

CHAPTER 4

ENERGY COMPETITION STANDARDS

Authority

Electric Discount and Energy Competition
Act of 1999, P.L. 1999, c.23.

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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.

(c) Each change order submitted to an LDC on behalf of an electric or gas supplier must be subject to verification procedures, in accordance with these rules and Board Orders prior to the change being effectuated by the LDC. A separate verification for an electric power supply and gas supply change order must be undertaken, even if the same company is chosen to provide both electric and natural gas services.

(d) Records of customer authorization changes shall be retained by the TPS for a minimum of three years. In the event that a customer disputes a change order, either before or after a switch is effectuated by the LDC, the TPS shall produce the customer switch authorization within (3) business days of a request by the customer or the Board.

14:4-1.4 TPS billing

(a) 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 a 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.

14:4-1.5 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.

14:4-1.6 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 prescribe. 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.

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.

14:4-1.7 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:

- (i) Suspension or revocation of the TPS's authority to conduct business in the State; and
- (ii) 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.

SUBCHAPTER 2. INTERIM LICENSING AND REGISTRATION STANDARDS

14:4-2.1 Scope

These standards shall apply to electric power suppliers, gas suppliers, energy agents and private aggregators as defined below.

Electric power suppliers and gas suppliers shall apply for and obtain a license from the Board pursuant to the standards and procedures herein.

Energy agents and private aggregators shall register with the board pursuant to the standards and procedures herein.

No electric power supplier, gas supplier, energy agent or private aggregator shall contract, offer to contract, enroll, provide generation service or gas supply service, or arrange for a contract for the provision of these services without having obtained a license from or having registered with the Board, as appropriate.

14:4-2.2 Definitions

As used in this rule:

"Act" means the "Electronic Discount and Energy Competition Act" (P.L. 1999, c.23).

"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, or a duly licensed gas supplier that assumes the contractual and legal obligations to provide gas supply service to end-use retail customers, but does not take title to the gas.

"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 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 R.S. 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 of 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.

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

“Energy consumer” means a business or residential consumer of electric generation service or gas supply service located within the territorial jurisdiction of a government aggregator.

“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 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 the Act to offer 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.

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

“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.

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

“Private aggregator” means a non-government aggregator that is a duly organized business or nonprofit organization authorized to do business in this State that enters into a contract with a duly licensed electric power supplier for the purchase of electric energy and capacity, or with a duly licensed gas supplier for the purchase of gas supply service, on behalf of multiple end-use customers by combining the loads of those customers.

“Retail choice” means the ability of retail customers to shop for electric generation or gas supply service from electric power or gas suppliers, or opt to receive basic generation service as basic gas service, and the ability of an electric power or gas supplier to offer electric generation service or gas supply service to retail customers, consistent with the provisions of the Act.

14:4-2.3 Electric power supplier and gas supplier license application process

(a) Applications shall be made on forms provided by the Board.

(1) Application forms can be obtained at the Board of Public Utilities’ offices in Newark, New Jersey; by writing to the Board at 2 Gateway Center, Newark, New Jersey 07102; by calling 973-648-2065 or through the BPU website at www.njin.net/njbpu.

(2) All applications must satisfy the requirements of Section 3.3, herein, and must be accompanied by an application fee of \$250, or as otherwise determined by the Board.

(3) The Board will process all completed application requests and notify applicants of its determination within 60 days of the receipt of the application.

(i) In cases where additional information is required from the applicant, the 60 day processing time period begins when the required additional information has been received and time-stamped by the Board.

(ii) In cases where the Board has not completed its review process and notified the applicant of its determination within 60 days, or for other special circumstances, as determined by the Board, the Board shall issue the applicant a provisional electric power supplier license, valid for no longer than 90 days.

(iii) Provisional licenses may be extended one time by the Board for an additional 90 days.

(b) After processing by the Board and upon a determination by the Board that the applicant has met all the requirements in subsection 3.3, the Board shall provide a notice of acceptance to the applicant. Upon payment of a licensing fee the Board shall issue the applicant an electric power supplier or a gas supplier license. The initial fee, to cover portions of the licensing unit costs, environmental disclosure, and if determined by the Board, consumer education costs, for an electric power supplier license shall be \$1,000. The initial fee, to cover portions of the licensing unit costs, and, if determined by the Board, consumer education costs, for a gas supplier license shall be \$800.

(c) Electric power and gas supplier licenses shall be valid for a period of one year from date of issue.

14:4-2.4 License renewal

(a) To renew a valid electric power or gas supplier license, the licensee must apply for renewal no later than 30 days before the expiration date of the current license.

