

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, except Subchapters 4, 5 and 6, 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: Source and Effective date. See, also, section annotations.

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, expire on March 11, 2002. See: 32 N.J.R. 3617(a), 3633(a), and 3642(a).

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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.

"Slamming" means an unauthorized change in a customer's electric power supplier or gas supplier.

“Third Party Supplier (TPS)” means an electric power supplier or a gas supplier as those terms are defined herein, or a person acting on behalf of such suppliers.

14:4-1.3 Change orders for gas or electric service

(a) No TPS shall submit to a LDC, an order requesting a change of a customer’s electric or gas supplier unless the order is in accordance with these rules. The only acceptable change order that an LDC will process is from an

Electronic Data Interchange (EDI) transaction, in a Board approved format.

(b) A change order shall be deemed to be unauthorized unless the customer has authorized the change affirmatively and voluntarily and the supplier has obtained the customer’s approval either through a signed contract or such other alternative forms of verification as the Board may permit, pursuant to its consumer protection standards or Board Order.

(b) TPS shall maintain a record of the complaints received, how resolved, and still pending, for review by the Board upon request, within 3 days' notice.

Amended by R.2001 d.46, effective February 5, 2001.
See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

In (a), recodified i as 1.

14:4-3.10 Termination

(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 may be terminated for non-payment at the time of the next meter reading but with at least the minimum 30 days' written notice, 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 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) 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.

SUBCHAPTER 4. INTERIM ENVIRONMENTAL INFORMATION DISCLOSURE STANDARDS

Authority

P.L. 1999, c.23.

Source and Effective Date

R.2000 d.408, effective September 11, 2000
(to expire September 7, 2002).
See: 32 N.J.R. 3617(a), 34 N.J.R. 1524(d).

14:4-4.1 Scope

(a) Each electricity supplier or basic generation service provider serving retail customers in the State is required to disclose to such customers, including residential, commercial and industrial customers, a uniform, common set of information about the environmental characteristics of the energy purchased by the customer. The environmental information must be published in a standardized label format attached hereto as Appendices A, B, and C, incorporated herein by reference, and distributed as part of the customer's billing materials or in other mailings determined by the

Board, and on customer contracts and marketing materials. This disclosure requirement is mandatory and applies to every electricity supplier and every electricity product, regardless of whether or not the supplier is making an environmental claim about the electricity product. The environmental information to be disclosed to the customer includes the following, as illustrated in Appendices A, B, and C:

1. Fuel mix associated with the generation of the electricity, including categories for coal, gas, hydroelectric (large), nuclear, oil and renewable energy, or regional average default values as determined by the New Jersey Board of Public Utilities (herein the "Board");

2. Air emissions, in pounds per megawatt hour, of sulfur dioxide, carbon dioxide, oxides of nitrogen, and any other pollutants that are associated with the generation of the electricity and that the Board may determine to pose an environmental or health hazard, or emissions default values determined by the Board; and

3. The electricity supplier's support of energy efficiency, as reflected in the number of discrete emission reduction credits that are based on energy conservation measures and that are retired pursuant to rules and regulations adopted pursuant to P.L. 1995, c.188.

(b) For the label in Appendix A, the environmental information shall be values based on actual data; for the label in Appendix B, the environmental information shall be a commitment by the supplier as to the electricity to be provided over the next year; and for the label in Appendix C, the environmental information shall be default values or averages determined in accordance with this subchapter.

(c) Electricity suppliers shall be permitted to elect whether to sell their entire portfolio of electricity supply as a single electricity product or to disaggregate their portfolio into distinct electricity products in accordance with N.J.A.C. 14:4-4.6(e).

(d) Environmental disclosure pertains to electricity purchases and not installed capacity purchases.

14:4-4.2 Implementation schedule

(a) The environmental disclosure standards set forth in this subchapter will be effective as regulations immediately upon adoption by the Board (adopted September 11, 2000) and will be effective for a period not to exceed 18 months. The Board may thereafter, in accordance with the procedures of the Administrative Procedure Act (P.L. 1968, c.410 (C.52:14B-1 et seq.)) readopt these standards, adopt these standards with amendments, or replace these standards with new standards.

(b) As of September 11, 2000, each electricity supplier is required to disclose environmental information to retail customers in its marketing activities in the State and when it solicits retail customers in New Jersey.

(c) The Environmental Disclosure Program will be incrementally implemented. The Phase I period is projected to end by January 1, 2002, with the commencement of Phase II of environmental disclosure. Phase I shall consist of two parts: Phase I-A, during which electricity suppliers shall implement environmental disclosure independently; and Phase I-B, during which the Program Administrator shall assist in the implementation of environmental disclosure in accordance with the terms set forth in Appendix D, incorporated herein by reference. Notwithstanding the projected start date for Phase II, the Board recognizes the importance of having a full tracking system in place and functioning as early as feasible, and seeks means to implement Phase II as soon as possible. Phase II shall be implemented after successful testing of the full tracking system.

14:4-4.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Basic generation service” means electric generation service that is provided by a utility to any retail 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 retail customer that cannot obtain such service from a non-utility 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.

“Benchmark” means a reference point, describing emissions levels, to allow customers to make comparisons among alternative electricity products offered by suppliers. That is, a point of comparison for the air emissions associated with the electricity product being offered or sold to the customer. Initially, and until modified by Board order in consultation with the NJDEP, the specific benchmarks shall be based on the most recent data available from the Energy Information Administration and shall reflect the average emission rate of all electric generating units in New Jersey for SO₂ (that is, 2.5 pounds per megawatt hour) and CO₂ (that is, 1,213 pounds per megawatt hour); and NO_x (that is, 3.0 pounds per megawatt hour). In the case of NO_x, the benchmark set forth in Appendix F, incorporated herein by reference, takes into account the effect on this average of the new NO_x standards that first applied during the 1999 ozone season.

“Bilateral contract” or “bilateral wholesale contract” means a unit or system contract, or a contract for specified resources, between an electricity supplier and a generating company or between an electricity supplier and a wholesale power marketer.

“Contract for specified resources” means a contract between an electricity supplier and a generating company or wholesale power marketer:

1. In which the types of generating resources that may supply the electricity are specified, along with any other environmental criteria applicable to those resources;

2. Which requires the generating company or wholesale power marketer to deliver the resources into the PJM control area, or for Orange & Rockland, into the New York Power Pool (NYPP); and

3. Which requires that the generating company or wholesale power marketer be able to identify after the fact, and establish an audit trail to verify, the specific generating unit or units used to supply the contracts and to establish that the energy was generated and delivered into the PJM control area, or for Orange & Rockland, into the NYPP, and was not sold more than once.

“Customer” means any person that is connected to any part of the transmission and distribution system within an electric public utility’s service territory within New Jersey and that takes electricity directly from the transmission and distribution grid.

“Default values” means the fuel mix and air emissions information set forth by the Board that electricity suppliers shall be allowed to disclose to retail customers in place of the actual fuel mix and air emissions information data, when required to do so pursuant to this subsection. Initially, and until modified by Board order in consultation with the NJDEP, the default value for fuel mix (energy source) shall be the PJM average. The default value for air emissions shall be the PJM average adjusted, as set forth in Appendix F. Electricity suppliers with new electricity products and electricity suppliers newly serving retail customers in New Jersey, who elect not to make an environmental claim for their products, shall use the default values. Also, electricity suppliers making prospective environmental claims for new products and electricity suppliers disclosing actual generation data for existing products with a record of generation may use the default values, but only for that portion of the electricity supplier’s energy portfolio that is purchased from the spot market or wholesale market, and only if and for as long as contractual information that can trace the energy to its originating system or unit is not available.

“Electric generating unit” means a unit that generates electricity, if the owner or operator of the unit sells any portion of the electricity generated by the unit (or where the electricity produced by the unit is co-mingled at the facility at which the unit is located with electricity produced by another unit, sells any portion of the co-mingled electricity).

“Electric public utility” means a public utility, as that term is defined in N.J.S.A. 48:2-13, that transmits and distributes electricity to end users within this State.

“Electricity supplier” or “electric power supplier” means a person that is duly licensed by the Board to offer or provide electric generation service to retail customers in New Jersey, and includes, but is not limited to, load serving entities and electric public utilities that provide electricity to end-users, including basic generation service providers.

APPENDIX C

Label for New Product Based on Default Information

Environmental Information for the Electricity Product (Insert Product Identification)

(This is a new energy product. (Insert company name) has made no guarantee as to the environmental characteristics of the energy to be supplied from January through December, 2000. The data shown below are default values, and do not necessarily reflect the energy that (insert company name) will supply.)

(Insert Product Identification and company name)

Electricity can be generated in a number of ways with different impacts on the environment. The standardized environmental information shown below allows you to compare this electricity product with electricity products offered by other electric suppliers.

Energy Source

Default values are shown which represent 1996 regional averages.

Coal	.49%
Gas	.7%
Hydroelectric (large)	.2%
Nuclear	.34%
Oil	.6%
Renewable energy	
Captured methane gas	.0%
Fuel cells	.0%
Geothermal	.0%
Hydroelectric (small)	.0%
Solar	.0%
Solid waste	.2%
Wind	.0%
Wood or other biomass	.0%
<hr/>	
Renewable energy sources subtotal	__%
TOTAL	100%

Air Emissions

The emission data given are default values and represent the average amount of air pollution associated with the generation of electricity in the region. This amount is compared to the New Jersey benchmark. The benchmark approximates the average emission rate for all electricity generation in New Jersey.

CO₂ is a "greenhouse gas" which may contribute to global climate change. SO₂ and NO_x react to form acids found in acid rain. NO_x also reacts to form ground level ozone, an unhealthy component of "smog."

Pollutant	Percentage of Benchmark	Classification
CO ₂	126%	greater pollution
NO _x	153%	greater pollution
SO ₂	396%	greater pollution
NJ Benchmark	100%	Benchmark

Energy Conservation

(Insert company name) is not investing in energy conservation measures for this electricity product. Energy conservation measures means less electricity needs to be generated and pollution is avoided.

Avoided generation	Avoided Air Emissions
__0__ kWh	__0__ tons CO ₂
	__0__ tons NO _x
	__0__ tons SO ₂

See your Terms of Service for further information regarding this label. You may also call XYZ Energy Supplier for additional information or a copy of the Terms of Service at (800) 555-5555.

APPENDIX D

Role of the Parties

Board of Public Utilities. Until the Program Administrator is established, the Board, in consultation with the NJDEP, will undertake responsibility for implementation of Phase I. If an independent Program Administrator is appointed, the Board, in consultation with the NJDEP, will assume an oversight role. Electricity suppliers. New Jersey electricity suppliers must create disclosure labels and provide them to current and prospective retail customers. Each electricity supplier must also report semi-annually to the Board or Program Administrator; these reports will include notice of any new unit or system contracts. During Phase I-A, each electricity supplier will independently develop the environmental information to be disclosed on each of its product's label, including determining the electric generating units or systems used to meet its retail load, where this can be readily known, and the environmental characteristics associated with such units or systems. Electricity suppliers must maintain documentation to support disclosure labels, including (if applicable) a demonstration of how it performed product differentiation and how it met any environmental claims made about electricity products in New Jersey. Suppliers of existing products must have their environmental information verified by an independent verifier. Suppliers of new products, if they base their labels on environmental claims, must demonstrate that these claims are met and have these demonstrations verified by an independent verifier. During Phase I-B, the Program Administrator will assist in the implementation of environmental disclosure in accordance with the terms set forth in Appendix A.

PJM ISO. In Phase I, the Board and the Program Administrator will rely on PJM ISO generation and load data to verify disclosure labels.

The New Jersey Department of Environmental Protection (NJDEP) will work with the Board in developing and updating New Jersey emissions benchmark(s) for disclosure labels and the default fuel mix and emissions values that the supplier of a new product shall disclose if no environmental claim is made for a new product, or when information about actual resources is unavailable. It will also work with the Board to develop processes for dispute resolution and processes for developing policy to address issues as they arise. The NJDEP will also aid in developing emissions and fuel mix data for New Jersey electric generating units that do not provide data to EPA. The NJDEP will also support environmental disclosure by working with representatives of environmental agencies in other states in the region to the end of achieving consistency, to the extent feasible, in the approaches taken to environmental disclosure in the various states.

Independent Verifiers—Certified Public Accountants (CPAs) who are licensed in New Jersey will provide verification services. During Phase I, a supplier of an existing product will be required to have the environmental information it intends to disclose on a product label verified before the information is used. If a supplier of a new product bases its label on environmental claims, the supplier must retrospectively demonstrate that these claims are met and have this demonstration verified by an independent verifier. In all cases, the CPA who performs the verification must be independent of the electricity supplier for whom it performs the verification.

Program Administrator. As soon as practicable following adoption of this proposal, the Board will appoint a Program Administrator to assist with the implementation of the disclosure program. The duties of the Program Administrator will include, but not necessarily be limited to, the following:

1. Review the disclosure labels developed by electricity suppliers for proper format, clarity and accuracy;
2. Verify that the electric power provided by electricity suppliers who have based disclosure labels on prospective information, met the fuel mix and emissions characteristics prospectively claimed;
3. Confirm that suppliers who based their labels for products on environmental claims, retrospectively demonstrated that these claims were met and that the demonstration was verified by an independent verifier;
4. Serve as a repository for the documentation that suppliers are required under N.J.A.C. 14:4-4.6 and 4.9, to submit for unit contracts and system contracts;
5. Develop and update the default values to be used by suppliers;
6. Answer questions market participants might have regarding disclosure requirements;
7. Provide information to electricity suppliers on energy efficiency, including opportunities for obtaining and retiring emission credits;
8. Provide information to electricity suppliers on the retirement of emission credits generated under NJDEP's Open Market Emission Trading Program;
9. Establish a semiannual reporting system for suppliers, and update the system as environmental disclosure evolves and the reporting needs change;
10. Provide guidelines to suppliers for the preparation of annual reports; and
11. Maintain an Internet website which displays disclosure labels for all products sold in New Jersey as well as other relevant information.

