

**CHAPTER 4
ENERGY COMPETITION STANDARDS**

Authority

N.J.S.A. 48:3-78 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).

Executive Order No. 66(1978) Expiration Date

Chapter 4, Energy Competition Standards, expires on January 9, 2006.

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.

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SUBCHAPTER 1. INTERIM ANTI-SLAMMING STANDARDS

14:4-1.1 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.

14:4-1.2 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.

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.

SUBCHAPTER 7. (RESERVED)

SUBCHAPTER 8. INTERIM RENEWABLE ENERGY PORTFOLIO STANDARDS

Authority

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

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 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, Source and Effective Date. See, also, section annotations.in particular 48:3-51 and 48:3-87.

14:4-8.1 Purpose and scope

(a) Pursuant to the provisions of the Electric Discount and Energy Competition Act (the "Act") (N.J.S.A. 48:3-87), each electric power supplier or basic generation service provider who sells electricity to retail customers in this State shall include in its electric energy portfolio electricity generated from renewable energy sources. These interim renewable portfolio energy standards ("interim standards") are designed to encourage the development of renewable sources of electricity and new, cleaner generation technology; minimize the environmental impact of emissions from electric generation; reduce possible transport of emissions and minimize any adverse environmental impact from deregulation of energy generation.

(b) These interim standards pertain to the retail electricity sales of each electric power supplier and basic generation service provider as defined in N.J.A.C. 14:4-8.2. These interim standards pertain to electricity retail sales, and not to installed capacity obligations.

(c) These interim standards do not apply to a private or government aggregator that contracts for electric generation

service or electric related services, either separately or bundled, for its own facilities or on behalf of other business and residential customers in this State. These standards do not apply to an energy agent that arranges the sale of retail electricity or electric-related services between government aggregators or private aggregators and electric power suppliers. The electric power supplier(s) who is contractually obligated to sell electricity to the aggregator shall comply with these interim standards by including the aggregated amount as part of its energy portfolio.

(d) For the limited purposes of these interim standards, electricity generated from Class I renewable energy projects funded by the societal benefits charge (SBC) shall qualify as Class I renewable energy that can be used to meet the renewable energy portfolio standards percentage requirements. Specifically, Class I renewable energy generated from projects funded by the SBC, as a result of the findings of the Comprehensive Resources Analysis (CRA) Proceeding, may be used to meet the requirements herein, unless and until the Board determines otherwise.

(e) Certain elements of these interim standards, particularly pertaining to reporting requirements for electric power suppliers and basic generation service providers, may be subject to elimination or modification by an order of the Board, to the extent that a tracking system is implemented by an independent system operator and/or an environmental disclosure program administrator.

14:4-8.2 Definitions

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

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

“Aggregator” means either of the following:

1. A governmental entity, subject to the requirements of the “Local Public Contracts Law,” P.L. 1971, c.198 (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,” P.L. 1982, c.189 (N.J.S.A. 18A:64A-25.1 et seq.), that enters into a written contract with a licensed electric power supplier(s) for electric generation service or electric related service either separately or bundled with other services, for its own facilities, the use of other government aggregators or on behalf of business and residential customers within its territorial jurisdiction; or
2. A private non-government aggregator that is a duly-organized business or non-profit organization authorized to do business in this State and that enters into a contract with a duly licensed electric power supplier for the purchase of electric energy and capacity, on behalf of multiple end-use customers by combining the loads of those customers.

For the limited purposes of these interim standards, a government or private aggregator, as well as its customers, shall be considered to be retail customers.

“Basic generation service” means electric generation service that is provided 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.

“Biomass” means, for the limited purposes of these interim standards, as it is defined in Executive Order 13134, published in the Federal Register on August 16, 1999, “. . . any organic matter that is available on a renewable or recurring basis (excluding old-growth timber), including dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, wood and wood residues, animal wastes, and other waste materials. Old-growth timber

means timber of a forest from the late successional stage of forest development. The forest contains live and dead trees of various sizes, species, composition, and age class structure. The age and structure of old growth varies significantly by forest type and from one biogeoclimatic zone to another.”

