

CHAPTER 4 ENERGY COMPETITION

Authority

N.J.S.A. 48:2-1 et seq., in particular 48:2-13; 48:2-16; 48:2-16.1; 48:2-16.2; 48:2-23; 48:2-29.2; 48:2-37; 48:2-51.1; 48:2-78 et seq., 48:3-7; 48:3-9; 48:3-10 and 48:3-48 et seq.

Source and Effective Date

R.2006 d.178, effective April 18, 2006.
See: 37 N.J.R. 3911(a), 38 N.J.R. 2176(a).

Chapter Expiration Date

Chapter 4, Energy Competition, expires April 18, 2011.

Chapter Historical Note

Chapter 4, Autobus and Trolley, was adopted and became effective prior to September 1, 1969.

Chapter 4, Autobus and Trolley, was recodified as N.J.A.C. 16:52 by an administrative change, effective November 3, 1995. See: 27 N.J.R. 4906(a).

Chapter 4, Energy Competition Standards, was adopted as new rules by R.1999 d.257, effective July 9, 1999. See: 31 N.J.R. 2228(a).

Subchapter 1, Interim Anti-Slamming Standards, Subchapter 2, Interim Licensing and Registration Standards, and Subchapter 3, Interim Retail Choice Consumer Protection Standards, were readopted as R.2001 d.46, effective January 9, 2001. See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

Subchapter 4, Interim Environmental Information Disclosure Standards, Subchapter 5, Affiliate Relations, Fair Competition and Accounting Standards and Related Reporting Requirements, and Subchapter 6, Interim Government Energy Aggregation Program Standards, were adopted as new rules by R.2000 d.408, d.409 and d.410, effective September 11, 2000. See: 32 N.J.R. 3617(a), 3633(a), and 3642(a).

Subchapter 8, Interim Renewable Energy Portfolio Standards, and Subchapter 9, Net Metering, Safety and Power Quality Standards for Wind and Solar Photovoltaic Systems, were adopted as R.2001 d.231, effective June 15, 2001. See: 33 N.J.R. 2536(a).

Subchapter 8, Interim Renewable Energy Portfolio Standards, and Subchapter 9, Net Metering, Safety and Power Quality Standards for Wind and Solar Photovoltaic Systems, were readopted as R.2003 d.260, effective June 9, 2003. See: 35 N.J.R. 94(a), 35 N.J.R. 2892(a).

Subchapter 4, Interim Environmental Information Disclosure Standards, Subchapter 5, Affiliate Relations, Fair Competition and Accounting Standards and Related Reporting Requirements and Subchapter 6, Interim Government Energy Aggregation Program Standards, were readopted as R.2002 d.313, effective August 21, 2002. See: 34 N.J.R. 1524(d), 34 N.J.R. 3230(a).

Subchapter 6, Interim Government Energy Aggregation Program Standards, was repealed and special new rules adopted by R.2003 d.322, effective July 11, 2003. See: 35 N.J.R. 3711(a).

Subchapter 6, Government Energy Aggregation Programs, was readopted by R.2005 d.253, effective July 8, 2005. See: 37 N.J.R. 388(a), 37 N.J.R. 2888(a).

In accordance with N.J.S.A. 52:14B-5.1c, Subchapters 2, 3, 4, 5, 6 and 9, expired on July 8, 2006. See: 37 N.J.R. 3911(a).

Chapter 4, Energy Competition Standards, was renamed "Energy Competition" and Subchapter 1, General Provisions and Definitions, was

adopted as new rules by R.2006 d.178, effective May 15, 2006. Former Subchapter 1, Interim Anti-Slamming Standards, was readopted by R.2006 d.178, effective April 18, 2006, and it was recodified as Subchapter 1A, effective May 15, 2006. Subchapter 8, Interim Renewable Energy Portfolio Standards, was readopted by R.2006 d.178, effective April 18, 2006, and it was recodified to N.J.A.C. 14:8 as Subchapter 2, Renewable Portfolio Standards, by R.2006 d.178, effective May 15, 2006. See: 37 N.J.R. 3911(a), 38 N.J.R. 2176(a).