APPENDIX E

Definitions of Fuel Types

Coal Coal—Steam Turbine
Pumped Storage Hydro Powered by Coal

Gas Natural Gas—Steam Turbine
Natural Gas—Simple Combustion Turbine
Natural Gas—Combined Cycle Combustion Turbine

Hydro

Nuclear

Oil

LPG
Pumped Storage Hydro Powered by Gas
Pondage Hydro
Run-of-River Hydro
Boiling & Pressurized Water Reactors
Pumped Storage Hydro Powered by Nuclear
Oil—Steam Turbine
Oil—Simple Combustion Turbine

	Oil—Combined Cycle Combustion Turbine	Pallet Waste
	Diesel	Construction and Demolition
	No. 2 Heating Oil	Municipal Solid Waste Wood
	Jet Fuel	Mill Residue Wood
	Gasoline	Primary Wood Products Industries
	Kerosene	Secondary Wood Products Industries
	Pumped Storage Hydro Powered by Oil	Harvested Wood
Solar	Photovoltaics	Site Conversion Waste Wood
	Fuel Cells Powered by Photovoltaics	Sivicultural Waste Wood
Wind	Wind Turbines	Agricultural Residue
Captured Methane Gas	Landfill Gas	Sustainable Yield Wood
	Sewage Gas	Geothermal
	Agricultural Waste Digesters	Solid Waste
	Fuel Cells Powered by Methane	Incineration
Biomass	Urban Wood Waste	Wave/Tidal Action
		Geothermal
		Municipal Solid Waste
		Tire Waste
		Wave/Tidal Action

APPENDIX F

Benchmark and Default Values

I. Default Values for the “Energy Source” Section of the Label^a

Coal	49%
Gas	7%
Hydroelectric (large)	2%
Nuclear	34%
Oil	6%
Renewable Energy Sources:	
Captured methane gas	0%
Fuel Cells	0%
Geothermal	0%
Hydroelectric (small)	0%
Solar	0%
Solid waste	2%
Wind	0%
Wood or other biomass	0%

TOTAL 100%

II. Benchmarks and Defaults for “Air Emissions” Section of the Label

	BENCHMARKS ^b (pounds per megawatt-hour)	DEFAULTS ^c (pounds per megawatt-hour)
CO ₂	1,213 ^d	1,525 ^e
NO _x	3.0 ^f	4.6 ^g
SO ₂	2.5 ^h	9.9 ⁱ

^aData from USEPA Acid Rain Division, E-GRID v.1.2, 1996 Data, except that the percentage for unspecified fuels was divided equally among the three fossil fuels: coal, gas and oil; the percentage for unspecified renewables was allocated to the solid waste category; and the percentage for hydroelectric was allocated to the hydroelectric (large) category.

^bBased on 1996 emissions data from Department of Energy; Energy Information Administration publication EIA-0629 “State Electricity Profiles,” p. 186 Table 1. 1996 Summary Statistics, February 1999.

^cBased on data from USEPA Acid Rain Division, E-GRID v.1.2, 1996 Data.

^dAverage rate of emissions of all New Jersey electric generating units in 1996: 22,842,000 tons of CO₂ emitted divided by the 37,663,185 megawatt hours generated and then multiplied by 2,000 to convert tons to pounds = 1,213 pounds per megawatt-hour.

^eBased on the 1996 average rate of emissions electric generating units within the PJM Interconnection, adjusted for importation of power from East Central Area Reliability Council (ECAR) Interconnection, and with the generation from New Jersey utility units removed: given that the 1996 PJM total generation is 238,402,036 megawatt-hours, and that of this 70,401,863 megawatt-hours were generated by utility units; and that 10,696,938 megawatt-hours were imported

from ECAR, and 1,389,324 megawatt-hours were imported from South East Reliability Council (SERC) (that is, that 4.83 percent of all power supplied with the PJM control area was imported power); and given that the 1996 rate of emissions of CO₂ from non-utility generation within PJM is 1,436 pounds per megawatt-hour; and that the 1996 average rate of emissions of CO₂ within ECAR is 2,219 pounds per megawatt-hour and within SERC is 1,562 pounds per megawatt-hour, the adjusted average is 1,525 pounds per megawatt-hour.

^fAverage rate of emissions of all New Jersey electric generating units, calculated for 1999, to take into account the effect of the new NO_x standards which first applied in the summer 1999 ozone season: given that the rate of growth of electricity generation is expected to continue to be 1.8 percent per year, the electricity generated in New Jersey in 1999 can be expected to be 39,733,825 megawatt-hours; given that approximately half of all New Jersey generation (that is, 19,866,913 megawatt-hours) occurs during the ozone season and that half of all New Jersey generation occurs during the remaining months of the year; given that the NO_x emission rate during the ozone season under the new NO_x Budget Program is expected to be 2 pounds per megawatt-hour; and assuming the NO_x emission rate during the other seven months of the year remains at the level it was in 1996 (77,000 tons of NO_x emitted in 1996 divided by the 37,663,185 megawatt-hours generated in 1996 and then multiplied by 2,000 to convert tons to pounds = 4.08 pounds per megawatt-hour); then the weighted average of the ozone season rates and the non-ozone season rates is 3.0.

^gBased on the 1996 average rate of emissions for electric generating units within the PJM Interconnection, adjusted for importation of power from ECAR Interconnection, and with the generation from New Jersey utility units removed: given that the 1996 PJM total generation is 238,402,036 megawatt-hours, and that of this 70,401,863 megawatt-hours were generated by utility units; and that 10,696,938 megawatt-hours were imported from ECAR, and 1,389,324 megawatt-hours were imported from SERC (that is, that 4.83 percent of all power supplied with the PJM control area was imported power); and given that the 1996 average rate of emissions of NO_x of non-utility generation within PJM is 4.11 pounds per megawatt-hour; and that the 1996 average rate of emissions of NO_x within ECAR is 7.02 pounds per megawatt-hour and within SERC is 4.78 pounds per megawatt-hour, the adjusted average is 4.6 pounds per megawatt-hour.

^hAverage rate of emissions of all New Jersey electric generating units in 1996: 47,000 tons of SO₂ emitted divided by the 37,663,185 megawatt-hours generated and then multiplied by 2,000 to convert tons to pounds = 2.5 pounds per megawatt-hour.

ⁱBased on the 1996 average rate of emissions for electric generating units within the PJM Interconnection, adjusted for importation of power from ECAR Interconnection, and with the generation from New Jersey utility units removed: given that the 1996 PJM total generation is 238,402,036 megawatt-hours, and that of this 70,401,863 megawatt-hours were generated by utility units; and that 10,696,938 megawatt-hours were imported from ECAR, and 1,389,324 megawatt-hours were imported from SERC (that is, that 4.83 percent of all power supplied with the PJM control area was imported power); and that given that the 1996 average rate of emissions of SO₂ from non-utility generation within PJM is 9.74 pounds per megawatt-hour, and the 1996 average rate of emissions of SO₂ within ECAR is 15.05 pounds per megawatt-hour and within SERC is 9.33 pounds per megawatt-hour, the adjusted average is 9.9 pounds per megawatt-hour.

APPENDIX G

New Jersey Non-Utility Generator Environmental Disclosure Default Methodology

The environmental disclosure provisions in New Jersey require electric power suppliers to disclose information about the environmental characteristics of their energy to all customers. During Phase I of the program, environmental characteristics disclosed by electric power providers are to be based on public available emissions and fuel mix information from the U.S. Environmental Protection Agency (EPA) and Energy Information Administration (EIA). However, emissions and fuel mix information for non-utility electric generating facilities (NUGs) are currently held confidential by EIA. In order for electric power suppliers to account for energy from NUG contracts in calculating their environmental disclosure information, they will need to either receive actual emissions information from their NUG energy sources directly, or, in cases where such information cannot be obtained, apply reasonable default emissions and fuel mix assumptions to NUG energy.

The discussion below identifies reasonable emissions and fuel mix assumptions that could be used as defaults for purchases from NUGs located in the State of New Jersey. The methodology utilizes aggregate information from EIA to identify a reasonable fuel mix default, emissions data from New Jersey DEP to identify reasonable emission rate defaults for NO_x and SO₂, and EPA greenhouse gas emissions factors to identify reasonable emission rate defaults for CO₂.

Default Fuel Mix Methodology

An appropriate default fuel mix can be estimated using publicly available EIA data. Although EIA does not publish NUG emissions or fuel mix data at the facility level, they do provide fuel mix information aggregated at the State level. EIA information indicates that a reasonable fuel mix default for New Jersey NUGs is:

Coal	6%
Oil	2%
Gas	85%
Landfill gas	2%
MSW	5%

The percentages above for gas and oil are calculated directly from the EIA information on New Jersey NUG generation.

EIA holds confidential the information on coal and hydro generation in New Jersey because there are only two coal and a few small hydro NUG facilities in the State. However, the total coal & hydro generation number can be back calculated based on subtracting all other sources from the State NUG generation total. This calculation reveals 1,095,000 MWh of coal and hydro generation, which is equal to 6% of the NUG generation total. Indications are that very little NUG hydro generation exists in New Jersey, so it can be conservatively assumed that all this generation is coal.

EIA lumps landfill gas, Municipal Solid Waste (MSW), and wood together in one category that comprises 7% of the New Jersey NUG generation total. Additional data from EIA on renewable generation sources indicates that there is no NUG wood or wood waste generation in the State.² Unfortunately, EIA information does not provide a basis for differentiating landfill gas generation from MSW combustion. However, it is likely that MSW accounts for the majority of this category, based on the generally smaller size of landfill gas generating capacity. A reasonable assumption would be that 70% of the 7% is actually MSW, making MSW 5% of the State NUG total and landfill gas 2%.

Default Methodology for NO_x and SO₂

New Jersey DEP collects annual fuel consumption and NO_x and SO₂ emissions data from all significant stationary combustion sources in the State. Unfortunately, the database containing this information does not identify which sources are NUGs. However, based on a review of published EIA lists as well as a list of NUG sources included in the New Jersey NO_x Budget allocation, 25 NUG sources have been identified from the DEP database (see Exhibit 1).³

The information collected by DEP on these sources includes the type and quantity of fuel burned during the year and the tons on NO_x and SO₂ emitted during the year. This information along with generic fuel heat content information obtained from EIA⁴ provides a basis for estimating the Btus of fuel consumed by each facility. Knowing the annual emissions and annual Btus provides a basis for developing lbs/mmBtu NO_x and SO₂ emission rates. These rates can then be converted to lbs/MWh based on assumptions about the heat rate (efficiency) of power generation facilities. Typical coal fired power plants operate with an efficiency of about 10,000 Btu/kWh, new natural gas combined cycle facilities operate at efficiencies of 8,000-9,000 Btu/kWh and stoker boilers typically used for MSW combustion operate in the 12,000-14,000 Btu/kWh range. For the conversions here, 10,000 Btu/kWh is assumed for coal and oil, 9,000 Btu/kWh is assumed for gas and 13,000 Btu/kWh is assumed for MSW combustion. The table below illustrates 1997 DEP data for fuel consumption and emissions by fuel type as well as the emissions rates calculated based on this data (see Exhibit 1 for further detail).

# Plants using	Fuel Consumption				Emissions			Emission Rates			
	Fuel Type	Fuel Units	Fuel Use	mmBtu	NOx tons	SO2 tons	NOx lb/mmBtu	SO2 lb/mmBtu	NOx lb/MWh	SO2 lb/MWh	
14	2FO	MGALS	9,581	1,328,833	148	107	0.22	0.161	2.23	1.61	
4	6FO	MGALS	11,852	1,774,121	2,015	802	2.27	0.904	22.71	9.04	
1	GSOLN	MGALS	0.42	52	0	0	1.68	0.088	16.82	0.88	
7	KERO	MGALS	2,138	288,689	12	6	0.08	0.042	0.82	0.42	
19	NG	MMCF	115,577	118,119,595	3,666	93	0.06	0.002	0.56	0.01	
4	PG	MMCF	66,082	66,081,867	5,148	1,635	0.16	0.049	1.40	0.45	
2	BIT Coal	TONS	958,817	19,679,719	1,729	1,419	0.18	0.144	1.58	1.30	
3	MSW	TONS	1,427,048	14,270,479	1666.58	267.79	0.23	0.038	3.04	0.49	
				221,543,356	14,384	4,330	0.13	0.04			

**Exhibit 1
New Jersey NUG Average NO_x and SO₂ Emission Rates by Fuel Type**

# Plants using	Fuel Consumption				Emissions			Emission Rates			
	Fuel Type	Fuel Units	Fuel Use	mmBtu	NOx tons	SO2 tons	NOx lb/mmBtu	SO2 lb/mmBtu	NOx lb/MWh	SO2 lb/MWh	
14	2FO	MGALS	9,581	1,328,833	148	107	0.22	0.161	2.23	1.61	
4	6FO	MGALS	11,852	1,774,121	2,015	802	2.27	0.904	22.71	9.04	
1	GSOLN	MGALS	0.42	52	0	0	1.68	0.088	16.82	0.88	
7	KERO	MGALS	2,138	288,689	12	6	0.08	0.042	0.82	0.42	
19	NG	MMCF	115,577	118,119,595	3,666	93	0.06	0.002	0.56	0.01	
4	PG	MMCF	66,082	66,081,867	5,148	1,635	0.16	0.049	1.40	0.45	
2	BIT Coal	TONS	958,817	19,679,719	1,729	1,419	0.18	0.144	1.58	1.30	
3	MSW	TONS	1,427,048	14,270,479	1666.58	267.79	0.23	0.038	3.04	0.49	
				221,543,356	14,384	4,330	0.13	0.04			

Conversion Factors
MGALS=(x)Barrels 23.81

Fuels with unknown heat content that were not estimated
#Plants Fuel Type Fuel Units Fuel Use NOx SO2

Plant Heat Rates*		2	4FO	MGALS	4,044	0.04	0.06
Btu/MWh Gas	9,000	13	DF	MGALS	280	13.59	1.53
Btu/MWh Oil & Coal	10,000	1	PETRO	MGALS	1,760	95.00	71.00
Btu/MWh MSW	13,000	1	SOLV	MGALS	270	2.13	1.56
		1	BUTA	MMCF	68	2.35	0.06
		1	SOLID	TONS	603	5.40	3.80
Fuel Heat Content**						118.51	78.00
	mmBtu/Barrel				Percent of Total	1%	2%
2FO	5.825						
6FO	6.287						
Gasoln	5.206						
Kero	5.670						
	mmBtu/mmCF						
NG	1,022						
PG (estimate)	1,000						
	mmBtu/ton						
BIT Coal	20.525						
MSW (estimate)	10						

*Plant heat rates estimated based on typical efficiencies reported for utility facilities.