1. The application for renewal must be on such form(s) as prescribed by the Board. Application forms can be obtained at the Board of Public Utilities' offices in Newark, NJ, by writing to the Board, by calling 973-648-2065 or through the BPU website at www.njin.net/njbpu.

2. The renewal application shall include, at a minimum:

i. The number of customers, by customer class (i.e. utility specific rate schedule), currently being served by the licensee;

ii. The licensee's most recent 12 month and calendar year sales volumes in New Jersey, by customer class (i.e. utility specific rate schedule); including a copy of the licensee's latest tax report as required by the Department of the Treasury pursuant to P.L. 1997, c.162;

iii. A listing of the number of residential customers it serves in the State, by Zip plus 4;

iv. Any changes to the information contained in the licensee's most recent license application or renewal;

v. Proof that a surety bond, or other approved security, has been obtained pursuant to Section 4(e) and will be maintained throughout the period for which the license is valid;

vi. Such other information as may be required by Board Order; and

3. (a) If a licensee has filed a completed renewal application in accordance with subsections 1 and 2 above, the applicant's current license shall not expire until the renewal application is acted upon by the Board.

(b) After processing by Board Staff and upon a determination by the Board that the renewal application is complete and acceptable, and upon payment of a license renewal fee, the Board shall issue a one year license renewal.

1. Such renewal fee for electric power suppliers will be \$500 or a fee determined by apportioning a share of the Board's licensing unit, environmental disclosure, and, if determined by the Board, consumer education costs to each applicant based upon a percentage of the State's electric load served by the licensee, whichever is higher. Such renewal fee for gas suppliers will be \$400 or a fee determined by apportioning a share of the Board's licensing unit, and, if determined by the Board, consumer education costs to each applicant based upon a percentage of the State's gas load served by the licensee, whichever is higher.

14:4-2.5 Electric power supplier and gas supplier application requirements

(a) Applications shall include:

1. Legal name as well as the name under which the electric power or gas supplier proposes to do business in New Jersey;

2. Mailing and business address(es);

3. Telephone number(s), facsimile number(s), e-mail address(es) and Internet address(es);

4. Statement describing the company's history, and a company profile;

5. A list of types of services and/or products which the company plans to offer in New Jersey to residential, commercial and industrial customers;

i. For applicants intending to market to residential customers, a sample residential contract.

6. Evidence of financial integrity including:

i. Two years of audited financial statements and

If applicant has not been in business long enough to satisfy this requirement, it shall file: (1) income statements and balance sheets covering the life of the business; and (2) credit reports or ratings prepared by established credit reporting agencies regarding the credit and payment history of the applicant.

ii. A reference from a lending institution

iii. A list of any bankruptcy filings made by the applicant, or any officer or director of the applicant, within the past 24 months.

7. Statement disclosing any existing, pending or past adverse rulings, judgments, litigation, contingent liabilities, revocations of authority, administrative regulatory (State, FERC or SEC) investigations and any other matters relating to financial or operational status for the past 3 years that arise from the sale of electricity or natural gas, or materially affect current financial or operational status;

8. Ownership interests of the supplier;

9. Statement detailing any criminal activities of which the applicant has been charged or convicted, or of which the principal or corporate officers of the applicant have been charged or convicted;

i. Applicant may be required to authorize a release of criminal history record information from the New Jersey State Police.

10. The name and address of the in-state agent of the supplier that is authorized to receive service of process and the name and address of the in-state customer service agent of the supplier per subsection 4(d) herein.

11. For electric power suppliers, the quantity of retail electric sales, kwh and revenues, by month and customer class, made in New Jersey during the 12 months preceding the application or license renewal. For gas suppliers, the quantity of retail natural gas sales, decatherms and revenues, by month and customer class, made in New Jersey during the 12 months preceding the application or license renewal.

12. A licensee must maintain a surety bond, in an amount prescribed in Section 4(e), to insure against a failure to pay taxes or assessments, or a failure to meet contractual commitments to deliver electric generation service or gas supply service.

13. For applications filed prior to December 1, 1999, a certification that applicant is "Y2K" ready or compliant.

14. Other information as the Board may, through Board Order, deem necessary.

14:4-2.6 Condition for maintaining a license in good standing

(a) A license serving electric load in the franchise area of Public Service Electric & Gas Company, GPU Energy or Conectiv must meet the requirements of a Load Serving Entity as defined by the PJM Reliability Assurance Agreement. In addition, all electric power supplier applicants must meet all reliability standards of the Mid-Atlantic Area Council of the North American Electric Reliability Council or its successor, the PJM Interconnection, L.L.C. and/or the New York Independent System Operator, the Federal Energy Regulatory Commission, the Board or any other state, regional, federal or industry body with authority to establish reliability standards.