Subchapter 4A, Public Utility Holding Company Standards, was adopted as new rules by R.2006 d.339, effective October 2, 2006. See: 37 N.J.R. 4889(a), 38 N.J.R. 4237(a).

Subchapter 5, Energy Licensing and Registration, was adopted as new rules by R.2007 d.344, effective November 5, 2007. See: 39 N.J.R. 1405(a), 39 N.J.R. 4851(a).

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SUBCHAPTERS 6 THROUGH 9. (RESERVED)

Special amendment, R.2003 d.322, effective July 11, 2003 (to expire January 11, 2005).

See: 35 N.J.R. 3711(a).

Rewrote (b) and (d).

Special amendment R.2003, d.322, expired January 11, 2005.

Rewrote (b) and (d).

14:4-1A.4 TPS billing

In addition to all other information required to be included in the customer's bill pursuant to regulations and/or Board Order, any bill submitted to a customer by or on behalf of gas supplier or an electric power supplier shall contain the name and telephone number of each party for which the billing is provided, the name and telephone number of each billing aggregator acting on behalf of a customer's TPS, the LDC's emergency phone number and any other information deemed appropriate by the Board, as well as the name, address and telephone number of the Board of Public Utilities at (973) 648-2350 and 1-800-624-0241.

Amended by R.2001 d.46, effective February 5, 2001.

See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

Deleted the identifier.

14:4-1A.5 TPS change order procedures

(a) Notwithstanding the time frame for execution of TPS customer change requests as set forth by regulation and/or Board Order, all TPS change orders received and verified in compliance with existing standards, shall be executed as soon as possible and without unreasonable delay.

(b) When an authorized change of a supplier is requested, the LDC shall be responsible for sending notification to the customer of the ordered change in writing, within one business day or such other a time frame as prescribed by the Board.

(c) The LDC responsible for implementing the TPS change orders must make available to customers upon written or verbal request, confirmation of their supplier change orders, to the extent the LDC has received such an order, electronically from a TPS.

14:4-1A.6 Unauthorized service termination and transfer (slamming)

(a) In construing and enforcing the provisions of these standards, the act of any person, firm or corporation, acting as an agent or representative acting on behalf of a TPS or electric or gas public utility shall be deemed to be the act of that TPS, gas or electric public utility.

(b) In the event a customer notifies the Board that slamming, as defined herein, has allegedly occurred, the supply portion of the bill that relates to the alleged slamming shall be considered in dispute pursuant to N.J.A.C. 14:3-7.13.

(c) Any TPS, gas or electric public utility that fails to comply with the procedures prescribed in these standards and collects charges, directly or indirectly, for electric power

supply or gas supply services from a customer, as a result of its or its agent's, unauthorized activity, shall be liable to the customer's properly authorized TPS, electric public utility or gas public utility in an amount equal to all charges paid by such customer after such violation, as well as for additional amounts as prescribed by regulation and/or Board Order, in accordance with such procedures as the Board may proscribe. The remedies provided in this subsection are in addition to any other remedies available by law.

(d) In addition to any other penalties that might be imposed by the Board, a party found guilty of an unauthorized customer switch may also be liable for any direct costs incurred, as determined by the Board, by the duly authorized supplier and/or its LDC as a result of the unauthorized switch.

(e) A customer that has been found to have been the subject of an unauthorized switch shall not be liable to its authorized supplier and/or its LDC for any more charges than the customer would have been liable for had the unauthorized switch not occurred.

(f) If the customer cannot resolve or correct an unauthorized switch, the customer may file a complaint with the Board under the procedures set forth in Dispute Resolution.