“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.

“Electric power supplier” means a person or entity that is duly licensed by the Board 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.

“Energy” means electric energy measured in kilowatt hours (kWh).

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

“Fuel cell” means an electrochemical device that converts chemical energy in a hydrogen or hydrogen-rich fuel directly into electricity, heat and water without combustion. A fuel cell may be powered by hydrocarbon-based fuel sources including methanol, ethanol, landfill and digester gas, and biomass gas. The fuel cell may not be powered by any fossil fuels, including natural gas.

“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.

“Net metering” means the difference between the electricity generated on the customer’s side of the meter using wind or solar photovoltaic systems and the amount of electricity supplied by the electric power supplier or basic generation service provider over an annualized period as determined by a meter which is allowed to run backwards.

“NJDEP” means the New Jersey Department of Environmental Protection.

“New York Independent System Operator” (“NY ISO”) means the independent system operator that coordinates the physical supply of electricity throughout the service territories of New York state utilities and maintains reliability of the bulk power system.

“PJM Interconnection, L.L.C.” or “PJM ISO” means the entity that operates the wholesale electric power market in the “PJM Region” as that term is defined in the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., as that Agreement is amended from time to time. The Operating Agreement may be obtained on the PJM website at www.pjm.com, or by writing to PJM Interconnection, L.L.C.-Legal Department, 955 Jefferson Avenue, Norristown, PA 19403.

“Renewable energy,” for the limited purposes of these interim standards, means electric energy that is produced from a source of energy that belongs to one of the following two classes:

1. “Class I renewable energy” means electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, and methane gas from landfills or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner; or

2. “Class II renewable energy” means electric energy produced at a resource recovery facility or hydro power facility, provided that such facility is located where retail competition is permitted and provided further that the Commissioner of Environmental Protection has determined that such facility meets the highest environmental standards and minimizes any impacts to the environment and local communities.

“Retail choice” or “retail competition” means the ability of retail customers to shop for electric generation service from electric power suppliers or opt to receive basic generation service, and the ability of an electric power supplier to offer electric generation service to retail customers.

“Retail customer” means any person that is an end user of electricity and is connected to any part of the transmission and distribution system within an electric public utility’s service territory within this State. For the limited purposes of these interim standards, this term includes an aggregator, as well as the customer of a private sector aggregator or governmental aggregator, but does not include a wholesale customer.

“Societal benefits charge” means a charge imposed by an electric public utility, at a level determined by the Board, pursuant to, and in accordance with, N.J.S.A. 48:3-60.

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

“Total retail sales” or “total energy load” means the total amount of kilowatt hours of electricity that an electric power supplier or a basic generation service provider sells to retail customers, including electricity aggregators, in this State during a given year.

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

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

Rewrote “Fuel Cell” and “PJM Interconnection, L.L.C.”.

14:4-8.3 Implementation schedule

(a) Each electric power supplier or basic generation service provider selling electricity to retail customers in this State shall have in its annual electric energy portfolio a minimum amount of electricity generated from Class I and Class II renewable energy sources, as defined in N.J.A.C. 14:4-8.2, as a percentage of the total energy load supplied to New Jersey retail customers according to the following schedule:

Year	Class I	Plus	Class I or II	Total
2001 (September-December)	0.5%		2.5%	3.0%
2002	0.5%		2.5%	3.0%
2003	0.75%		2.5%	3.25%
2004	0.75%		2.5%	3.25%
2005	0.75%		2.5%	3.25%
2006	1.0%		2.5%	3.5%
2007	1.5%		2.5%	4.0%
2008	2.0%		2.5%	4.5%
2009	2.5%		2.5%	5.0%
2010	3.0%		2.5%	5.5%
2011	3.5%		2.5%	6.0%
2012 and beyond	4.0%		2.5%	6.5%

(b) In the year 2001, at least one-half of one percent of the kilowatt hours sold in this State to retail customers from September 1st through December 31st by each electric power supplier and each basic generation service provider shall be from Class I renewable energy sources, as defined herein and specified in the above table (Column 2, “Class I”). At a minimum, an additional two and one-half percent of kilowatt-hours of electricity sold to retail customers from September 1st through December 31st by each electric power supplier and each basic generation service provider shall be from Class I or Class II renewable energy sources, or any combination thereof (Column 3, “Class I or Class II”).