(b) A licensee serving natural gas load must meet all reliability standards of the Federal Energy Regulatory Commission, the Board or any other state, regional, federal or industry body with authority to establish reliability standards.

(c) A licensee serving natural gas load must meet the safety standards of the Liquefied Natural Gas Facilities: Federal Safety Standards: Part 193, Title 49 of the Code of Federal Regulations (Federal Code), The Natural Fuel Gas Code (ANSI Z223.1/NFPA 54, the Board of Public Utilities (BPU); and any other state, regional or industry body with authority to establish safety standards.

The gas supplied must be of pipeline quality with the following characteristics:

(1) Minimum Heating Value

(i) The minimum average heating value of any gas delivered into a distribution system in New Jersey shall not be less than one thousand (1,000) BTU per cubic foot of gas. The average heating value shall not be less than 1,000 BTU per cubic foot at 14.73 psia and 60 degrees Fahrenheit.

(ii) When supplemental or substitute gas is distributed, the gas supplier will make every reasonable effort to maintain gas characteristics and quality so that utilization performance will be satisfactory regardless of the heating value of the gas.

(2) Gas Purity

(i) All gas supplied to customers in this State shall be substantially free from dangerous or objectionable quantities of impurities such as hydrogen sulfide, nitrogen or other combustible or noncombustible, noxious, or toxic gases or other impurities. A gas shall be considered free from undesirable impurities when the quantity of any impurity present is within the limits recognized as allowable in good practice.

(ii) All gas supplied to customers shall not contain impurities which may cause excessive fumes when burned in a properly designed and adjusted burner.

National Standards and FERC approved tariffs of the interstate pipelines serving the state, including amendments thereto, shall, where applicable, supersede the requirements in 1 and 2 above.

(d) A licensee must maintain an office within New Jersey, as defined by the Board, for the purposes of accepting service of process, maintaining such records as the Board requires and ensuring accessibility to the Board, consumers and electric and gas public utilities.

(1) A licensee shall file with the Board a designation in writing of an agent, resident of this State, upon whom legal process and process for the production of any records, books, accounts, documents and other writings associated with the vendor's business within New Jersey may be served. Such designation shall set out the name of such agent and his or her places of residence and business.

(2) Every licensee shall have a representative who will be accessible by phone on a timely basis, and in person when required, to the Board and its staff, and DCA and its staff. The duties of the vendor's representative shall include, but not be limited to, responding to inquiries, facilitating the resolution of billing problems, and assisting the Board and DCA in customer supplier related investigations.

(i) Compliance with this provision is in addition to any rule, regulation or Board Order requiring the licensee to provide a toll free customer service number.

(3) A licensee shall, at its New Jersey office, maintain summary records related to energy contracts or transactions entered into with New Jersey customers or services provided by the supplier to New Jersey customers. Copies of all contracts or other writings authorizing the provision of service by the supplier to each of its New Jersey customers, subject to reasonable confidentiality requirements allowed under State and federal statute, or as determined by the Board Order, shall be made available for inspection by the Board upon 48 hours notice.

(4) A licensee shall, at its New Jersey office, maintain for a period of three years, a record of customer complaints and the resolution thereof.

(5) A hard copy printout and/or on-line access of all items required by subsections (3) and (4), at the suppliers' New Jersey office(s) from data bases located outside the State will meet the requirements of these subsections.

(e) A licensee must maintain a surety bond or equivalent financial instrument, as determined by the Board, to insure against a failure to pay taxes or assessments, or a failure to meet contractual commitments to customers to deliver electric generation service or gas supply service.

1. The amount of the bond required in order to be granted an initial license is \$250,000.

2. Modifications of this amount commensurate with the amount of anticipated business to be conducted in this state may be granted by the Board where substantial evidence is submitted in support of the modification.

i. A request for modification of this initial bonding amount may be made in conjunction with the initial application.

3. Bonding requirements for license renewals will be based on a percentage, as determined by the Board, of

the licensee's sales information as reported in its license renewal application.

4. Bonding requirements may be increased at such time as the Board determines is necessary to protect the interests of the ratepayers of the State.

i. Prior to the filing of an annual license renewal application, licensee shall report to the Board at any time when its sales volumes have increased by 33% from its previously reported amount and the Board may increase its surety bond accordingly.