(g) Beginning January 15, 2000, each electric public utility and gas public utility shall submit a quarterly report to the Board, Division of Customer Relations, containing all slamming complaints received, indicating the customer's name, address, telephone number, type of service, and the name of the TPS that requested the alleged unauthorized switch of the customer's electric power or gas supplier.

Amended by R.2001 d.46, effective February 5, 2001.

See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

In (f), the undesignated paragraph was recodified as (g).

Special amendment, R.2003 d.322, effective July 11, 2003 (to expire January 11, 2005).

See: 35 N.J.R. 3711(a).

In (f), deleted "under the procedures set forth in Dispute Resolution" following "with the Board".

Special amendment, R.2003 d.322, expired on January 11, 2005.

14:4-1A.7 Enforcement

(a) The Board may investigate upon its own initiative or upon complaint, any allegation of a violation of these standards.

(b) Any party determined by the Board, after notice and hearing, to have violated any provisions of these standards relating to changes in a customer's electric or gas supplier shall be subject to any one or more of the penalties permitted by the Act, including:

1. Suspension or revocation of the TPS's authority to conduct business in the State; and

2. Financial penalties as permitted by law.

(c) All monies recovered from an administrative penalty imposed pursuant to this section shall be paid into the State Treasury to the credit of the General Fund.

(d) In considering the violations of the Act and/or the Board's Standards and Rules, the Board may consider every day of each violation against each customer as a separate offense.

Amended by R.2001 d.46, effective February 5, 2001.

See: 32 N.J.R. 4249(a), 33 N.J.R. 565(a).

In (b), recodified (i) and (ii) as 1 and 2.

SUBCHAPTERS 2 THROUGH 4. (RESERVED)

SUBCHAPTER 4A. PUBLIC UTILITY HOLDING COMPANY STANDARDS

14:4-4A.1 Scope

This subchapter sets forth requirements that apply to electric and/or gas public utilities that operate in New Jersey and are owned by a public utility holding company. The subchapter is intended to protect New Jersey utility ratepayers from the risks presented by the ownership of a New Jersey electric or gas public utility by a public utility holding company.

14:4-4A.2 Definitions

(a) As used in this subchapter, "Board," "electric public utility," "electricity related services," "existing products and/or services," "gas public utility," "gas related services," "person," "public utility holding company," and "shared services" have the same meaning as used in N.J.A.C. 14:4-1.2.

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

"Public utility holding company system" means a public utility holding company, together with its subsidiary companies.

"Subsidiary" or "subsidiary company" of a public utility holding company means:

1. Any company, for which 10 percent or more of the outstanding voting securities of the company are directly or indirectly owned, controlled, or held with power to vote, by the public utility holding company; and
2. Any person over whose management or policies the public utility holding company has a controlling influence that is sufficient to make it necessary for the rate protection of utility customers that such person be subject to the obligations, duties, and liabilities imposed by this subchapter upon subsidiary companies of public utility holding

companies. This shall apply regardless of whether the public utility holding company exercises its influence directly or indirectly, either alone or pursuant to an arrangement or understanding with one or more other persons. The Board shall make this determination after notice and opportunity for hearing.

"Voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

"Nonutility associate" means a subsidiary company, in a public utility holding company system, that is not an electric or gas public utility or utility associate. Examples of entities excluded from this definition include, but are not limited to:

1. Entities that are developing facilities that will engage in public utility or utility associate activities; and
2. Entities that are directly related and subordinate to, or that directly support, public utility or utility associate activities, including, but not limited to:
 - i. Entities that provides fuel to generating plants;
 - ii. Entities created to facilitate tax advantages;
 - iii. Entities created to facilitate financing transactions;
 - iv. Captive insurance and other risk management entities; or
 - v. Entities that hold or manage emission allowances or other environmental allowances or credits.