(c) For each successive year thereafter, a minimum percentage of the kilowatt hours sold in this State from January 1st through December 31st by each electric power supplier and each basic generation service provider shall be from Class I renewable energy sources, beginning at one-half of one percent in 2002 and increasing to four percent of the kilowatt hours sold in this State by 2012 and remaining at a minimum of four percent for each successive year thereafter (Column 2, “Class I”). In addition, no less than two and one-half percent of the kilowatt hours of electricity sold in this State by each electric power supplier and each basic generation service provider to retail customers from January 1st to December 31st shall be from Class I or Class II renewable energy sources, or any combination thereof (Column 3, “Class I or Class II”). Thus, by the year 2012, each electric power supplier and each basic generation service provider shall include at least a total of six and one-half percent of Class I and Class II renewable energy as part of his electric energy portfolio.

(d) For each year beyond the year 2012, the minimum percentage of energy required from Class I and Class II renewable sources shall remain fixed at four percent from Class I renewable energy plus an additional two and one-half percent from either Class I renewable energy or Class II renewable energy or a combination thereof, for a total of six and one-half percent of the electric power supplier's or basic generation service provider's annual electric energy portfolio.

14:4-8.4 Reporting requirements of the interim standards

(a) Pursuant to the mandates embodied in N.J.S.A. 48:3-87, the interim standards for renewable energy require that each electric power supplier or basic generation service provider demonstrate, beginning in 2002, that the percentage of Class I and Class II renewable energy in the electric power supplier's or basic generation service provider's electric energy portfolio for the preceding calendar year was at least as great as the required minimum percentages set forth in the table in N.J.A.C. 14:4-8.3.

(b) By March 1st of each year, beginning March 1, 2002, each electric power supplier and basic generation service provider shall file an annual report with the Board of Public Utilities, demonstrating that the electric power supplier's or basic generation service provider's electric energy portfolio met the percentage requirements for Class I and Class II renewable energy contained in N.J.A.C. 14:4-8.3 for the preceding calendar year (January through December).

(c) The annual report shall contain the following:

1. The electric power supplier's or basic generation service provider's total amount of kilowatt hours sold to retail customers in New Jersey during the preceding year;

2. The amount of energy sold to retail customers in New Jersey during the preceding year that was generated from Class I renewable energy sources, expressed as a number of kilowatt hours; and the percentage of the electric power supplier's or basic generation service provider's total retail sales that this amount represents.

i. For the limited purposes of these interim standards, electric energy produced from biomass, either by the burning of captured methane gas derived from biomass or the direct firing of biomass, shall qualify as a Class I renewable energy source provided that the biomass is cultivated and harvested in a sustainable manner.

(1) Electric energy produced from combustion of the following materials shall qualify as a Class I renewable source that is produced from biomass that is cultivated and harvested in a sustainable manner in accordance with a management plan approved by the environmental agency in the state in which the wood is grown:

(A) Gas from the anaerobic digestion of food waste and sewage sludge;

(B) Gas from the anaerobic digestion of other biomass fuels, including bioenergy crops and agricultural waste, provided the electric power supplier or basic generation service provider maintains documentation that demonstrates that the biomass was cultivated and harvested in a sustainable manner;

(C) A bioenergy crop, provided that the electric power supplier or basic generation service provider maintains documentation that demonstrates that the crop was cultivated and harvested in a sustainable manner;