**With the exception of PG and MSW, which are estimated, fuel heat content is taken from EIA Annual Energy Outlook 1999, Appendix H (incorporated herein by reference as Appendix I).

Although some of the data in the table above appear anomalous (residual fuel oil emissions rates are unreasonably high) the data provides a basis for identifying potential default NO_x and SO₂ emission rate characteristics for New Jersey NUGs. Cutting it up by major fuel type and rounding to tenths, the data indicate that the following emission rates would be reasonable for NUG defaults for coal, oil and gas generation:

	<u>No_x</u> <u>(lbs/MWh)</u>	<u>SO₂</u> <u>(lbs/Mwh)</u>
Coal	2.0	1.5
Oil	3.0	2.0
Gas	1.0	0.05

For MSW, the heat content was estimated to be 50% of the heat content of coal. Based on this estimation, the NO_x emission rate for MSW is higher than coal (3.0 lbs/MWh) and the SO₂ emissions rate is lower (0.5 lbs/MWh). These data are somewhat less certain than that for coal and oil due to estimations of both plant efficiency and the heat content of waste that could be somewhat variable. Nonetheless, since the rates are in the ballpark of rates for coal, the data suggest that assigning MSW emissions rates compatible with coal is not unreasonable.

If an overall average emissions rate is desired for the default, then treating landfill gas and MSW as gas and coal, respectively, the weighted average NO_x and SO₂ emissions rates for NUG generation in New Jersey based on the fuel mix identified above and rounded up to the nearest tenth would be:

NO_x: =1.2 lbs/MWh

SO₂: =0.3 lbs/MWh

Default Methodology for CO₂

Although actual CO₂ emissions data is not available for New Jersey NUG sources, relatively accurate CO₂ lb/MWh emission rate estimates can be derived based on fuel type and power plant efficiency. EPA's Inventory of Greenhouse Gas Emissions and Sinks provides emissions factors for

estimating CO₂ emissions rates for coal, oil and gas combustion, as follows:⁵

coal:	207 lbs/mmBtu
oil:	168 lbs/mmBtu
gas:	117 lbs/mmBtu

Assuming efficiencies of 9,000 Btu/kWh for combined cycle gas and 10,000 Btu/kWh for relatively new oil and coal facilities, appropriate default emissions rates would be:

Coal:	2,070 lbs/MWh
Oil:	1,680 lbs/MWh
Gas:	1,053 lbs/MWh

Although no specific factors are readily available for CO₂ emissions associated with burning landfill gas or MSW, it is probably appropriate to treat landfill gas as natural gas and MSW as coal for this purpose.

If an overall average emissions rate is desired for the default, then treating landfill gas and MSW as gas and coal, respectively, the weighted average CO₂ emissions rate for NUG generation in New Jersey rounded to the nearest hundred would be:

=1,200 lbs/ MWh

Reasonable NUG defaults Summary

Fuel Mix

Coal	6%
Oil	2%
Gas	85%
Landfill gas	2%
MSW	5%

Emission Rates

	<u>NO_x</u> <u>(lbs/MWh)</u>	<u>SO₂</u> <u>(lbs/MWh)</u>	<u>CO₂</u> <u>(lbs/MWh)</u>
Coal	2.0	1.5	2,070
Oil	3.0	2.0	1,680
Gas	1.0	0.05	1,053
Weighted Average	1.2	0.3	1,200

⁵EIA data available at: <http://www.eia.doe.gov/cneaf/electricity/epav2/epav2t58.txt>

²See Energy Information Administration, "Challenges of Electric Power Industry Restructuring for Fuel Suppliers," September 1998. (Available at: <http://www.eig.doe.gov>).

³Since this list is probably not inclusive of all NUGs in the state, it was not used as the basis for determining the NUG fuel mix above. However, the Btu's of fuel consumed by fuel type according to this list indicates a very similar fuel mix as that identified using EIA generation data. The fuel mix of the 25 plants is: 83% gas, 9% coal, 1.5% oil, and 6% MSW.

⁴See Energy Information Administration, Annual Energy Outlook 1999, Appendix H. The heat content values used in this analysis are provided in Exhibit 1.

⁵See U.S. Environmental Protection Agency, "Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-1993," 1994. All EPA data provided in kg C/mmBtu. Conversion based on 3.67 kg CO₂/kg C and 2.205 lbs CO₂/kg Co₂. EPA provides separate emissions factors for distillate and residual fuel oil, which are averaged together to obtain a composite number for oil of 168 lbs/mmBtu.

APPENDIX H

Label Update and Distribution Timing Requirements

HISTORICAL LABEL	
Date label must be updated & distributed to customers	Reporting period on label
September 15, 1999	July 1, 1998 June 30, 1999
April 1, 2000	January 1, 1999-December 31, 1999
October 1, 2000	July 1, 1999-June 30, 2000
April 1, 2001	January 1, 2000-December 31, 2000
October 1, 2001	July 1, 2000-June 30, 2001

First historical label	April 1, 2001	Jan. 1, 2000 through December 31, 2000.	April 1, 2001
Future historical labels	The next semiannual time set forth in the HISTORICAL table above.		

NEW PRODUCT LABEL (CLAIM)			
	Date of label update	Reporting period on label	Distribution to customer
Initial prospective label	Commencement of marketing	12 month period for which power will first be provided in New Jersey	Commencement of marketing & six months after power is first provided.
First historical label	3 months after the end of the 12 month period	The same time period used on the prospective label (above).	3 months after the end of the 12 month period
Future historical labels	The next semiannual time set forth in the HISTORICAL table above.		

NEW PRODUCT LABEL (DEFAULT)			
	Date of label update	Reporting period on label	Distribution to customer
Initial prospective label	Commencement of marketing	Until December 31, 2000.	Commencement of marketing, then each six months thereafter until the first historical label is used.

APPENDIX I

Table-1. Heat Rates

Conversion Factors			
Fuel	Units	Approximate Heat Content	
Coal¹			
Production	million Btu per short ton	21.287	
Consumption	million Btu per short ton	20.856	
Coke Plants	million Btu per short ton	26.800	
Industrial	million Btu per short ton	22.105	
Residential and Commercial	million Btu per short ton	23.011	
Electric Utilities	million Btu per short ton	20.525	
Imports	million Btu per short ton	25.000	
Exports	million Btu per short ton	26.174	
Coal Coke	million Btu per short ton	24.800	
Crude Oil			
Production	million Btu per barrel	5.800	
Imports	million Btu per barrel	5.948	
Petroleum Products			
Consumption ²	million Btu per barrel	-5.362	
Motor Gasoline ²	million Btu per barrel	5.206	
Jet Fuel (Kerosene)	million Btu per barrel	5.670	

Distillate Fuel Oil	million Btu per barrel	5.825
Residual Fuel Oil	million Btu per barrel	6.287
Liquefied Petroleum		
Gas	million Btu per barrel	3.625
Kerosene	million Btu per barrel	5.670
Petrochemical		
Feedstocks	million Btu per barrel	5.630
Unfinished Oils	million Btu per barrel	5.800
Imports ²	million Btu per barrel	-5.493
Exports ²	million Btu per barrel	-5.769
Natural Gas Plant Liquids		
Production ²	million Btu per barrel	-3.885
Natural Gas		
Production, Dry	Btu per cubic foot	1,028
Consumption	Btu per cubic foot	1,028
Non-electric Utilities	Btu per cubic foot	1,029
Electric Utilities	Btu per cubic foot	1,022
Imports	Btu per cubic foot	1,022
Exports	Btu per cubic foot	1,022
Electricity Consumption	Btu per kilowatt-hour	3,412

¹Conversion factors vary from year to year. 1996 values are reported.

²Conversion factors vary from year to year. 2000 values are reported.

Source: Energy Information Administration, AE099 National Energy Modeling System run AE099B.D100198A.

SUBCHAPTER 5. AFFILIATE RELATIONS, FAIR COMPETITION AND ACCOUNTING STANDARDS AND RELATED REPORTING REQUIREMENTS

Authority
P.L. 1999, c.23.

Source and Effective Date
R.2000 d.408, effective September 11, 2000
(to expire September 7, 2002).
See: 32 N.J.R. 3633(a), 34 N.J.R. 1524(d).

14:4-5.1 Scope

(a) These standards shall apply as follows:

1. N.J.A.C. 14:4-5.3 through 5.5 set forth standards of conduct applicable to transactions, between an electric public utility or gas public utility, including a related competitive business segment of an electric or gas public utility, and a related competitive business segment of the electric or gas public utility holding company providing or offering competitive services to retail customers in New Jersey or the public utility holding company itself providing or offering competitive services to retail customers in New Jersey, as defined herein;

2. N.J.A.C. 14:4-5.6 sets forth standards of conduct applicable to electric and/or gas public utilities and the related competitive business segments of each electric public utility and gas public utility, as well as the transactions, interactions and relations between an electric and/or gas public utility and a related competitive business segment of an electric and/or gas public utility; and

3. N.J.A.C. 14:4-5.7 through 5.9 address regulatory oversight, dispute resolution and violations and penalties applicable to electric and/or gas public utilities regarding affiliate relations, fair competition, accounting standards and related reporting requirements.

(b) The Board reserves the right to promulgate any additional interim standards as may be required to effectuate the intent of the Act.

(c) A New Jersey electric and/or gas public utility, which is also a multi-state electric and/or gas public utility and subject to the jurisdiction of other state or Federal regulatory commissions, may file an application, requesting a limited exemption from these standards or part(s) thereof, for transactions between the electric and/or public utility and its affiliate(s) solely in its role of serving its jurisdictional areas wholly outside of New Jersey.

1. The applicant has the burden of proof to establish the appropriateness of the requested exemption.

14:4-5.2 Definitions

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

“Act” means the “Electric Discount and Energy Competition Act” (P.L. 1999, c.23), N.J.S.A. 48:3-49 et seq.

“Affiliate” means a “related competitive business segment of an electric public utility or a related competitive business segment of a gas public utility” or a “related competitive business segment of a public utility holding company” as defined herein and in the Act.

“Affiliated” means related to an electric or gas public utility as an affiliate thereof.

“Board” means the New Jersey Board of Public Utilities or any successor agency.

“Category” means a group of products and/or services that use the same type of electric and/or gas public utility assets or capacity. For example, “leases of land under utility transmission lines” or “use of a utility repair shop for third party equipment repair” would each constitute a separate product and/or service category.

“Competitive service” means any services, goods, or products offered by an electric public utility or a gas public utility that the Board has already determined or that the Board shall in the future determine to be competitive pursuant to section 8 or section 10 of the Act or that is not regulated by the Board.

“Cross-subsidization” means the offering of a competitive product and/or service by an electric and/or gas public utility, or the offering of a product and/or service by an affiliate, which relies in whole or in part on the utilization of utility employees, equipment or other assets, and for which full compensation (via cost allocations or direct payment), as determined by the Board, has not been provided for the use of such electric and/or gas public utility assets, resulting in the inappropriate transfer of benefits from the utility rate-payers to the competitive product and/or service or affiliate.

“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.

“Customer information” means information data regarding a utility customer which the electric and/or gas public utility learned, acquired or developed while in the business of providing electric and/or gas public utility services.

“Demand side management” means the management of customer demand for energy service through the implementation of cost-effective energy efficiency technologies, including, but not limited to, installed conservation, load management and energy efficiency measures on and in the residential, commercial, industrial, institutional and governmental premises and facilities in this State.

“Dth” means decatherms or ten therms.

“EBB” means an electric and/or gas public utility’s electronic bulletin board.

“Electric public utility” means a public utility, as that term is defined in N.J.S.A. 48:2-13, that transmits and distributes electricity to end users within this State.

“Electric related service” means a service that is directly related to the consumption of electricity by an end user, including, but not limited to, the installation of demand side management measures at the end user’s premises, the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user’s premises, and the provision of energy consumption measurement and billing services.

“Existing products and/or services” means those products and/or services which an electric and/or gas public utility was offering prior to January 1, 1993, that have been approved by the Board prior to February 9, 1999, or an electric and/or gas public utility is offering on the effective date of the adoption of these standards.

“FERC” means the Federal Energy Regulatory Commission or any successor agency.

“Fully allocated cost” means an allocation of the direct, indirect and other economic costs of all equipment, vehicles, labor, related fringe benefits and overheads, real estate, furniture, fixtures and other personal and administration utilized, and other assets utilized and costs incurred, directly or indirectly in providing competitive services.

“Functional separation” means the formation of a separate business unit by an electric or gas public utility for purposes of offering competitive services permitted by N.J.S.A. 48:3-55(f) or N.J.S.A. 48:3-58(b) of the Act, which separate business unit shall be a related competitive business segment of an electric public utility or gas public utility as defined herein and in the Act.

“Gas public utility” means a public utility, as that term is defined in N.J.S.A. 48:2-13, that distributes gas to end users within this State.

“Gas related service” means a service that is directly related to the consumption of gas by an end user, including, but not limited to, the installation of demand side management measures at the end user’s premises, the maintenance, repair or replacement of appliances or other energy-consuming devices at the end user’s premises, and the provision of energy consumption measurement and billing services.