"Utility associate" means a subsidiary company, in a public utility holding company system, that directly or indirectly derives or will derive substantially all of its revenues (greater than 70 percent) from:

1. Producing, generating, transmitting, delivering, distributing, storing, selling, marketing, and/or furnishing natural gas, heating oil, electricity, propane, thermal energy and/or steam energy to wholesale and/or retail customers;
2. Gas and/or electricity related services, including, but not limited to:
 - i. Energy management services and demand side management activities;
 - ii. Development and commercialization of electro-technologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, clean coal technologies, and similar innovations;
 - iii. Ownership, repair, maintenance, replacement, operation, sale, installation and servicing of refueling, recharging and conversion equipment and facilities relating to electric and compressed natural gas powered vehicles;

iv. Sale of electric and gas appliances including equipment to promote new technologies, or new applications for existing technologies, that use gas or electricity and equipment that enables the use of gas or electricity as an alternate fuel and the installation and servicing thereof;

v. Production, conversion, servicing, sale and distribution of:

(1) Thermal energy products and resources, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products;

(2) Alternative fuels, such as coal gasification facilities and other synthetic fuels technologies, hydrogen fuel, landfill gas recovery, refuse derived fuels, biomass derived fuels, ethanol, methanol, and other alternative fuels technologies; and

(3) Renewable energy resources;

vi. Sale of technical, operational, management and other similar kinds of services and expertise relating to distribution, transmission, and generation, including engineering, development, design and rehabilitation, construction, maintenance and operation, fuel procurement, delivery and management and environmental licensing, testing and remediation;

vii. Ownership, operation and servicing of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities, including activities related to nuclear fuels;

viii. Development and commercialization of technologies or processes that utilize coal waste or by-products as an integral component of such technology or process;

ix. Nuclear decommissioning trust activities;

x. Securitization activities, financing activities and tax advantaged transactions related to electric or gas public utility and utility associate activities;

xi. Development activities relating to other authorized electric or gas related activities or utility associate activities;

xii. Local community development investments relating to other authorized electric or gas related activities;

xiii. Revenues from sales of assets that were related to other authorized electric or gas related activities;

xiv. Captive insurance and other risk management activities;

xv. Holding and managing emission allowances or other environmental allowances or credits; or

xvi. Other utility-related activities, as determined on a case-by-case basis by the Board;

3. Existing products and/or services and similar services provided by a subsidiary that is not a public utility; and/or

4. Shared services.

14:4-4A.3 Asset investments

(a) Each electric or gas public utility and its public utility holding company shall ensure that the aggregate assets of all nonutility associates in the public utility holding company system do not exceed 25 percent of the aggregate assets of all public utilities and utility associates in the public utility holding company system.

(b) The Board may adjust the percentage level in (a) above up to an additional 10 percentage points higher, not to exceed 35 percent, upon petition by an electric or gas public utility. The Board shall consider any petitions filed pursuant to this provision on a case-by-case basis. Any adjustment to the percentage level must not compromise safe, adequate and proper service.

(c) Each electric or gas public utility or its public utility holding company shall file all of the following in their annual report with the Board:

1. A listing of names and total assets for each subsidiary in the public utility holding company system;

2. The assets of all nonutility associates as a percentage of total assets of all public utilities and utility associates in the public utility holding company system;

3. An annual certification by the chief executive officer as authorized by the board of directors, of the public utility holding company and electric or gas public utility, if applicable, that the percentage of assets in nonutility associates does not contravene this subchapter; and

4. All information required in the annual report pursuant to (c)1-3 above, shall be as of the end of the previous fiscal year.

SUBCHAPTER 5. ENERGY LICENSING AND REGISTRATION

14:4-5.1 Scope, general provisions

(a) This subchapter shall apply to the following, as these terms are defined at N.J.A.C. 14:4-1.2:

1. Electric power suppliers;

2. Gas suppliers;

3. Energy agents, including energy consultants. An energy consultant is an energy agent that has met additional requirements in this subchapter, and is therefore eligible to access certain customer information;

(c) An LDC shall not do business with a person performing activities described in N.J.A.C. 14:4-5.1(f) or (g), that is, acting as an energy agent, energy consultant, or aggregator, unless the person has a valid registration under this subchapter.