(D) Any of the following types of wood, provided that the wood is clean and untreated and that the electric power supplier or basic generation service provider maintains documentation that demonstrates that the wood was cultivated and harvested in a sustainable manner:

I. Wood produced at a biomass energy plantation;

II. Wood from the thinning or trimming of trees and/or from a forest floor, except wood from old growth forests;

III. Ground wood, produced through the grinding or shredding of pallets and other scrap wood (and that the removal of nails and any other metal) at a recycling facility that is classified as a Class B recycling facility by the New Jersey Department of Environmental Protection's Bureau of Landfill and Recycling Management or an equivalent recycling facility approved by the state environmental agency in which the facility is located; or

IV. Wood shavings and scrap from a lumberyard or a paper mill;

(E) The electric power supplier or basic generation service provider shall provide the documentation required pursuant to (c)2i(1)(B), (C) or (D) above to the Board or its authorized representative upon request.

(2) Electric energy produced from combustion of the following materials shall not qualify as a Class I renewable source that is produced from biomass that is cultivated and harvested in a sustainable manner:

(A) Treated, painted or chemically coated wood;

(B) Municipal solid waste;

(C) Tires;

(D) Sewage sludge;

(E) Wood waste, including demolition waste and construction waste, for which there is no documentation that demonstrates that the wood was grown and harvested in accordance with a management plan approved by the environmental agency of the state in which the wood is grown;

(F) Wood from an old growth forest, including wood from the forest floor; and

(G) Wood from the harvesting of a standing forest, except for a forest that is part of a bioenergy plantation.

(3) For any category not specifically addressed within (c)2i(1) and (2) above, to determine if electric energy produced from biomass shall qualify as a Class I renewable resource, which is produced from biomass that is cultivated and harvested in a sustainable manner, an electric power supplier or basic generation service provider intending to rely on energy produced from biomass to meet the standards in N.J.A.C. 14:4-8.3 for Class I renewable energy shall seek a determination from the NJDEP as to whether the biomass was cultivated and harvested in a sustainable manner by filing a request with the Board for such determination. At the request of the Board, the NJDEP shall make case-by-case determinations, until such time as the NJDEP issues generic criteria that further defines biomass that is cultivated and harvested in a sustainable manner.

(A) An electric power supplier or basic generation service provider who intends to rely on energy from a biomass facility as Class I renewable energy shall file a request with the Board for a determination as to the facility's eligibility as soon as possible, but no later than September 30th of the year for which the supplier seeks to use electricity from the facility to meet the requirements herein.

I. This deadline is intended to allow a period of time for the NJDEP to conduct an environmental review of the facility records, and to allow the supplier a reasonable time to comply with the standards after a determination has been made. The NJDEP shall complete its environmental review and make a determination no later than two months after the Board requests the NJDEP to make such a determination pursuant to the request that has been filed with the Board.

ii. For the limited purposes of these interim standards, Class I renewable energy from geothermal technologies means electricity produced by extracting hot water or steam from geothermal reservoirs in the earth's crust and supplied to steam turbines that drive generators to produce the electricity;

3. The amount of energy sold to retail customers in New Jersey during the preceding year that was generated from Class II renewable energy sources, expressed as a number of kilowatt hours, and the percentage of the electric power supplier's or basic generation service provider's total retail sales that this amount represents.

i. For the limited purposes of these interim standards, the NJDEP has determined that only hydroelectric facilities that have a maximum design capacity of 30 megawatts or less shall qualify as Class II renewable energy sources, unless and until the NJDEP has issued more specific criteria that hydroelectric facilities shall meet to ensure that such a facility meets the highest environmental standards;

ii. An electric power supplier or basic generation service provider may not use pumped hydroelectricity to meet either the Class I or Class II renewable energy resource requirements, except to the extent that the pump storage facility is powered by a Class I or Class II renewable energy resource as defined in N.J.A.C. 14:4-8.2.