“Individual proprietary information” means a customer’s name, address, telephone number, energy usage and payment history and such other information as the Board, by Order, may determine.

“Joint purchases” means purchases made by a parent or holding company or affiliate thereof for use by one or more affiliates, the fully allocated costs of which are allocated to be paid proportionally by the affiliates, based upon utilization.

“Joint purchases allowed” means purchases not associated with merchant functions, examples of which would be joint purchases of office supplies and telephone services.

“Joint purchases not allowed” means purchases associated with merchant functions, examples of which would be gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, systems operations, and marketing.

“kW” means kilowatts or 1,000 watts.

“kWh” means kilowatt-hours or 1,000 watt-hours.

“Long term” means a transaction in excess of 31 days.

“Merchant functions” means the marketing and/or the provision of electric generation service and/or gas supply service to wholesale or retail customers, as opposed to the marketing and/or provision of transmission and distribution services, by an electric and/or gas public utility.

“Person” means an individual, partnership, corporation, association, trust, limited liability company, governmental entity or other legal entity.

“Products” means goods as defined in the Uniform Commercial Code, N.J.S.A., all other real, personal and intellectual property of whatever being or nature.

“Public posting” means a posting on an electric and/or gas public utility’s EBB, website or other industry recognized and publicly accessible electronic or print medium.

“Public utility holding company” or “PUHC” means: 1. Any company that, directly or indirectly, owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of an electric public utility or a gas public utility or of a company which is a public utility holding company by virtue of this definition, unless the Securities and Exchange Commission, or its successor, by order declares such company not to be a public utility holding company under the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79 et seq., or its successor; or 2. Any person that the Securities and Exchange Commission, or its successor, determines, after notice and opportunity for hearing, directly or indirectly, to exercise, either alone or pursuant to an arrangement or understanding with one or more other persons, such a controlling influence over the management or policies of an electric public utility or a gas public utility or public utility holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in the Public Utility Holding Company Act of 1935 or its successor.

“Ratepayer Advocate” or “RA” means the Division of Ratepayer Advocate or any successor agency.

“Regulatory asset” means an asset recorded on the books of an electric public utility or gas public utility pursuant to the Statement of Financial Accounting Standards, No. 71, entitled “Accounting for the Effects of Certain Types of Regulation,” or any successor standard and as deemed recoverable by the Board.

“Related competitive business segment of an electric public utility or gas public utility” means any business venture of an electric public utility or gas public utility including, but not limited to, functionally separate business units, joint ventures, and partnerships, that offers to provide or provides competitive services.

“Related competitive business segment of a public utility holding company” means any business venture of a public utility holding company, including, but not limited to, functionally separate business units, joint ventures, and partnerships and subsidiaries, that offers to provide or provides competitive services, but does not include any related competitive business segments of an electric public utility or gas public utility.

“Services that may not be shared” means those services which involve merchant functions, including, by way of example: hedging and financial derivatives and arbitrage services, gas and/or electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.

“Shared services” means administrative and support services that do not involve merchant functions, including by way of example: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.

“Short term” means a transaction of 31 days or less.

“Slamming” means the unauthorized change of a consumer’s electric power supplier or gas supplier.

“Structural separation” means the formation of a related competitive business segment of a public utility holding company.

“Therm” means 100,000 BTUs.

“Transmission and distribution system” means any facility or equipment that is used for the transmission, distribution and/or delivery of electricity or natural gas to the end-use

customers including, but not limited to, the land, structures, meters, lines, pipes, switches and all other appurtenances thereof and thereto, owned or controlled by the electric and/or gas public utility, or LDC, respectively within this State.

14:4-5.3 Nondiscrimination

(a) An electric and/or gas public utility shall not unreasonably discriminate against any competitor in favor of its affiliate(s) or related competitive business segment:

1. An electric or gas public utility shall not represent that, as a result of the relationship with the electric and/or gas public utility or for any other reason, a related competitive business segment of its public utility holding company, or customers of a related competitive business segment of its public utility holding company will receive any different treatment by the electric and/or gas public utility than the treatment the electric and/or gas public utility provides to other, unaffiliated companies or their customers; and

2. An electric or gas public utility shall not provide a related competitive business segment of its public utility holding company, or customers of a related competitive business segment of its public utility holding company, any preference (including, but not limited to, terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of products and/or services offered by the electric and/or gas public utility.

(b) Transactions between an electric and/or gas public utility and a related competitive business segment of its public utility holding company shall be prohibited, except for the following:

1. Tariffed products and services;

2. The sale or purchase of goods, property, products or services made generally available by the electric and/or gas public utility, by the PUHC or a related competitive business segment of its public utility holding company to all market participants through an open, competitive bidding process; or

3. As provided for in N.J.A.C. 14:4-5.5(g) and (h) (joint purchases), in N.J.A.C. 14:4-5.5(i) and (j) (corporate support) or N.J.A.C. 14:4-5.6(a) through (f) (competitive utility products and/or services), provided the transactions specified in N.J.A.C. 14:4-5.6 (competitive utility products and/or services) comply with all other applicable rules.

(c) An electric and/or gas public utility shall provide access to utility information, services, and unused capacity or supply on a non-discriminatory basis to all market participants, including affiliated and non-affiliated companies, except as provided for in subsection 5.4 {Joint purchases}, subsection 5.5 {Corporate support} and subsection 6.1 {Competitive Utility Products and/or Services} below, pro-

vided the transactions specified in N.J.A.C. 14:4-5.6, Competitive utility products and/or services, comply with all other applicable rules.

1. If an electric and/or gas public utility provides supply, capacity, services, or information to a related competitive business segment of its public utility holding company, it shall make the offering available, via a public posting, on a non-discriminatory basis to non-affiliated market participants, which include competitors serving the same market as the related competitive business segment of the electric and/or gas public utility's holding company.

(d) An electric and/or gas public utility selling or making an offer to sell surplus energy, kWh and/or Dth, respectively, and/or capacity, kW or therms, respectively, on a short term basis to its PUHC or a related competitive business segment of its public utility holding company, shall make the offering available on a non-discriminatory basis to non-affiliated electric or gas marketers, via a public posting.

(e) An electric and/or gas public utility making an offer to sell surplus energy, kWh and/or Dth, respectively, and/or capacity, kW or therms, respectively, on a long term basis to the PUHC or a related competitive business segment of its public utility holding company, shall make the offering available on a non-discriminatory basis to non-affiliated electric or gas marketers, via a public posting.

(f) Except when made generally available by an electric and/or gas public utility through an open, competitive bidding process, an electric and/or gas public utility shall not offer a discount or waive all or any part of any other charge or fee to a related competitive business segment of its public utility holding company, PUHC, or offer a discount or waiver for a transaction in which a related competitive business segment of its public utility holding company is involved unless the electric and/or gas public utility shall make such discount or waiver available on a non-discriminatory basis to other market participants.

1. An electric and/or gas public utility shall not give its PUHC or a related competitive business segment of its public utility holding company involved in energy supply or marketing a preference with respect to tariff provisions that provide for discretionary waivers of fees, penalties, etc., unless offered to all others on a non-discriminatory basis.

(g) An electric and/or gas public utility shall document the cost differential underlying the discount to its PUHC or a related competitive business segment of its public utility holding company in the Affiliate Discount Report described in (o) through (q) below.

(h) An electric and/or gas public utility shall apply tariff provision(s) on a non-discriminatory basis to its PUHC or related competitive business segments of its public utility holding company and to other market participants and their respective customers if the tariff provision allows for discretion in its application.

(i) An electric and/or gas public utility shall strictly enforce a tariff provision if the tariff provision does not allow discretion in its application.

(j) An electric and/or gas public utility shall process all requests for similar services provided by the electric and/or gas public utility on a non-discriminatory basis for its PUHC or a related competitive business segment of its public utility holding company and for all other market participants and their respective customers.

(k) An electric and/or gas public utility shall not condition or otherwise tie the provision of any products and/or services provided by the electric and/or gas public utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any products and/or services provided by the electric and/or gas public utility to the taking of any products and/or services from its PUHC or a related competitive business segment of its public utility holding company.

(l) An electric and/or gas public utility shall not assign customers to which it currently provides products and/or services to any related competitive business segments of its public utility holding company, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors on a non-discriminatory basis.

(m) Except as otherwise provided by these standards, an electric and/or gas public utility shall not provide any assistance, aid or services to its PUHC or related competitive business segment of the PUHC if related to customer enrollment, marketing or business development unless offered to all competitors on a non-discriminatory basis. By way of example but not limited to, an electric or gas public utility shall not:

1. Provide leads to its PUHC or a related competitive business segment of its public utility holding company;
2. Solicit business on behalf of its PUHC or a related competitive business segment of its public utility holding company;
3. Acquire information on behalf of or to provide to its PUHC or a related competitive business segment of its public utility holding company;
4. Share market analysis reports or any other type(s) of proprietary or non-publicly available reports, including but not limited to, market, forecast, planning or strategic reports, with its PUHC or a related competitive business segment of its public utility holding company;
5. Share customer usage or end use equipment information obtained during the course of providing electric and/or gas public utility services, including but not limited to the administration of demand-side management programs, with its PUHC or a related competitive business segment of its public utility holding company;

6. Request authorization from its customers to pass on customer information exclusively to its PUHC or a related competitive business segment of its public utility holding company;

7. Represent or imply that the electric and/or gas public utility speaks on behalf of its PUHC or a related competitive business segment of its public utility holding company or that the customer will receive preferential treatment as a consequence of conducting business with the related competitive business segment of its public utility holding company; or

8. Represent or imply that its PUHC or a related competitive business segment of its public utility holding company speaks on behalf of the electric and/or gas public utility.

(n) Provided it is in compliance with these standards, and subject to the provisions of N.J.A.C. 14:4-5.4(g), an electric and/or gas public utility may offer or provide customers advice or assistance with regard to a related competitive business segment of its public utility holding company and/or other product and/or service providers upon the unsolicited request of the customer, so long as such advice or assistance is provided with regard to other competitors on a non-discriminatory basis.

(o) If a discount, rebate, or other waiver of any charge, penalty, or fee associated with products and/or services provided by an electric and/or gas public utility is offered to its PUHC or a related competitive business segment of its public utility holding company, the electric and/or gas public utility shall provide the following information within 24 hours of the time of the transaction, via a public posting:

1. The name of its PUHC or related competitive business segment of its public utility holding company involved in the transaction;
2. The rate charged;
3. The maximum rate;
4. The time period for which the discount, rebate, or waiver applies;
5. The quantities involved in the transaction;
6. The delivery points involved in the transaction;
7. Any conditions or requirements applicable to the discount, rebate or waiver, and a documentation of the cost differential underlying the discount as required in (d) or (e) above; and
8. Procedures by which a non-affiliated entity may request a comparable offer.

(p) An electric and/or gas public utility that provides its PUHC or a related competitive business segment of its public utility holding company a discounted rate, rebate, or other waiver of a charge, penalty or fee associated with

services offered by the electric and/or gas public utility shall maintain, in compliance with N.J.A.C. 14:5-5.2 or longer if required by another government agency, for each billing period, the following information:

1. The name of its PUHC or a related competitive business segment of its public utility holding company being offered products and/or services provided by the electric and/or gas public utility in the transaction;
2. The related competitive business segment's role in the transaction, that is shipper, marketer, supplier, seller, etc.;
3. The duration of the discount or waiver;
4. The maximum rate;
5. The rate or fee actually charged during the billing period;
6. The quantity of products and/or services scheduled at the discounted rate during the billing period for each delivery point; and
7. Facts demonstrating that the discounted rate, rebate, or other waiver of a charge, penalty or fee was offered to non-affiliated entities on a non-discriminatory basis.

(q) All records maintained pursuant to the standards in (o) and (p) above shall also conform to FERC rules where applicable.

14:4-5.4 Information disclosure

(a) An electric and/or gas public utility may provide individual proprietary information to its PUHC or a related competitive business segment of its public utility holding company, and only with prior affirmative customer written consent or as otherwise authorized by the Board and only if it is provided to unaffiliated entities on a non-discriminatory basis.

(b) An electric and/or gas public utility shall make available non-customer specific non-public information acquired as a result of operating the public utility's distribution system, including information about an electric and/or gas public utility's natural gas or electricity purchases, sales, or operations or about an electric and/or gas public utility's gas-related goods or services, electricity-related goods or services, to a related competitive business segment of its public utility holding company only if the electric and/or gas public utility makes such information available, via a public posting, to all other service providers on a nondiscriminatory basis, and keeps the information open to public inspection.

1. An electric or gas public utility is permitted to exchange proprietary information on an exclusive basis with its PUHC or a related competitive business segment of its public utility holding company, provided it is necessary to exchange this information in the provision of the

corporate support services permitted by N.J.A.C. 14:4-5.5(i) and (j).

2. The PUHC's or related competitive business segment's use of such proprietary information is limited to its use in conjunction with the permitted corporate support services, and is not permitted for any other use.

(c) When an electric and/or gas public utility makes available a list of electric generation and/or gas service suppliers (suppliers), said list shall only contain those suppliers who are duly licensed by the Board and comply with the electric and/or gas public utility's Board-approved tariff to operate on its distribution system. Said list shall be maintained in alphabetical order, and not highlight or otherwise promote any particular supplier.

(d) An electric and/or gas public utility may provide non-public information and data which have been received from unaffiliated suppliers to its PUHC or a related competitive business segment of its public utility holding company or other non-affiliated entities only if the electric and/or gas public utility first obtains written affirmative authorization to do so from said unaffiliated supplier.

(e) An electric and/or gas public utility shall not solicit the release of such information exclusively to its PUHC or a related competitive business segment of its public utility holding company in an effort to keep such information from other unaffiliated entities.

