

(c) A utility may collect fixed cost revenue erosion for a forecasted year subject to true-up with interest.

Recodified from N.J.A.C. 14:12-4.3 by R.1993 d.96, effective March 1, 1993.

See: 24 N.J.R. 2804(a), 25 N.J.R. 1000(a).

#### 14:12-4.3 Earnings

(a) Lost revenues plus incentives/disincentives from shared savings programs and income/losses from standard offer programs shall be excluded from the determination of a utility's base rate revenue requirement.

(b) For the shared savings option, the Board shall set the split of the savings based on a targeted rate of return for the plan based on forecasts of costs and savings and the level of risks associated with the plan.

(c) The Board retains the ability to re-evaluate the treatment of incentives/disincentives and/or income/losses and the recovery of fixed cost revenue erosion from DSM programs. However, any changes will apply prospectively only and any DSM measures implemented in accordance with a particular set of rules shall be exempt from future changes for the life of the measure.

New Rule: R.1993 d.96, effective March 1, 1993.

See: 24 N.J.R. 2804(a), 25 N.J.R. 1000(a).

#### 14:12-4.4 DSM bidding for gas utilities

(a) Each gas utility shall file a proposed DSM competitive bidding or standard pricing offer procedure.

(b) For competitive bidding, the proposed procedure shall include proposed weighting criteria for economic factors, most notably price, as well as additional factors such as project viability, environmental, measurement plan, marketing plan and site control.

(c) The proposed competitive bidding procedure shall also include proposed minimum criteria for acceptance of bids as well as a proposed avoided cost ceiling price.

(d) The procedure may address a particular DSM measure or be more broad in scope.

(e) The filing shall also identify a specific block size to be targeted.

(f) Review by the Board of bidding and standard offer procedures in subsequent DSM Plan filings shall be based upon the experience with the initial pilot bidding procedure.

Amended by R.1996 d.547, effective December 2, 1996.

See: 28 N.J.R. 3890(a), 28 N.J.R. 5092(a).

#### 14:12-4.5 DSM bidding for electric utilities

(a) To the extent that, notwithstanding DSM initiatives undertaken pursuant to this chapter, an electric utility projects a need for additional generating capacity to be pro-

cured via a competitive bid procedure, said competitive bid procedure is subject to the following:

1. The basis for establishing the ceiling price for DSM bids as well as evaluation criteria must be consistent with the formulae and guidelines for utility DSM incentives and standard price offers as established in this chapter; and

2. A utility which implements a DSM standard pricing offer pursuant to N.J.A.C. 14:12-3.5 concurrent with the bid solicitation process will be exempt from including DSM in the bidding procedure.

#### 14:12-4.6 Program Transition Strategy

As part of the DSM Plan filed pursuant to this chapter, each utility shall file a DSM Program Transition Strategy which describes the utility's proposed plan to merge its existing DSM efforts into its subsequent DSM Plan. Such strategy shall address the proposed future status of each of the utility's existing programs, that is, whether an existing program is proposed to be rolled into the Performance-Based Programs or into the Core Programs established in N.J.A.C. 14:12-2, or whether it is proposed to be eliminated based upon a finding of non cost-effectiveness and insufficient societal benefits. A supporting rationale shall be included which underlies the proposed status of each program. Further, the DSM Program Transition Strategy must address the impact, if any, of utility programs implemented as a result of these regulations, on existing DSM contracts that resulted from previous competitive bid solicitations.

Recodified from N.J.A.C. 14:12-4.2 by R.1993 d.96, effective March 1, 1993.

See: 24 N.J.R. 2804(a), 25 N.J.R. 1000(a).

Amended by R.1996 d.547, effective December 2, 1996.

See: 28 N.J.R. 3890(a), 28 N.J.R. 5092(a).

### SUBCHAPTER 5. AGENCY REVIEW

#### 14:12-5.1 Impact on non-utility markets

(a) In reviewing each proposed DSM Plan and DSM Program, the Board will assess the impact on existing non-utility market infrastructures involved in the sales and installation or other provision of DSM measures and/or services.

1. The Board's review of proposed DSM Plan and DSM Programs will take into account the Board's policy to encourage the development of non-utility market infrastructures.

2. The existence or absence, as well as the size, of a non-utility market infrastructure for the distribution, sale or installation, operation, or maintenance of a particular DSM measure or service will bear on the Board's assessment with respect to paragraph (a) above.

**14:12-5.2 Consistency with competitive bid programs**

Review by the Board of each proposed DSM Plan and DSM Program will include an assessment of pricing, quality assurance mechanisms, measurement plans and savings verification plans. This review is to ensure that utility-sponsored DSM programs are held to similar standards as comparable projects designed and implemented by non-utility interests pursuant to a utility-sponsored DSM competitive bid solicitation process or standard pricing offer.

**14:12-5.3 Public notice and hearing**

(a) Prior to the filing of its DSM Plan, each utility shall contact Board staff to arrange for a public hearing on the DSM Plan.

(b) Subsequent to its filing, each utility shall provide public notice of its filing by publication in newspapers published and circulated in the utility's service area. The public notice shall be subject to review by Board staff at least three business days prior to its publication. The public notice shall include the date, time and location of the public hearing, and a contact for obtaining a copy of the Executive Summary prepared pursuant to N.J.A.C. 14:12-2.2(a)6 or the complete DSM Plan.

(c) Concurrent with the filing of its DSM Plan with the Board, each utility shall provide the Division of the Ratepayer Advocate with a copy of the Plan.

(d) Written comments on the Plan may be submitted to the Board within 60 days of the public notice announcing the filing, or as otherwise extended by the Board.

(e) The Division of the Ratepayer Advocate, shall be a statutory intervenor pursuant to N.J.S.A. 13:1D-1 and given notice of the public hearing.

(f) Any person(s), other than the Division of the Ratepayer Advocate, interested in intervening in the DSM Plan review process must file a Motion to Intervene with the Board within 30 days of public notice of the DSM Plan filing.

(g) The Board shall establish a schedule under which each utility and any other party shall be required to respond to information requests including all relevant dates and provide notification of same to the parties, which schedule shall terminate no sooner than 45 days from the date of the public notice.

(h) Utilities shall use their best efforts to respond to all discovery requests within 15 days of the date of the request.

(i) Approximately 60 days after the public notice, Board staff will convene a settlement conference of the parties in each case. Additional conferences may be convened. In the event the parties determine that settlement is unlikely, the Board will determine whether it will retain the matter and establish an evidentiary hearing schedule for resolving all contested issues, or whether it will transmit the matter to the Office of Administrative Law for hearing.

Repeal and New Rule: R.1993 d.96, effective March 1, 1993.

See: 24 N.J.R. 2804(a), 25 N.J.R. 1000(a).

Administrative Correction.

See: 26 N.J.R. 4786(a).

Amended by R.1996 d.547, effective December 2, 1996.

See: 28 N.J.R. 3890(a), 28 N.J.R. 5092(a).

Amended by R.1997 d.202, effective May 19, 1997.

See: 29 N.J.R. 540(a), 29 N.J.R. 2466(a).

In (f), substituted "Any person(s)" for "Persons" and "file a Motion to Intervene with" for "notify", and deleted "of their intent to intervene" following "DSM Plan filing".

**14:12-5.4 Board approval**

The DSM Plan shall be implemented as soon as practicable following Board approval.