(1) Use of renewable energy to power a pumped storage hydroelectric facility shall not be construed to exempt the facility, in either its construction or operation, from the obligation to meet all applicable environmental standards and requirements.

iii. For limited purposes of these interim standards, the NJDEP has determined that energy from all resource recovery facilities permitted in New Jersey that comply with all applicable regulations meet the requirements for Class II renewable energy.

iv. Until the final standards are promulgated, an electric power supplier or basic generation service provider intending to rely on energy produced by an out-of-State resource recovery facility as Class II renewable energy shall seek a determination from the NJDEP as to whether the facility meets the highest environmental standards by filing a request with the Board for such determination. The NJDEP shall make case-by-case determinations, unless and until such time as the NJDEP issues generic criteria that defines the highest environmental standards that a resource recovery facility must meet.

(1) At a minimum, a resource recovery facility shall not be deemed to meet the highest environmental standards unless it is in compliance with air pollution control standards of the state in which the facility is located, as well as Federal air pollution control standards.

(2) Where New Jersey has more stringent environmental protection requirements, a resource recovery facility may not be deemed to meet the highest environmental standards unless it is in compliance with the New Jersey requirements; or equivalent or similar standards, such that overall its level of environmental protection is at least comparable to what would be realized under the New Jersey requirements. These requirements may include solid waste management practices, such as source reduction or recycling practices.

v. As mandated by the Act, an electric power supplier or basic generation service provider may not meet these standards through the use of Class II renewable energy that is generated at a facility in a jurisdiction where retail competition is not permitted.

(1) An electric power supplier or basic generation service provider who intends to rely on Class II renewable energy from a resource recovery facility located in a state other than New Jersey, but from a jurisdiction where retail competition exists, shall file a request with the Board for a determination as to the facility's eligibility as soon as possible, but no later than September 30th of the year for which the supplier seeks to use electricity from the facility to meet the requirements herein.

(A) This deadline is intended to allow a period of time for the NJDEP to conduct an environmental review of the facility records, and to allow the supplier a reasonable time to comply with the standards after a determination has been made. The NJDEP shall complete its environmental review and make a determination within no more than two months after the Board requests the NJDEP to make such a determination pursuant to a request that has been filed with the Board;

4. Documentation which demonstrates that the Class I and Class II renewable resources in the electric power supplier's or basic generation service provider's electric energy portfolio were produced by owned generation, or under a bilateral contract or a contract for specified resources between the electricity power supplier or generation service provider and a generating company or between the electricity power supplier or a generation service provider and a wholesale power marketer, in which:

i. Each generating unit used to fulfill these interim standards is specified, including location, fuel and technology type, and any unique State and/or Federal facility or plant identification number;

ii. The operator of the generating unit(s) documents that the specified amount of kilowatt hours from each renewable energy source was generated by and/or sold to the electric power supplier or basic generation service provider;

iii. Evidence that the specified kilowatt hours flowed into the appropriate PJM ISO or NY ISO control area; and

iv. An affidavit from the owner of the specified unit(s) that the renewable energy power was sold once and only once; and

5. If an electric power supplier or basic generation service provider sells electricity in any other state and is subject to renewable energy portfolio requirements in that state, the electric power supplier or basic generation service provider shall list any such requirement and shall

indicate how it satisfied those renewable energy portfolio requirements.

i. To prevent double-counting the electric power supplier or basic generation service provider shall not satisfy New Jersey's renewable energy portfolio requirements using renewable energy used to satisfy another state's renewable energy portfolio requirements.

(d) Class I and Class II renewable portfolio percentage requirements cannot be fulfilled by ascribing a portion of spot market purchases as renewable energy.

1. To avoid multiple counting of the renewable energy generated, spot market purchases shall not be allowed to fulfill Class I or Class II renewable energy requirements. Because most of the renewable energy claimed by suppliers as fulfilling the interim standards' requirements will be scheduled and delivered into the PJM or NY ISO control area markets, allowing suppliers to rely on a percentage of the spot market average to discharge their renewable energy requirement could result in counting the renewable energy in more than one supplier's energy portfolio.