(f) Except upon request by a customer or as authorized in (c) above or otherwise by the Board, an electric and/or gas public utility shall not provide its customers with any list of product and/or service providers, which highlights or otherwise identifies its PUHC or a related competitive business segment of its public utility holding company, regardless of whether such list also includes the names of unaffiliated entities.

(g) If a customer requests information about any affiliated product and/or service provider, the electric and/or gas public utility may acknowledge that such affiliated product and/or service provider exists, but shall provide no additional information unless it provides a list of all providers of gas-related, electricity-related, or other utility-related products and/or services in business in its service territory, including the related competitive business segment of its public utility holding company.

1. Any such list shall include all suppliers licensed by the Board.

2. Where maintaining such list would be unduly burdensome due to the number of service providers, the electric and/or gas public utility shall not provide a list and may direct the customer to a generally available listing of service providers, for example, the Board, the telephone directory or Internet.

(h) An electric and/or gas public utility shall maintain complete and accurate records, documenting all tariffed and non-tariffed transactions with its PUHC and a related competitive business segment of its public utility holding company, including but not limited to, all waivers of tariff or contract provisions.

(i) An electric and/or gas public utility shall maintain such records in compliance with the time frame required by N.J.A.C. 14:5-5.2 or longer if another government agency so requires.

(j) The electric and/or gas public utility shall make such records available for Board and/or RA review upon 72 hours' notice, or at a time mutually agreeable to the electric and/or gas public utility and the Board and/or RA.

(k) An electric and/or gas public utility shall maintain a record of all contracts and related bids for the provision of work, products and/or services to and from the electric and/or gas public utility to and from the PUHC or related competitive business segments of its public utility holding company in compliance with N.J.A.C. 14:5-5.2 or longer if another government agency so requires.

14:4-5.5 Separation

(a) An electric and/or gas public utility, its PUHC and related competitive business segments of its public utility holding company shall be separate corporate entities.

(b) An electric and/or gas public utility and related competitive business segments of its public utility holding company shall keep separate books and records.

(c) Electric and/or gas public utilities' books and records shall be kept in accordance with applicable Uniform System of Accounts (USOA).

(d) The books and records of its PUHC or a related competitive business segment of an electric and/or gas public utility's holding company engaged in transactions, interactions and relations with the electric or gas public utility shall be open for examination by the Board.

(e) An electric and/or gas public utility shall not share office space, office equipment, services, and systems with a related competitive business segment of its public utility holding company, except to the extent appropriate to perform shared corporate support functions permitted under this subsection or as follows:

1. An electric and/or gas public utility may access the computer or information systems of a competitive related business segment of its PUHC or allow a related competitive business segment of its PUHC to access its computer or information systems, for purposes of the sharing of computer hardware and software systems and may share office space, office equipment, services and systems, provided adequate system protections are in place to prevent the accessing of information or data between the utility and its affiliate(s) which would be in violation of these standards.

i. Prevention of unauthorized access to computer and information systems must be specifically addressed as part of an electric and/or gas public utility's compliance plan submitted pursuant to N.J.A.C. 14:4-5.7(b).

(f) Subsection (e) above does not preclude an electric and/or gas public utility from offering a joint product and/or service, provided such joint product and/or service is authorized by the Board and is available to all non-affiliated product and/or service providers on the same terms and conditions, for example, joint billing services.

(g) An electric and/or gas public utility and its PUHC or related competitive business segments of its public utility holding company may make joint purchases of products and/or services, but not those associated with merchant functions.

(h) The electric and/or gas public utility must insure that all such joint purchases are priced, reported, and conducted in a manner that permits clear identification of the electric and/or gas public utility's portion and its PUHC or the related competitive business segment's portions of such purchases, and that direct costs of the joint purchase(s) as well as the indirect purchasing costs are apportioned between the electric and/or gas public utility and the related competitive business segment of the public utility holding company in direct proportion to the relative amounts of the purchased product(s) and/or service(s) received and/or utilized, respectively, and in accordance with these standards and other applicable Board allocation and reporting rules.

(i) An electric and/or gas public utility, its public utility holding company and related competitive business segments, or separate business segments of the public utility holding company created solely to perform corporate support services may share joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with N.J.A.C. 14:4-5.4 and this section, respectively, set forth herein, as well as other applicable Board pricing and reporting requirements.

(j) Such joint utilization shall not allow or provide a means for the transfer of confidential customer or market information from the electric and/or gas public utility to a related competitive business segment of its public utility holding company in violation of these standards, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of a related competitive business segment of the public utility holding company. In the compliance plan required pursuant to N.J.A.C. 14:4-5.7(a) through (e), a senior corporate officer from the electric and/or gas public utility and public utility holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the electric and/or gas public utility follows the mandates of these standards, and to ensure the electric and/or gas public utility is not

utilizing joint corporate support services as a conduit to circumvent these standards.

(k) A related competitive business segment of a public utility holding company shall not trade upon, promote, or advertise its relationship with the electric and/or gas public utility, nor use the electric and/or gas public utility's name and/or logo in any circulated material, including, but not limited to, hard copy, correspondence, business cards, faxes, electronic mail, electronic or hardcopy advertising or marketing materials, unless it discloses clearly and conspicuously or in audible language that:

1. The PUHC or related competitive business segment of the public utility holding company "is not the same company as [LDC's NAME HERE], the electric and/or gas public utility";

2. The PUHC or related competitive business segment of the public utility holding company is not regulated by the Board; and

3. "You do not have to buy [RELATED COMPETITIVE BUSINESS SEGMENT'S NAME HERE] products in order to continue to receive quality regulated services from the electric and/or gas public utility."

(l) The requirement of the name and/or logo disclaimer set forth in (k) above is limited to the use of the name and/or logo in New Jersey.

(m) An electric and/or gas public utility, through action or words, shall not represent that, as a result of its PUHC or a related competitive business segment of the public utility holding company's relationship with the electric and/or gas public utility, its affiliate(s) will receive any different treatment than other product and/or service providers.

(n) An electric and/or gas public utility shall not offer or provide to its PUHC or a related competitive business segment of its public utility holding company advertising space in the electric and/or gas public utility's billing envelope(s) or any other form of electric and/or gas public utility's written communication to its customers unless it provides access to all other unaffiliated service providers on the same terms and conditions.

(o) An electric and/or gas public utility shall not participate in joint advertising or joint marketing activities with its PUHC or related competitive business segments of its public utility holding company which activities include, but are not limited to, joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals) to existing or potential customers.

1. The prohibition in (o) above notwithstanding, at a customer's unsolicited request, an electric and/or gas public utility may participate, on a nondiscriminatory basis, in non-sales meetings with its PUHC or a related competitive business segment of its public utility holding company or any other market participant to discuss technical or operational subjects regarding the electric and/or gas public utility's provision of distribution service to the customer;

2. Except as otherwise provided for by these standards, an electric and/or gas public utility shall not participate in any joint business activity(ies) with its PUHC or a related competitive business segment of its public utility holding company which includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;

3. An electric and/or gas public utility shall not participate jointly with its PUHC or a related competitive business segment of the PUHC in trade shows, conferences, or other information or marketing events held in New Jersey; and

4. An electric and/or gas public utility shall not subsidize costs, fees, or payments with its PUHC or related competitive business segments of its public utility holding company associated with research and development activities or investment in advanced technology research.

(p) Except as permitted in (i) and (j) above, an electric and/or gas public utility and its PUHC or related competitive business segments of its public utility holding company which are engaged in offering merchant functions and/or electric related services or gas related services shall not employ the same employees or otherwise retain, with or without compensation, as employees, independent contractors, consultants, or otherwise.

1. Other than shared administration and overheads, employees of the competitive services business unit of the public utility holding company shall not also be involved in the provision of non-competitive utility and safety services, and the competitive services are provided utilizing separate assets than those utilized to provide non-competitive utility and safety services.

(q) An electric and/or gas public utility and the PUHC or related competitive business segments of its public utility holding company shall not have the same persons serving on the Board of Directors as corporate officers, except for the following circumstances:

1. In instances when these standards are applicable to public utility holding companies, any board member or corporate officer may serve on the holding company and with either the electric and/or gas public utility or a related competitive business segment of the public utility holding company, but not both the electric and/or gas public utility and a related competitive business segment of the public utility holding company.

2. Where the electric and/or gas public utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the related competitive business segments, the prohibition against any board member or corporate officer of the electric and/or gas public utility also serving as a board member or corporate officer of a related competitive business segment shall only apply to related competitive business segments operating within New Jersey.

i. In the case of shared directors and officers, a corporate officer from the electric and/or gas public utility and holding company shall verify, subject to Board approval, in the electric and/or gas public utility's compliance plan required pursuant to N.J.A.C. 14:4-5.7(a) through (e), the adequacy of the specific mechanisms and procedures in place to ensure that the electric and/or gas public utility is not utilizing shared officers and directors in violation of the Act or these standards.

(r) All employee transfers between an electric and/or gas public utility and its PUHC or related competitive business segments of its public utility holding company providing or offering competitive services to retail customers in New Jersey which are engaged in offering merchant functions and/or electric related services or gas related services shall be consistent with the following provisions:

1. The electric and/or gas public utility shall make a public posting of all employee transfers within three working days.

2. An electric and/or gas public utility shall track and report annually to the Board all employee transfers between the electric and/or gas public utility and such related competitive business segments of its public utility holding company.

3. Once an employee of an electric and/or gas public utility is transferred to such related competitive business segment of its public utility holding company, said employee may not return to the electric and/or gas public utility for a period of one year, unless the related competitive business segment of the public utility holding company to which the employee is transferred goes out of business or is acquired by a non-affiliated company during the one-year period.

4. In the event that an employee is returned to the electric and/or gas public utility, such employee cannot be transferred for employment by a related competitive business segment of the public utility holding company which is engaged in offering merchant functions and/or electric-related services or gas-related services for a period of one year.

(s) Employees transferring from an electric and/or gas public utility to a related competitive business segment of the public utility holding company are expressly prohibited from using any information gained from the electric and/or gas public utility to the benefit of the related competitive business segment of the public utility holding company or to the detriment of other unaffiliated product and/or service providers.

1. Any electric and/or gas public utility employee hired by a related competitive business segment of the public utility holding company shall not remove or otherwise provide information to said affiliate which said related competitive business segment of the public utility holding company would otherwise be precluded from having pursuant to these standards.

2. An electric and/or gas public utility shall not make temporary or intermittent assignments, or rotations to related competitive business segments of its public utility holding company.

(t) All transfers of services not prohibited by these standards shall be subject to the following provisions:

1. Transfers from the electric and/or gas public utility to a related competitive segment of its public utility holding company of services produced, purchased or developed for sale on the open market by the electric and/or gas public utility will be priced at no less than the fair market value.

2. Transfers from a related competitive business segment of the public utility holding company to the electric and/or gas public utility of services produced, purchased or developed for sale on the open market by the related competitive business segment of the public utility holding company shall be priced at no more than fair market value.

3. Prices for services regulated by a state or Federal agency shall be deemed to be the fair market value.

4. Services produced, purchased or developed for sale on the open market by the electric and/or gas public utility shall be provided to related competitive business segments of its public utility holding company and unaffiliated company(ies) on a nondiscriminatory basis, except as otherwise required or permitted by these standards or applicable law.

5. Transfers of services not produced, purchased or developed for sale on the open market by the electric and/or gas public utility from the electric and/or gas public utility to related competitive business segments of its public utility holding company shall be priced at fully allocated cost.

6. Transfers of services not produced, purchased or developed for sale on the open market by a related competitive business segment of the public utility holding company from that related competitive business segment of the public utility holding company to the electric and/or gas public utility shall be priced at the lower of fully allocated cost or fair market value.

(u) All transfers, leases, rentals, licenses, easements or other encumbrances of utility assets to a PUHC or related competitive business segments of a PUHC not prohibited by these standards shall be subject to the following pricing provisions, consistent with all other applicable Board rules:

1. Transfers, leases, rental, licenses, easements or other encumbrances of utility assets from the electric and/or gas public utility to a related competitive business segment of its public utility holding company shall be recorded at fair market value or book value as determined by the Board.

2. Transfers, leases, rental, licenses, easements or other encumbrances of assets from a related competitive business segment of the public utility holding company to the electric and/or gas public utility shall be recorded at the lesser of book value or fair market value.

14:4-5.6 Competitive products and/or services offered by a utility or related competitive business segments of a utility

(a) Except as provided for in the Act or these standards, an electric and/or gas public utility or a related competitive business segment of an electric and/or gas public utility shall not offer competitive products and/or services without the prior review and approval by the Board of a proposed tariff, except where pre-empted by Federal law.

1. A public utility holding company may offer any competitive service, including, but not limited to, electric generation service, telecommunications services, and cable service, to retail customers of an electric public utility that is owned by the holding company, but only through a related business segment of the holding company that is not an electric public utility or a related business segment of the electric public utility. Competitive services shall be offered in compliance with all Board rules and regulations for carriers of these services.

2. A public utility holding company may offer a competitive service to retail customers of a gas public utility that is owned by the holding company, but only through a related business segment of the holding company that is not a related business segment of the gas public utility; provided however, that in the event that a gas public utility is not part of a holding company legal structure, competitive services may be offered by a related competitive business of that gas public utility as long as that related competitive business segment is structurally separated from the gas public utility, and provide that interactions between the gas public utility and the related competitive business segment are in compliance with these standards.

