.C. 14:4-7.3(d)1 and 7.4(n)1:

1. Shall be liable to the residential customer in an amount equal to all charges paid by the residential customer after such violation occurs in accordance with any procedures as the board may prescribe, whether the electric power supplier or gas supplier provided the electric generation service or gas supply service to that customer, or the electric generation service or gas supply service was provided to the customer by a broker, energy agent, marketer, private aggregator, sales representative, or tele-

marketer who contacted the customer on behalf of the electric power supplier or gas supplier; and

2. Shall be liable for a civil penalty pursuant to N.J.S.A. 48:3-83.

(b) The Board is hereby authorized to revoke the license of any electric power supplier, gas supplier, broker, energy agent, marketer, or private aggregator found in violation of N.J.A.C. 14:4-7.3(d) or 7.4(n).

Special New Rule, R.2014 d.159, effective September 30, 2014 (to expire March 30, 2016).

See: 46 N.J.R. 2197(a), 48 N.J.R. 709(a).

In accordance with N.J.S.A. 52:14B-5.1c, special new rule R.2014 d.159, expires on September 26, 2016.

See: 48 N.J.R. 709(a).

SUBCHAPTERS 8 THROUGH 9. (RESERVED)