(e) In some cases, a single electricity generating source may utilize a combination of energy resources to generate electricity, and these energy resources may fall into more than one of the following categories: "Class I renewables," "Class II renewables" and "other type of energy source." This may occur, for example, when biomass that is cultivated and harvested in a sustainable manner is fired or co-fired in conjunction with natural gas or other energy resources which are not Class I renewable energy resources. In such a case, for the purpose of reporting under N.J.A.C. 14:4-8.4(c)2 and/or 3, the following procedures shall be followed to determine the percentage of an electric power supplier's or basic generation service provider's electricity portfolio that is generated from the Class I or Class II renewable energy resources:

1. If the generator is delivering the electricity on a wholesale basis to a single supplier, then the prorated share of the total electricity sold shall be considered Class I renewable energy and/or Class II renewable energy, in proportion to the amount of Class I renewable energy sources and Class II renewable energy sources, expressed in kilowatt hours, that was used to produce the electricity. These prorated amounts shall then be used to determine the percentage of Class I and Class II renewable resources in the supplier's portfolio.

2. If the generator is delivering electricity on a wholesale basis to more than one energy supplier, then one of the following two options is acceptable, provided that a supplier utilizes the same approach in determining its amount of Class I and Class II renewable energy:

i. Unless the contractual arrangements linking the generator and supplier provide otherwise, the amount of Class I and/or Class II renewable energy in the electricity sold to each supplier from this generation

source shall be considered to be directly proportional to the amount of Class I and/or Class II renewable energy in the total amount of electricity generated by the generator source, and this amount shall be determined as follows:

(1) Establish the amount of electricity generated from Class I renewable energy sources; from Class II renewable energy sources; and from all non-renewable energy sources expressed as a percent of the total amount of electricity produced by the generator; and

(2) Then multiply these percentages by the amount of electricity delivered to each supplier; or

ii. If the contractual arrangements linking the generator and supplier so provide, the portions of the total amount of electricity generated by the energy source which are Class I and/or Class II renewable energy may be conveyed and assigned to one or more specific suppliers, and the remaining portions of the total amount of electricity generated by the energy source shall be considered not to include any Class I and/or Class II renewable energy. The amounts assigned to each supplier shall be determined as follows; however, the amount of Class I and/or Class II renewable energy from the energy source conveyed to individual suppliers may not exceed, in total, the portion of the energy generated by the source which was produced from Class I and/or Class II renewable energy resources:

(1) Establish the amount of electricity generated from Class I renewable energy sources; from Class II renewable energy sources; and all non-renewable energy sources expressed in kilowatt hours;

(2) Then determine the specific amounts from each category conveyed and assigned to each supplier, so that the sum of electricity from each category sold to each supplier equals the total amount of electricity generated from each category; and

(3) For the purposes of N.J.A.C. 14:4-8.4(e)1 and 2, for electric generation associated with a combustion device, the amount of electricity produced from each fuel source shall be considered to be in proportion to the amount of British thermal units (Btu) of heat input from each kind of fuel burned in the combustion device.

(f) The electric power supplier or basic generation service provider shall identify after the fact, the specific generating unit or units used to supply the renewable energy in its electric energy portfolio (including operating records for owned generation and contracts for purchased power, minus proprietary information such as pricing terms) and shall document that the renewable energy was not sold more than once, as defined in N.J.A.C. 14:4-8.4(c)4. The electric power supplier or basic generation service provider shall establish either that the Class I and Class II renewable energy was generated and flowed into the appropriate PJM Interconnection L.L.C. or New York Independent System Operator control area or that the conditions are met as set forth in (f)2 below.