(b) An electric and/or gas public utility or its related competitive business segment may only offer to provide the following competitive products and/or services:

1. Metering, billing or administrative services that are deemed competitive by the Board pursuant to N.J.S.A. 48:3-56;

2. Products and/or services related to customer and public safety and reliability of non-competitive utility services as determined by the Board;

3. Competitive products and/or services that have been offered by an electric and/or gas public utility in the State prior to January 1, 1993 or that have been approved by the Board prior to February 9, 1999, to be offered by any electric and/or gas public utility in the State;

4. Products and/or services that are substantially similar, as determined by the Board, to competitive services that have been offered by any electric and/or gas public utility in the State prior to January 1, 1993 or that have been approved by the Board prior to February 9, 1999 to be offered by any electric and/or gas public utility in the State and, in the case of electric public utilities, for which a request for approval by the public utility seeking to offer such service had been filed with the Board on or before July 1, 1998; or

5. Competitive services to non-residential customers using existing public utility employees.

(c) For a competitive product and/or service that has been offered by an electric and/or gas public utility prior to January 1, 1993 or that has been approved by the Board prior to February 9, 1999, the electric and/or gas public utility may continue offering such product or service, subject to the provisions of these standards and applicable law and shall not be required to seek further approval to offer said product and/or service, provided, however, that if the electric and/or gas public utility does not have a tariff for the service on file with the Board, the electric and/or gas public utility shall file with the Board within 60 days of final adoption of these standards a tariff setting forth the pricing terms, and other terms and conditions of the product and/or service.

(d) For any new competitive product and/or service which an electric and/or gas public utility or its related competitive business segment intends to offer, consistent with these standards, the electric and/or gas public utility must file a proposed public tariff to the Board for its review and approval for the new product and/or service, along with the information in the attachment (Appendix A).

(e) Copies of the petition for approval, including proposed tariff and other required information, shall be certified and shall be accompanied by a certificate of service demonstrating that the petition was served on the Division of the Ratepayer Advocate simultaneous to its submission to the Board.

(f) All tariffs for competitive services filed with the Board shall be in the public records unless the rates contained therein are determined to be proprietary, in which case said tariffs shall be filed under seal and made available under the terms of an appropriate protective agreement as provided by Board Order. The public utility shall have the burden of proof by affidavit and motions to demonstrate the need for proprietary treatment. The rates shall become public upon Board approval.

(g) The Board may approve a proposed new competitive product and/or service filing if the electric and/or gas public utility has demonstrated and the Board determines that:

1. The proposed product and/or service is competitive, consistent with the standards for competitive products and/or services set forth in the Act and as determined by the Board;

2. The provision of the proposed product and/or service by the electric and/or gas public utility will not adversely impact the electric and/or gas public utility's ability to offer its non-competitive services to customers in a safe, adequate and proper manner, and that in all instances where resources are jointly deployed by the electric and/or gas public utility to provide competitive and non-competitive services and resource constraints arise, the provision of safety-and reliability-related and non-competitive services receives the higher priority;

3. The competitive product and/or service will be offered in a non-discriminatory manner to all customers; and

4. The price which the electric and/or gas public utility or its related competitive business segment will charge for the competitive products and/or service will equal or exceed the fully allocated cost to the electric and/or gas public utility or its related competitive business segment to provide the competitive product and/or service, and will not otherwise result in cross-subsidization.

(h) Notwithstanding any other provisions of these standards, the Board may determine that any service shall remain regulated for purposes of public safety and welfare. Notwithstanding the other provisions of these standards an electric and/or gas public utility shall continue to offer safety-related services, as determined by the Board, free of charge to its customers or as otherwise determined by the Board.

(i) All electric and/or gas public utility employees who are directly involved in the provision of non-competitive services as well as competitive services, or who are involved in the provision of more than one competitive service, must maintain complete and accurate time logs to track and record the amount of time spent in the performance of each service. For those employees who travel to remote or customer locations in the provision of competitive services, time logs shall account for and allocate as time to the competitive service all time spent traveling to and from each competitive service job, as well as the time spent performing related diagnostics, repair and/or installation, and allocated share of downtime.

(j) Each electric and/or gas public utility is responsible for and has an ongoing obligation to track, monitor and update, as necessary, its fully allocated cost of providing each competitive product and/or service offering by itself or its related competitive business segment, and to ensure that the price it or its related competitive business segment charges for each such competitive product and/or service at all times equals or exceeds the fully allocated cost of providing such competitive products and/or services and to file the notification required by (t) and (u) below.

(k) Each electric and/or gas public utility is responsible for and has an ongoing obligation to ensure that its related competitive business segment's offering of competitive products and/or services does not adversely impact its ability to provide safe, adequate and proper electric and/or gas public utility service.

(l) Each electric and/or gas public utility is responsible for and has an ongoing obligation to ensure that it or its related competitive business segment's competitive products and/or services are offered in a non-discriminatory manner to all customers.

(m) An electric and/or gas public utility employee engaged in providing non-competitive, regulated services shall not violate these rules regarding cost allocation and fair competition and shall not:

1. Solicit competitive services business on behalf of the public utility or its related competitive business segment, or provide business leads to the public utility's or its related competitive business segment's employees engaged in the offering of competitive services;

2. Share market analysis reports or other type(s) of proprietary or non-publicly available reports, including, but not limited to, market, forecast, planning or strategic reports, with the public utility's employees involved in the offering of competitive products and/or services, or with employees of a related competitive business segment of the public utility, unless such information is made available on a non-discriminatory basis to all other service providers and the information is kept open to public inspection, or as otherwise authorized by the Board;

3. Represent or imply that a customer will receive preferential treatment as a consequence of obtaining competitive products and/or services from the public utility or its related competitive business segment as opposed to a non-affiliated service provider;

4. Provide a customer preferential treatment as a consequence of obtaining competitive products and/or services from the public utility or its related competitive business segment as opposed to a non-affiliated service provider;

5. Process any request for non-competitive services offered by the electric and/or gas public utility on a preferential or discriminatory basis for a customer taking competitive products and/or services from the public utility or its related competitive business segment, as opposed to taking such products and/or services from a non-affiliated provider;

6. Condition or otherwise tie the provision of any non-competitive services provided by the public utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any non-competitive products and/or services provided by the public utility to the taking of any competitive products

and/or services from the public utility or its related competitive business segment; or

7. Assign customers to which the public utility currently provides products and/or services to its related competitive business segment, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors.

(n) Each electric and/or public utility and/or its related competitive business segment shall maintain, within its general ledger, separate subledgers for each competitive service and/or product offered. The subledgers shall contain assets, revenue and expense accounts as necessary to record all transactions of each competitive product and/or service offered. Each electric and/or gas public utility and/or its related competitive business segment shall also track the following:

1. Total customers;
2. Total revenues received by the utility;
3. Dedicated assets;
4. Carrying costs on dedicated assets;
5. Portion of shared assets allocated to the competitive service(s);
6. Dedicated expenses incurred in the start-up, promotion, and provision of service;
7. Fully allocated shared expenses;
8. Total margins, defined as the difference between the total revenues received and the total expenses;
9. Net revenues, defined as the difference between total revenues and dedicated expenses; and
10. Any such other item as the Board may determine.

(o) Each electric and/or gas public utility shall file with the Board, by no later than 45 days following the close of each calendar year, an annual financial report and, no later than six months thereafter each year, a semi-annual financial report, providing information on the financial performance of each competitive product and/or service offering made by the public utility and/or its related competitive business segment, utilizing the information compiled pursuant to (n) above.

(p) Each electric and/or gas public utility is responsible in the preparation of its annual and semi-annual reports to be filed in accordance with (o) above, to reflect the most current cost information available to report the financial performance of it and/or its related competitive business segment's competitive product and/or service offerings.

(q) All transfers, leases or rental of utility assets from an electric and/or gas public utility to a related competitive business segment of the public utility, for purpose of the asset becoming a dedicated asset of the related competitive business segment of the public utility, shall be recorded at the greater of book cost or fair market value and shall be subject to approval by the Board.

(r) The revenues received by an electric and/or gas public utility or its related competitive business segment(s) for the provision of a competitive product and/or service shall be treated in the following manner:

1. The level of gross revenues representing the fully allocated cost of providing the service shall be recorded in the respective competitive service revenue account and treated above-the-line for ratemaking purposes and credited to ratepayers in a manner to be determined by the Board.

2. For electric public utilities and related competitive business segments of electric public utilities except as set forth in (r)3 below, pursuant to subsection b of Section 7 of the Act, 50 percent of the total margins shall be recorded in respective competitive service revenue accounts and treated above-the-line for ratemaking purposes and credited to ratepayers via a credit to the market transition charge, or distribution service charge in a manner to be determined by the Board.

3. For a related competitive business segment of an electric public utility, 25 percent of the total margins shall be recorded in respective competitive service revenue accounts and treated above-the-line for ratemaking purposes and credited to ratepayers of the electric public utility via a credit to the market transition charge, or distribution service charge in a manner to be determined by the Board.

4. For gas public utilities, the total margins shall be treated above-the-line for ratemaking purposes and credited to ratepayers in a manner to be determined by the Board.

(s) Revenues received by an electric and/or gas public utility as the result of a transfer of services or a transfer, lease or rental of assets to an affiliate shall be recorded in respective competitive service revenue account and credited to ratepayers in a manner to be determined by the Board.

(t) Each electric and/or gas public utility is required to file a public tariff with the Board for each competitive product and/or service it or its related competitive business segment offers in the State, setting forth the pricing terms and other terms and conditions associated with these competitive products and/or services.

(u) Subsequent to the filing of an initial tariff for an existing competitive product and/or service offering pursuant to (c) above, or subsequent to the initial approval by the Board for the offering of a new competitive product and/or service by an electric or gas public utility or its related competitive business segment pursuant to (r)2 above, respectively, an electric and/or gas public utility or its related competitive business segment may make modifications to the pricing terms or other terms and conditions of a competitive product and/or service offering without further approval of the Board, provided that the electric and/or gas public utility must notify the Board of the proposed change at least 30 days prior its intended implementation, such notification to include:

1. A proposed revised tariff with changes in pricing and/or other terms and conditions clearly identified; and
2. An affidavit from an officer of the electric and/or gas public utility, including justification, that the proposed changes do not render the product and/or service offering in non-compliance with the standards for approval set forth in (g) and (h) above.

(v) Any change by an electric and/or gas public utility or its related competitive business segment of a previously Board-approved competitive product and/or service offering, which change shall include, but is not limited to, an expansion of the product and/or service offering outside of the electric and/or gas public utility's franchise area, shall require the review and prior approval of the Board.

(w) An electric and/or gas public utility proposing a substantive change in offering by itself or its related competitive business segment must submit to the Board, at least 60 days prior to the intended effective date of the change in offering, information sufficient to demonstrate that the change in offering will not adversely impact the ability of said electric and/or gas public utility to provide safe, adequate and proper electric and/or gas public utility service.

(x) In the event that the Board determines that an electric and/or gas public utility or its connected competitive business segment has offered a competitive product and/or service without the prior approval of the Board pursuant to (a) through (f), (g) and (h), or (v) and (w) above, or without the prior notification to the Board pursuant to (t) and (u) above, such electric and/or gas public utility or its related competitive business segment shall immediately be required to cease and desist such unauthorized product and/or service offerings for a period of at least 90 days as determined by the Board and, subject to further hearings of the Board, may be subject to further penalties as determined by the Board pursuant to N.J.A.C. 14:4-5.9(b).

(y) In the event that the Board determines as a result of the audit performed pursuant to Section 8 of the Act, N.J.A.C. 14:4-5.7(f) through (h) or by other means, after providing the electric and/or gas public utility an opportunity to be heard, pursuant to Section 8(f)3 of the Act, that an electric and/or gas public utility or its related competitive business segment has violated any provision(s) of this section of these standards, the Board may take one or more of the following actions:

1. Order a reimbursement, including interest, to competitive product and/or service offering customers of any overcharges resulting from the violation;
2. Order a reimbursement to electric and/or gas public utility ratepayers, including interest, of any cross-subsidy(ies) found to have been provided to the competitive product and/or service offerings;
3. Impose a penalty of up to \$10,000 for each such violation;

4. For a first violation:

i. Order a violating electric and/or gas public utility to cease some or all competitive product and/or service offerings and form a related competitive business segment of the public utility to perform the competitive product and/or service offerings; or

ii. Order a violating related competitive business segment of an electric and/or gas public utility to cease some or all competitive product and/or service offerings and permit further competitive offerings only through a related competitive business segment of the public utility holding company; and

5. For a second and subsequent violations:

i. Order a violating related competitive business segment of the previously-violating public utility to cease some or all competitive product and/or service offerings and permit further competitive offerings only through a related competitive business segment of the public utility holding company.

14:4-5.7 Regulatory oversight

(a) No later than December 11, 2000, each electric and/or gas public utility shall file its compliance plan with the Board and provide a copy of said plan to the RA.

(b) Said compliance plan shall demonstrate that there are adequate procedures in place to ensure compliance with these standards.

1. Said compliance plan shall contain an accurate list of all affiliates of an electric and/or gas public utility, including the business name and address, name and business telephone number of at least one officer of each affiliate and a brief description of the business of each affiliate.

i. The information required by (b)1 above shall be updated within five business days of any change(s) thereto as well as make a public posting thereof.

(c) Absent Board action to the contrary, the electric and/or gas public utility's compliance plan shall be in effect between its filing and the Board's decision.

(d) Annually thereafter or upon changes thereto, the electric and/or gas public utility shall file a revised compliance plan with the Board and the RA.

(e) Upon the creation of a new affiliate which is covered by these standards, the electric and/or gas public utility shall immediately notify the Board as well as make a public posting thereof.

(f) By no later than September 11, 2000, at the discretion of the Board, the electric and/or gas public utility shall have an audit prepared by an independent auditor, to be selected

by the Board, which verifies that the electric and/or gas public utility is in compliance with these standards.

1. The scope of the audit shall be established by the Board.

(g) An audit performed by an independent auditor shall be at the gas and/or electric public utility's expense.

(h) After December 31, 2000, subsequent audits will be performed at least every two years thereafter.

14:4-5.8 Dispute resolution

(a) An electric and/or gas public utility shall establish and file with the Board a dispute resolution procedure, including the establishment of a telephone complaint hotline, to address complaints alleging violations of these standards.

(b) At a minimum, the procedure shall designate a person to conduct an investigation of the complaint and communicate the results of the investigation to the complainant, in writing, within thirty days after the complaint is received, including a description of any action taken.