(d) The prohibitions in this section shall apply to a person that has never obtained a license or registration under this subchapter, as well as to a former registrant or licensee whose registration, license or surety bond has expired, or has been suspended or revoked by the Board.

14:4-5.11 Registration procedure—energy consultant

(a) To be eligible to operate in New Jersey as an energy consultant, a person shall, in addition to meeting all of the requirements for registration as an energy agent, meet the requirements in this section.

(b) A registration shall be submitted on forms provided by the Board, available on the Board's website at www.bpu.state.nj.us. The registration form shall require all of the following:

1. Proof that the person is a registered energy agent, or, alternatively, all of the information required under this subchapter to register as an energy agent;

14:4-5.12 Fees

(a) Fees for license applications and registrations shall be as follows:

	Electric Power <u>Supplier License</u>	Clean Power <u>Marketer License</u>	Gas Supplier <u>License</u>	Energy Agent <u>Registration</u>	Private Aggregator <u>Registration</u>
Initial Fee- Nonrefundable	\$250.00	\$250.00	\$250.00	\$500.00	\$500.00
Initial Fee-refunded if license is denied	\$1,000.00	\$1,000.00	\$800.00	\$0	\$0
Renewal Fee	\$500.00	\$500.00	\$400.00	\$200.00	\$200.00

(b) If an applicant applies for more than one license, the applicant shall submit the application fees for both licenses. For example, the application fee for both an electric power supplier license and a clean power marketer license would be \$2,500; and the fee for both an electric power supplier license and a gas supplier license would be \$2,050. Similarly, an applicant that applies for more than one license shall post a surety bond for the sum of the applicable amounts required at N.J.A.C. 14:4-5.4(f).

14:4-5.13 Enforcement

(a) Failure to comply with any provision of this subchapter shall subject the violator to the following penalties in accordance with the Board's regulatory and statutory authority:

2. A \$10,000 surety bond; and

3. Documentation that the person maintains an office in New Jersey in accordance with N.J.A.C. 14:4-5.2(b).

(c) Board staff shall accept and process an application for registration as an energy consultant using the procedures for acceptance and processing of an energy agent registration at N.J.A.C. 14:4-5.8.

(d) If a registration as an energy consultant is submitted simultaneously with a registration as an energy agent, there shall be no additional application fee for the energy consultant registration. However, if the registrations are submitted at different times, each registration shall be accompanied by the nonrefundable initial energy agent registration fee set forth at N.J.A.C. 14:4-5.12. This provision shall also apply to registration renewals.

(e) An energy consultant registration obtained under this subchapter shall be valid for one year from the date of issue.

(f) An LDC shall provide a registered energy consultant with access to customer usage data through electronic data interchange in accordance with *I/M/O The Energy Master Plan Phase II Proceeding To Investigate the Future Structure of the Electric Power Industry*, Board Order Docket Nos. EX94120585Y et al., available on the Board's website at <http://www.bpu.state.nj.us/wwwroot/energy/consultantord.pdf>.

1. Denial, suspension or revocation of the license or registration;

2. Financial penalties;

3. Prohibition on accepting new customers; and/or

4. Any and all other remedies authorized by law.

(b) In determining the appropriate sanction for a violation of this subchapter, the Board shall consider the following criteria and any other factors deemed appropriate and material to the failure to comply:

1. The good faith efforts, if any, of the entity charged in attempting to achieve compliance;

2. The gravity of the violation or failure to comply with the requirements in this subchapter;
3. The number of past violations by the entity charged regarding this subchapter and other Board rules or orders; and
4. The appropriateness of the sanction or fine to the financial situation or customer base of the company charged.

(c) In determining the penalty for a violation, the Board may, where appropriate, consider each day of each violation against each customer as a separate offense, punishable by an additional fine.

SUBCHAPTERS 6 THROUGH 9. (RESERVED)