1. Aggregate generation from small renewable energy resources, 100 kilowatts of capacity or less, may be used to meet renewable portfolio requirements, provided that the generators or customer-generators or their agents document the level of generation, as recorded by appropriate metering and power sales, on an annual basis;

2. Any renewable energy from small on-site generation not scheduled through the PJM ISO or NY ISO, including on-site small wind or solar photovoltaic generation sources using net metering to record electricity generated from the customer's side of the meter and meeting New Jersey's Interim Net Metering, Safety and Power Quality Standards for Wind and Solar Photovoltaic Systems, N.J.A.C. 14:4-9, may be used to meet these renewable energy portfolio requirements, provided that:

i. The generation unit is no greater than 100 kilowatts capacity;

ii. The unit is located in New Jersey;

iii. The unit meets the definition of Class I renewable energy as defined herein in N.J.A.C. 14:4-8.2;

iv. The generators or customer-generators or their agents can verify the level of generation, as recorded by appropriate metering, on an annual basis; and

v. Any credit for Class I renewable energy from such small on-site generation shall comply with the protocol of the renewable energy trading system, including proprietorship of credit, when such program is ordered or adopted by the Board.

(g) If the annual March report demonstrates noncompliance for the preceding calendar year, the electric power supplier or basic generation service provider shall then file quarterly reports beginning in June of that year and in each subsequent calendar year in March, June, September, and December, reporting on the calendar quarter that ended three months previously (that is, a report on the January through March period would be submitted in June) to demonstrate that the electric power supplier or basic generation service provider is making progress in meeting the renewable energy portfolio standards' requirements. The electric power supplier or basic generation service provider shall continue to submit quarterly reports until such time that the supplier or provider of electricity has met the Class I and Class II renewable energy portfolio requirements for one full calendar year. The quarterly reports shall include the same components as required for the annual reports, as described in preceding paragraphs.

(h) Until the final standards are promulgated, the NJDEP and the Board shall continue to consider outstanding environmental issues.

1. The issues shall include, but are not limited to:

i. The definition of “highest environmental standards” and specifically, the general criteria that an out-of-State resource recovery facility and hydroelectric facility over 30 mW must demonstrate to be approved as meeting the highest environmental standards;

ii. The further definition of what constitutes biomass that is cultivated and harvested in a sustainable manner; and

iii. The development and implementation of a regional renewable energy trading program.

2. The conclusions reached on these issues shall be included in the final renewable energy portfolio standards. A draft of the final standards shall be offered for public review and comment prior to adoption.

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

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

Substituted references to the final standards are promulgated for the 18-month period when these interim standards are in effect in (c)3iv and the introductory paragraph of (h).

14:4-8.5 Calculation methodology

(a) The actual percentages for Class I and Class II renewable energy sources shall be calculated by dividing the total amount of kilowatt hours of electricity sold to retail customers in New Jersey from each renewable generation class, by the electric power supplier’s or basic generation service provider’s total retail sales within the State. The percentages generated from a Class I or Class II renewable energy source shall consist of the amount of kilowatt hours generated from a renewable energy source(s) that the electric power supplier or basic generation service provider delivered or caused to be delivered to the appropriate PJM Interconnection, L.L.C. or NY ISO control areas during the preceding calendar year to sell to retail customers in New Jersey.

1. Energy under contract or energy from capacity under contract to any customer outside of New Jersey or to any wholesale customer shall not be included in these calculations.

14:4-8.6 Recordkeeping and verification

(a) All documentation pertinent to the requirements in this subchapter shall be subject to audit review by the Board. Each electric power supplier or basic generation service provider shall keep all records pertaining to the requirements contained in this subchapter for a period of five years, including data on kilowatt hours from owned generation, bilateral contracts, and purchases from the wholesale market. Each electric power supplier or basic generation service provider shall make all pertinent records available to the Board for review upon Board request.