(c) An electric and/or gas public utility shall report any violation of these standards to the Board, with a copy provided to the RA, within five business days of becoming aware of any such violation(s).

(d) The electric and/or gas public utility shall maintain a log of all resolved and pending complaints. The log shall be subject to review by the Board and RA and shall contain, at minimum, a summary of the complaint, the manner in which the complaint was resolved, or an explanation why the complaint remains pending.

14:4-5.9 Violations and penalties

(a) If, as a result of an audit conducted pursuant to N.J.A.C. 14:4-5.7(f) through (h) or by any other means, the Board determines that an electric and/or gas public utility has committed violations of N.J.A.C. 14:4-5.3, 5.4, 5.5, 5.7 or 5.8 which are not substantial violations, the Board is authorized to impose a penalty of up to \$10,000 for each such violation upon said electric and/or gas public utility.

(b) If, as a result of an audit conducted pursuant to N.J.A.C. 14:4-5.7(f) through (h) or by any other means, the Board determines after providing the electric and/or gas public utility notice of a public hearing and an opportunity to be heard, that an electric and/or gas public utility has committed violations of N.J.A.C. 14:4-5.3, 5.4, 5.5, 5.7 or 5.8 which are substantial in nature, the Board is authorized to take some or all of the following actions:

1. Impose a penalty of up to \$10,000 for each such violation(s).

2. Order appropriate reimbursement to electric and/or gas public utility ratepayers, including interest.

3. For a first violation:
 - i. Order a violating electric and/or gas public utility to cease some or all competitive product and/or service offerings and form a related competitive business segment of the public utility to perform the competitive product and/or service offerings; or
 - ii. Order a violating electric and/or gas public utility to cease some or all competitive product and/or service offerings through a related competitive business segment of the public utility holding company; and
4. For a second violation:
 - i. Initiate a hearing to reconsider its approval of the formation of the public utility holding company.

APPENDIX A

SECTION 1 Timing and Review

1. Time for Filing of Petition
 - a. The EDC/GDC shall file a petition at least sixty (60) days prior to the offering of any new maintenance, repair, replacement parts, service contract, power conditioning or equipment sales and/or lease or any other tariffed or non-tariffed EDC/GDC competitive services.
 - b. The EDC/GDC shall provide Staff a draft petition at least two weeks prior to filing of said petition with the Board, so that EDC/GDC representative(s) may discuss the salient aspects of said filing with Board staff at a mutually agreed to time.
 2. Conditions for Review
 - a. The following conditions must be satisfied prior to Staff's review of said petition:
 - i. All filing requests are met and acknowledged by letter from Board Staff;
 - ii. Copies of the filing are served on the Division of the Ratepayer Advocate and other interested parties; and
 - iii. All confidentiality issues are resolved.
- ### SECTION 2 Petition Filing and Confidentiality
1. Required Petition Contents
 - a. Said Petition must include the following to show that the competitive service offering(s) will not impair the EDC/GDC's ability to provide safe, adequate and proper service and that the service shall be offered on a non-discriminatory basis:
 - i. Dispatching schedules;
 - ii. A prioritization schedule which would show how the EDC/GDC will handle emergency, same day customer originated orders and proposed appliance service orders;
 - iii. Detailed description of how new competitive service offering(s) will affect this schedule, meter reading schedules, routine maintenance, etc.;
 - iv. Titles, competitive and non-competitive service responsibilities and number of all employees who are anticipated to be involved in the proposed competitive service offering(s);
 - v. Detailed description of how the proposed competitive service offering(s) will be marketed throughout demographic segments of the customer base;
 - vi. Indicate where the proposed competitive service offering(s) will be marketed;
 - vii. Detailed description of the proposed competitive service offering(s), including a list of the parts covered under said offering(s);
 - viii. Draft bill inserts shall state that:
 1. The Board has not approved the rates;
 2. "All prices may vary and will depend upon contractor and type of work performed" if rates vary;
 3. These services are also available from independent contractors;
 4. The EDC/GDC will provide free of charge, such services as gas leak investigations and other safety related services.
 - ix. Derivation of the proposed charge(s) for each competitive service offering, which shall include calculations, working papers, statistical data and other information utilized. Said proposed charge(s) should exceed the fully allocated current cost of providing the proposed competitive service offering(s), which shall include the current cost of all equipment, vehicles, labor, fringe benefits, and overheads and administration expenses, other assets utilized and costs incurred, directly or indirectly, all current promotional, advertising and marketing costs, and the current fully loaded labor cost of management involved with this proposed competitive service offering(s);
 - x. Estimate of market penetration which may be defined as the estimated number of orders or calls;
 - xi. Estimated three year proforma revenue and expense statements relating to the proposed competitive service offering(s) which shall include all relevant calculations, working papers, surveys and other data in support of the projected revenues and expenses based upon a fully loaded labor rate and all promotional expenses;
 - xii. A comparison of proposed charges with those of other EDC/GDCs and independent contractors for the same type(s) of service and specifically provide service charges for the following:
 1. EDC/GDC itself;
 2. 5 to 10 in-State independent contractors;
 3. Any out-of-State utility affiliates;
 4. Any out-of-State independent contractors;
 5. Any New Jersey EDC/GDC that offers the proposed competitive services offering(s) outside of its franchise area.
 - xiii. Detailed explanation of the accounting treatment of revenues and costs of proposed competitive service offerings including whether the proposed competitive service offering(s) will be above or below the line;
 - xiv. Accounts and Account Numbers that will be utilized in booking the revenues and expenses pertaining to the proposed competitive service offerings to ensure that there is strict separation and allocation of the EDC/GDC's revenues, costs, assets, risks and functions between competitive business segment and EDC/GDC;
 - xv. Detailed explanation of how prices will be conveyed to customers if subcontractors are used;
 - xvi. Complete list of all competitive service offering(s) currently offered by the EDC/GDC, the date of implementation, date of Board Order and Docket Number;

- xvii. In the alternative to xvi above, Competitive Service Tariffs, Competitive Service Schedules, etc., shall be maintained similar to EDC/GDC tariffs, rates schedules, etc., and should provide a full description of the service, current rates and may be filed in redacted and unredacted versions, with the date of the Board Order approving the current tariff as well as the respective Docket Number reflected on the bottom of the tariff sheet;
 - xviii. Detailed description of the procedures the EDC/GDC will utilize to resolve any consumer complaints, dissatisfaction, etc., if the proposed competitive service offering(s) will be performed rendered by a participating subcontractor;
 - xix. Copies of a standard contract between the EDC/GDC and customer, the subcontractor and the customer, and EDC/GDC and the subcontractor which shall include provisions guaranteeing work quality assurance, customer satisfaction, warranties on parts and labor, response to customer complaints, pricing and response time, as agreed by the participating subcontractors.
2. Petition Confidentiality
- a. If the EDC/GDC claims that certain information contained in said Petition should be treated as confidential and proprietary, the EDC/GDC must file a motion requesting confidentiality which motion shall include:
 - i. Redacted Petition;
 - ii. Unredacted Petition with appropriate staff;
 - iii. All relevant documents, pages, etc., marked as confidential; and
 - iv. Detailed explanation as to why the information should be treated as confidential.

SUBCHAPTER 6. INTERIM GOVERNMENT ENERGY AGGREGATION PROGRAM STANDARDS

Authority

P.L. 1999, c.23.

Source and Effective Date

R.2000 d.408, effective September 11, 2000
(to expire September 7, 2002).
See: 32 N.J.R. 3633(a), 34 N.J.R. 1524(d).

14:4-6.1 Scope

These standards shall apply to all government aggregators and TPSs.

14:4-6.2 Definitions

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

“Act” means the “Electric Discount and Energy Competition Act” (P.L. 1999, c.23).

“Basic gas supply service” 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 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” means electric generation service that is provided, pursuant to section 9 of the Act, 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.

“BGS” means basic generation service as defined in the Act or herein.

“Board” means the New Jersey Board of Public Utilities or any successor agency.

“Contracting unit” means a unit of local government as defined in N.J.S.A. 40A:11-2(1) and 18A:18A-2a.

“Cooperative pricing system” means a purchasing system pursuant to N.J.A.C. 5:34-7 in which the lead agency advertises for bids, awards a master contract to a successful vendor providing for its own needs and for the prices to be extended to the registered members, and notifies them of the bid prices awarded. The registered members then contract with the vendor for their own needs, subject to the specifications of the master contract.

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

“Electric power supplier” means a person or entity that is duly licensed pursuant to the provisions of this 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 N.J.S.A. 48:2-13, that transmits and distributes electricity to end users within this State.

“Electric related service” means a service that is directly related to the consumption of electricity by an end user,

including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services.

"Gas public utility" means a public utility, as that term is defined in N.J.S.A. 48:2-13, that distributes gas to end users within this State.

"Gas related service" means a service that is directly related to the consumption of gas by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services.

"Gas supplier" means a person that is duly licensed pursuant to the provisions of this Act to offer and assume the contractual and legal obligation to 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 this Act.

"Gas supply service" means the provision to customers of the retail commodity of gas, but not include any regulated distribution service.

"Government aggregator" means any government 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 or a licensed gas supplier for:

1. The provision of electric generation service, electric related service, gas supply service, or gas related service for its own use or the use of other government aggregators; or
2. If a municipal or county government, the provision of electric generation service or gas supply service on behalf of business or residential customers within its territorial jurisdiction.

"Government energy aggregation program" means a program and procedure pursuant to which a government aggregator enters into a written contract for the provision of electric generation service or gas supply service on behalf of business or residential customers within its territorial jurisdiction.

"LDC" means local distribution company and applies to electric and/or gas public utilities, as defined in the Act.

"Lead agency" means the contracting unit which is responsible for the management of the cooperative purchasing system (N.J.A.C. 5:34-7).

"Limited government energy aggregation program" means a program and procedure pursuant to which a government aggregator that is a municipality or a county provides for the aggregation of residential customers without the initial, affirmative, voluntary written consent of residential and business customers for electric generation service or gas supply service, either separately or bundled.

"Ratepayer Advocate (RA)" means the Division of Ratepayer Advocate or any successor agency.

"Regional electric generation service and/or gas supply service cooperative pricing system" means a new cooperative pricing system composed of two or more registered cooperative pricing systems and the participating local contracting units which have agreed to participate in the cooperative purchase of electricity generation service or gas supply service.

"Registered member" means a contracting unit which has been approved by the Director of the Division of Local Government Services for participation in a cooperative purchasing system pursuant to N.J.A.C. 5:34-7.2.

"System membership" or "membership" or "member" means the terms are set forth in Cooperative Purchasing Rules (N.J.A.C. 5:34-7).

"TPS" means a licensed third-party supplier and applies to electric power supplier and/or gas supplier as those terms are defined in the Act or herein, or a person acting on behalf of such supplier.

14:4-6.3 General provisions

- (a) A government aggregator may obtain electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, for its own facilities or with other government aggregators.
- (b) A government aggregator that is county or municipality may contract for electric generation service or gas supply service, either separately or bundled, for business and residential customers within its territorial jurisdiction.

(c) A government aggregator that is a municipal or county government aggregator may combine the electric generation service or gas supply service of its own facilities or other government aggregators with that of business and residential customers.

(d) A government aggregator is not precluded from aggregating its own accounts for regulated utility services, including basic generation service or basic gas supply service.

(e) Neither State government or any State independent authority or State college is precluded from exercising authority to obtain electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, for its own facilities on an aggregated basis.

(f) Neither an interstate authority or agency is precluded from exercising authority to obtain electric generation service or gas supply service, either separately or bundled, for its own facilities in this State, including tenants in this State and other utility customers in this State at such facilities, on an aggregated basis.

1. Such interstate authority or agency shall not be deemed a public utility pursuant to N.J.S.A. 48:1-1 et seq.; however, such interstate authority or agency is not exempt from paying the market transition charge or its equivalent, imposed pursuant to section 13 of the Act, the transition bond charge or its equivalent imposed pursuant to section 18 of the Act and the societal benefits charge or its equivalent imposed pursuant to section 12 of the Act.

(g) "New Jersey School Boards Association" is authorized to serve as a government aggregator to obtain electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, pursuant to "Public School Contracts Law" for those members wishing to voluntarily participate.

(h) No government aggregator shall implement the provisions of sections 42 through 45 of the Act prior to September 11, 2000.

(i) A government aggregator may enter into a contract for the purchase of electric generation service or gas supply service from TPSs.

(j) A government aggregator is permitted to contract for electric generation service, electric related service, gas supply service or gas related service for its own facilities or with other government aggregators pursuant to "Local Public Contracts Law," "Public School Contracts Law," "County College Contracts Law" or "Interlocal Services Act," as applicable.

14:4-6.4 Bidding specifications

(a) The bid specifications must be drafted so that the government aggregator's facility electric generation service or gas supply service requirements are clearly distinguished from residential and business customer electric generation service or gas supply service requirements.

(b) Bid specifications issued by a cooperative pricing system must reflect whether a member not providing initial estimated electric generation service or gas supply service requirements and a contracting unit which becomes a member after the contract has been awarded, may utilize such contract with the approval of the lead agency and the selected TPS.

(c) Notwithstanding any of the restrictions or conditions set forth in these standards, the lead agency shall determine prior to the solicitation of bids whether the electric generation service or gas supply service estimates submitted by a duly registered member of the system shall be considered firm and binding or a member may withdraw its electric generation service or gas supply service estimate even after a TPS has been selected.

1. The mechanism for determining the systemwide consensus shall be the responsibility of the lead agency.

(d) Bid specifications are precluded from including provisions for "take or pay" contracts, where the government aggregator commits to pay for a specified level of electric generation service or gas supply service, whether or not the specified level of electric generation service or gas supply service is actually utilized by the government aggregator or participants in a cooperative pricing system.

(e) For contract provisions for the allocation of costs between the selected TPS and the government aggregator, the bid specifications may provide for the reimbursement of preliminary costs incurred by the aggregator.

(f) When reimbursement is required, the bid specifications must describe the items for which reimbursement is being requested, an estimate thereof and the maximum amount to be reimbursed by the TPS.

(g) The bid specifications must reflect that preliminary costs shall not be passed through to the TPS without initially being paid by the government aggregator.

(h) All reimbursements shall be based upon invoices or vouchers authorized and paid by the government aggregator.

(i) All expenditures and reimbursements of preliminary costs shall be budgeted in accordance with the provisions of the Local Budget Law (N.J.S.A. 40A:4-1 et seq.) and procured pursuant to the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) and these standards.

(j) The government aggregator shall not authorize the expenditure of funds without a duly approved budget appropriation.

(k) No contracts for the procurement or provision of goods or services to be reimbursed by a TPS shall be entered into without an encumbrance to a budgetary line item.

(l) Reimbursements shall be treated as miscellaneous revenue, not anticipated unless revenue has been provided for in the budget.

1. For boards of education, the issuance of any contracts or other encumbrances or expenditure of funds related to reimbursable preliminary costs may not be made without the appropriate board action to ensure that sufficient appropriation balances exist for the affected line items.

2. Reimbursement shall be treated as a reduction of expenditures if received in the same year of the expenditures. If reimbursement is received in a fiscal year subsequent to the expenditure, it shall be treated as miscellaneous income.

(m) Preliminary costs shall be limited to the costs the government aggregator incurred in preparing for government energy aggregation programs in the areas of developing energy bid specifications; ordinance preparation; related professional services; work up to and including the preparation and distribution of the first notice; initial round of citizen education; and activities related to the use of a government aggregator's resources, equipment or employees.

14:4-6.5 Cooperative purchasing of electric generation service and/or gas supply service

(a) Two or more local contracting units may join together to form a cooperative pricing system for the sole specific purpose of purchasing electric generation service and/or gas supply service pursuant to the Act or an existing registered cooperative purchasing system may add electric generation service and/or gas supply service as a commodity to be purchased, pursuant to N.J.A.C. 5:34-7.29.

(b) Two or more duly registered cooperative pricing systems may join together for the purpose of purchasing electric generation service and/or gas supply service as a regional electric generation service and/or gas supply service cooperative pricing system.

1. The registered membership of each cooperative pricing system shall be deemed to be a member of the regional electric generation service and/or gas supply service cooperative pricing system upon submission to the Director of the Division of Local Government Services a list of the membership of each individual cooperative pricing system.

2. Registration of the regional electric generation service and/or gas supply service cooperative pricing system shall be pursuant to the requirements set forth in N.J.A.C. 5:34-7.5.

(c) When a municipality which has aggregated its residents or business customers for gas supply service or electric generation service becomes a member of a regional electric generation service and/or gas supply service cooperative, it shall simultaneously notify the lead agency of the cooperative pricing system of which it is a member and the lead agency of the regional electric generation service and/or gas supply service cooperative pricing system of the participation of its residents or businesses customers and their respective electric generation service and/or gas supply service supply requirements.

(d) A cooperative pricing system undertaking energy aggregation in which the lead agency is not a county or municipality and the membership includes a mix of local contracting units including municipalities and counties, shall not include municipalities and counties who seek to provide electric generation service and/or gas supply service to residents and businesses.

(e) At the discretion of the lead agency for any electric generation service and/or gas supply service cooperative pricing system or a regional electric generation service and/or gas supply service cooperative pricing system, participants shall file such reports, forms or documents designated by the lead agency, setting forth the use and expenditures related to contracts executed by the participants of the electric generation service and/or gas supply service cooperative purchasing system.

14:4-6.6 Program standards

(a) A contract for a government energy aggregation program between a government aggregator and TPS shall include the following provisions:

1. The specific responsibilities of the government aggregator and TPS;

2. Charges, rates, fees, and formulas used to determine costs to be charged to consumers electing to receive electric generation service or gas supply service under the government energy aggregation program;

3. Methods and procedures the TPS will utilize to solicit the affirmative and voluntary written consent of the participating consumer, including, but not limited to, consumer education;

4. Proposed terms and conditions of standard contract between energy consumers and TPS, which shall comply with the Board's consumer protection standards, and must specifically include, but not be limited to:

i. Terms;

- ii. Allocation of risks between the TPS and energy consumers receiving service(s);
- iii. Allocation of risks beyond the control of the parties to the contract;
- iv. Default and remedies; and
- v. Allocation of penalties between the TPS and government aggregator of which may imposed by the LDC on a TPS for imbalances and/or non-performance by the TPS;

5. Clearly identify the use of government aggregator resources, equipment, systems or employees associated with such services;

6. Term (duration) of the contract with the government aggregator;

7. A provision indemnifying and holding the government aggregator harmless from all liabilities, damages and costs associated with any contract between a residential customer and the TPS;

8. Provision for a performance bond, if so required by the government aggregator;

9. The procedures to ensure that participation is the result of affirmative choice, as evidenced by written signature and consistent with Board-adopted standards;

10. A provision that the TPS will comply with Board-adopted consumer protection standards; and

11. Such other terms and conditions as the government aggregator may deem necessary.

(b) The award of a contract for a government energy aggregation program must be based upon most advantageous, price and other factors considered or to the lowest responsible bidder for government to government systems, as appropriate.

(c) When a contract includes electric generation service to residential customers, the contract shall only be awarded if the TPS rate charge results in a total rate which is lower than the total rate a customer would pay under the State-mandated rate reductions pursuant to section 4 of the Act and basic generation service price pursuant to section 9 of the Act, respectively, as determined by the Board, throughout the duration of the contract.

(d) A TPS cannot provide concession fees, finders' fees or other direct monetary benefits to the government aggregator.

(e) A TPS is subject to prohibitions against political contributions in compliance with R.S. 19:34-45.

(f) A government aggregator may enter into only one electric generation service contract and only one gas supply service contract for consumers within its territorial jurisdiction during a contract duration, such as one contract for

either or both services but not two or more contracts for the same service.

(g) A county government, acting as a government aggregator, shall not enter into a contract for an energy aggregation program in competition with any existing government aggregator contract within its territorial jurisdiction unless one or more constituent municipalities adopt an ordinance authorizing such action.

(h) A county government energy aggregation program may be only conducted for residential and business customers within its constituent municipalities that approved participation therein.

14:4-6.7 Government energy aggregation programs

(a) A government aggregator that chooses to provide a government energy aggregation program must provide residential and business customers the opportunity to participate on a voluntary basis and in a clear and consistent manner.

(b) Any residential and business customer electing to participate must do so affirmatively and voluntarily, only after the terms and conditions of the program have been clearly and plainly articulated in writing to the customer prior to a signature authorizing participation.

(c) Residential and business customers who do not voluntarily and affirmatively agree to participate, via written signature, may contract with any supplier authorized by law to provide retail services.

(d) A government aggregator that is a municipality or county government may, notwithstanding provisions of section 44 of the Act or (a) through (c) above operate a limited government energy aggregation program which aggregates electric generation service or gas supply service without the initial, affirmative, voluntary, written consent of residential customers for such service(s), either separately or bundled, in accordance with the following procedures outlined in (e) below.

(e) As part of the bid specifications package, electric generation service or gas supply service for residential customers may be aggregated together with electric generation service or gas supply service, either separately or bundled, for the government aggregator's own facilities or with other government aggregators and such bid specifications may also combine the electric related or gas related service for government facilities provided that:

1. The governing body adopts an ordinance (municipality) or a resolution (county) indicating its intent to solicit bids for electric generation service or gas supply service, either separately or bundled, without affirmative, voluntary, written consent of residential customers, which ordinance or resolution must be approved by majority plus one vote of its full membership;

2. Within 15 days of said adoption, the governing body must mail a written notice to each residential customer advising them of their individual right to affirmatively decline participation;

3. The governing body must use a Board-approved form of notice as set forth in the Appendix, incorporated herein by reference, which shall include a check off and signature line to indicate the customer's desire to decline participation;

4. The governing body must allow its residential customers 30 days, from the postmark date, to affirmatively decline participation in writing by returning the Board-approved form of notice; and

5. Upon expiration of the 30 day period, the governing body shall determine the number and identity of its residential customers who did not affirmatively decline participation, and may commence public bidding.

(f) The governing body shall commence public bidding pursuant to the "Local Public Contracts Law," P.L. 1971, c.198 (N.J.S.A. 40A-11-1 et seq.) to receive bids from licensed TPSs for electric generation service or gas supply service, either separately or bundled, for those residential customers who did not affirmatively decline participation and electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, for the government aggregator's own facilities, or for use of other government aggregators.

(g) The governing body shall evaluate bids received, and shall select a licensed electric power supplier or gas supplier based upon the most advantageous, price and other factors considered.

1. The governing body shall only select a licensed electric power supplier if the TPS rate charged results in a total rate which is lower than the total rate a customer would pay under the State-mandated rate reductions pursuant to section 4 of the Act and basic generation service price pursuant to section 9 of the Act, respectively, as determined by the Board, throughout the duration of the contract.

(h) The governing body shall enter into a written agreement with the selected TPS, which agreement shall include:

1. The contract for a government aggregator's own load;
2. A contract form in compliance with and includes the requirements of N.J.A.C. 14:4-6.6(a); and
3. A provision that such written agreement shall not become effective until proposed contract in (h)2 above is approved by the Board.

(i) After entering into a written agreement with the selected TPS, the governing body shall submit to the Board, for approval, the proposed standard contract to be entered into between the selected TPS and each residential customer who affirmatively consents to enter into such contract.

(j) The governing body shall submit an application to the Board for approval of a contract for a limited government energy aggregation program which shall include the following information:

1. A copy of the bid specifications which was issued pursuant to N.J.A.C. 14:4-6.4 to solicit bids from licensed TPSs, accompanied by an index which indicates precisely where in the aforementioned each provision required in N.J.A.C. 14:4-6.6(a) is set forth;
2. A copy of the written agreement, accompanied by an index which indicates precisely where in the written agreement each provision required in N.J.A.C. 14:4-6.6(a) and in (h)3 above is set forth;
3. The TPS' name and license number;
4. A detailed customer bill comparison which demonstrates for a residential customer: for 250 kWh, 500 kWh, 1,000 kWh and 2,000 kWh 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 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;
5. A copy of the proposed form of notice, consistent with (p)1 below, which will be utilized to solicit customer consent to the energy aggregation program;
6. If a resubmission, noted deficiency(ies) corrected; and
7. Other items as the Board deems necessary and which will be specified pursuant to Board Order.

(k) The Board shall determine whether the submission is complete within 30 days receipt thereof.

1. If the submission is determined to be incomplete, the Board shall return the submission forthwith, with notice of the specific deficiency(ies).
2. The governing body shall correct specific deficiency(ies) and resubmit.

(l) Upon being notified by the Board that the submission is complete, the governing body or its designee shall provide a copy of completed submission to the Ratepayer Advocate (RA).

(m) The RA shall recommend to the Board to approve, modify or reject submission within 45 days of receipt thereof.

1. The Board shall approve, reject or modify submission within 60 days of the submission being deemed complete.

(n) Upon receipt of Board approval, governing body, or its designee, shall authorize the selected licensed TPS to solicit the affirmative and voluntary written consent of any residential customer who did not initially affirmatively decline to participate.

(o) The selected licensed TPS shall be subject to section 37 of the Act and Board-adopted customer protection standards.

(p) The governing body shall notify all residential customers of their right to decline continued participation if there is a change in TPS or price.

1. The governing body must use Board-approved form of notice; and

2. The governing body must provide certification of said notification to the Board.

(q) The county government aggregator may only implement a program pursuant to 43f of the Act and N.J.A.C. 14:4-6.6(g) and (h).

(r) The provisions of section 45 of the Act and (d) above through (s) below shall only apply to residential customers.

(s) Nothing in section 45 of the Act or (d) and (e) above shall preclude a limited government aggregation program from including business customers pursuant to section 44 of the Act or (a) through (c) above.

APPENDIX

Limited Government Energy Aggregation Program Notice

Dear _____:

This is to inform you that, as provided for under the State's "Electric Discount and Energy Competition Act" (P.L. 1999, c.23), the (name) has chosen to enter into a contract(s) for electricity generation service (or gas supply service) on behalf of our residential or business constituents unless you decline to participate. This is known as a "Limited Government Energy Aggregation Program." This notice is being sent to you pursuant to State law.

Under the law, you can choose one of the following options:

- You can remain a customer of your present electric (and natural gas) public utility.
- You can choose to participate in the (name) municipal energy aggregation program and sign-up with the supplier chosen by a public bid by the (name).
- You can shop for and negotiate a contract with any other power supplier (or gas supplier) on your own.
- You can participate in other aggregation groups that may contact you.

Once a (name) contract with an electric power supplier (or gas supplier) is approved by the New Jersey Board of Public Utilities, you will be contacted by that supplier with an offer to voluntarily participate in the program. At that time, you will be asked to sign a contract. *You will be under no obligation to enter into a contract and may decline to participate at that time.* Under the State law, the price for electricity must be lower than the rate charged by your electric public utility.

If you have not received detailed information or have additional questions concerning this program, please contact (fill in organization, name, address, e-mail as appropriate). If you wish to decline participation in the (Name) Energy Aggregation Program at this time, please complete, sign and return the bottom of this Notice in the enclosed envelope provided by (date).

Sincerely,
Mayor

I do not wish to participate in the (Name) Limited Energy Aggregation Program.

Signature: _____

Name: _____

Address: _____

SUBCHAPTER 7. (RESERVED)

SUBCHAPTER 8. INTERIM RENEWABLE ENERGY PORTFOLIO STANDARDS

Authority

N.J.S.A. 48:3-49 et seq.

Source and Effective Date

R.2001 d.231, effective June 15, 2001 (to expire December 15, 2002).
See: 33 N.J.R. 2536(a).

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).