(b) Basic generation service providers shall substantiate the cost of renewable energy and submit to the Board such renewable energy supply sources and costs as included in N.J.A.C. 14:4-8.4, and any other data judged pertinent by

the Board, in instances of rate proceedings. While recognizing that renewable energy sources have unique attributes, nonetheless, the cost of such energy to be recovered from the ratepayers must be reasonable and prudent.

14:4-8.7 Renewable energy trading program

An electric power supplier or basic generation service provider may satisfy the requirements contained in this subchapter by participating in a renewable energy trading program at such time as a program is developed and ordered or adopted by the Board, in consultation with the NJDEP.

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 (c).

14:4-8.8 Penalties

(a) If an electric power supplier or basic generation service provider fails to meet the requirement for renewable sources of energy set forth in N.J.A.C. 14:4-8.3 for any given year, then such electric power supplier or basic generation service provider shall be required to make up the amount of kilowatt hours in arrears during the succeeding calendar year. Thus, in the following calendar year immediately after the failure to meet the renewable energy portfolio standards’ requirement, the amount of kilowatt hours from renewable energy required in the electric energy portfolio of such electric power supplier or basic generation service provider shall be the amount of kilowatt hours set forth for that year in N.J.A.C. 14:4-8.3 plus the amount of kilowatt hours in arrears from the previous calendar year. Documentation that the arrearage has been met shall be included in the quarterly reports as filed with the Board, as required in N.J.A.C. 14:4-8.4.

(b) The failure of an electric power supplier or basic generation service provider that is in arrears to meet the minimum renewable energy portfolio standards’ requirement in any year plus compensate for any arrearage that the electric power supplier or basic generation service provider is carrying forward from the preceding calendar year shall constitute a violation, which shall be referred by Board staff to the Board for its consideration. Where applicable and appropriate, the Board shall consult the Attorney General and the NJDEP with respect to these referrals.

1. Any party determined by the Board, after notice and hearing, to have violated any provision of these interim standards relating to the renewable energy portfolio standards’ requirements may be subject to any one or more of the following penalties, as consistent with provisions of the Act:

- i. Suspension or revocation of the electric power supplier’s license;
- ii. Financial penalties;
- iii. Disallowance of recovery of costs in rates; and

iv. Prohibition on accepting new customers.

(c) In determining the appropriate sanction, the Board shall consider the following criteria and any other factors deemed appropriate and material to the electric power supplier's or basic generation service provider's failure to comply:

1. The good faith efforts, if any, of the entity charged in attempting to achieve compliance;
2. The gravity of the violation or failure to comply with the requirements in this subchapter;
3. The number of past violations by the entity charged regarding these interim standards and other standards adopted by the Board; and
4. The appropriateness of the sanction or fine to the size of the company charged.

SUBCHAPTER 9. NET METERING, SAFETY AND POWER QUALITY STANDARDS FOR WIND AND SOLAR PHOTOVOLTAIC 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: 33 N.J.R. 2536(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

These rules govern net metering standards for electric power suppliers, basic generation service providers and electric distribution companies.

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.

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

“Annualized period” means 12 consecutive monthly billing periods beginning with the first customer billing period in which net metering becomes applicable.

“Avoided cost of wholesale power” means the average locational marginal price of energy in the applicable utility's transmission zone.

“Basic generation service” means electric generation service that is provided, pursuant to N.J.S.A. 48:3-57, 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.

“Customer-generator” means a residential or small commercial customer that generates electricity, on the customer's side of the meter, using wind or solar photovoltaic system.

“Electric distribution company” 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 this State.

“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 thereto.

“Electric power supplier” means a person or entity 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, including 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 basic generation service pursuant to N.J.S.A. 48:3-57.

“IEEE” means the “Institute of Electrical and Electronic Engineers.”

“Net metering” means that the customer-generator is billed according to the difference between the amount of electricity supplied by the electric power supplier or basic generation service provider in a given billing period and the electricity delivered from the customers' side of the meter using wind or solar photovoltaic systems, with customer generation in excess of electricity supplied credited over an annualized period.