(f) The licensee must comply with such specific standards of conduct for electric power and gas suppliers, environmental disclosure requirements, renewable portfolio requirements, safety and service quality standards and consumer protection requirements, including slamming standards as the Board shall adopt.

(g) The licensee must provide the Board, six months after the effective date of its initial license, and thereafter in accordance with the Board's license renewal process, a listing of the number of residential customers it serves in the state, by Zip plus 4.

(h) The licensee must agree to provide through legal certification by an officer of the electric power or gas supplier such information as the Board or its staff, or the Division of Consumer Affairs or its staff shall require to assist the agencies in undertaking an investigation of a complaint against the electric power or gas supplier or in making any determination concerning revocation, suspension issuance or renewal of the supplier's license pursuant to Section 32 of P.L. 1999, c.32.

14:4-2.7 Energy agent registration process

(a) Registration shall be made on forms provided by the Board. Registration forms may be obtained at the Board of Public Utilities' offices in Newark, NJ, by writing to the Board, by calling 973-648-2065 or through the BPU website at www.njin.net/njbpu

(1) All registration forms must be accompanied by a registration fee of \$500, or as determined by the Board.

(2) The Board Staff will process all completed registration forms and confirm with the registrant compliance with this rule within 60 days of the receipt of the registration form. The confirmation notice will also indicate the effective registration date.

(i) In cases where additional information is required from the applicant, the 60 day processing time period begins when the required additional information has been received and time-stamped by the Board.

(ii) In cases where the Board has not completed its review process and notified the applicant of its determination within 60 days, the registrant shall be assumed in

compliance with this rule for the purpose of Board sanctions or penalties pursuant to Section 6, herein.

(b) The energy agent registration application shall include

(1) the applicant's name, address and telephone number and website address

(2) the applicant's business affiliation or a business profile

(3) evidence of financial integrity including

i. income statements and balance sheets covering the past 2 years or the life of the business, whichever is shorter, and

ii. a reference from a lending institution

(4) evidence of knowledge of the energy industry and/or evidence of the ability to aggregate large numbers of customers and prepare Requests for Proposals for commodity and energy-related services for large numbers of customers.

(5) a list of licensed electric power or gas suppliers through which the registrant has arranged for the delivery of electric energy, natural gas and/or electric energy or gas services.

(6) statement disclosing any existing, pending or past adverse rulings, judgments, litigation, contingent liabilities, revocations of authority, administrative regulatory (State, FERC or SEC) investigations and any other matters relating to financial or operational status for the past three years that materially affect current financial or operational status;

(7) Ownership interests of the energy agent;

(8) Statement detailing any criminal activities of which the applicant, its subsidiaries, affiliates or parent has been charged or convicted, or of which the principal or corporate officers of the applicant, its subsidiaries, affiliates or parent has been charged or convicted;

i. Applicant may be required to authorize a release of criminal history record information from the New Jersey State Police.

(c) Energy agent registration shall be valid for one year.

(1) An energy agent must apply for renewal within 30 days before the expiration date of the current registration.

i. The application for renewal must be on such form(s) as prescribed by the Board.

Application forms can be obtained at the Board of Public Utilities' offices in Newark, NJ, by writing to the Board, by calling 973-648-2065 or through the BPU website at www.njin.net/njbpu.

ii. The renewal application shall provide an update to all information contained in the energy agent's previous application or renewal and be accompanied by a renewal fee of \$200 or, as prescribed by the Board.

iii. (a) If an energy agent has filed a completed renewal application in accordance with Sections 1 and 2 above, the applicant's current registration shall not expire until the renewal application is acted upon by the Board.

(d) After processing by Board Staff and upon a determination by the Board that the renewal application is complete and acceptable, the Board shall issue a one year registration renewal.

14:4-2.8 Private aggregator registration process

(a) Registration shall be made on forms provided by the Board.

(1) Registration forms can be obtained at the Board of Public Utilities' offices in Newark, NJ, by writing to the Board, by calling 973-648-2065 or through the BPU website at www.njin.net/njbpu.

(2) All registration forms must be accompanied by a registration fee of \$500, or as determined by the Board.

(3) The Board will process all completed registration forms and confirm with the registrant compliance with this rule within 60 days of the receipt of the registration form. The confirmation notice will also indicate the effective registration date.

(i) In cases where additional information is required from the applicant, the 60 day processing time period begins when the required additional information has been received and time-stamped by the Board.

(ii) In cases where the Board Staff has not completed its review process and notified the applicant of its determination within 60 days, the registrant shall be assumed in compliance with this rule for the purpose of Board sanctions or penalties pursuant to Section 6, herein.

(b) The private aggregator registration application shall include

(1) the applicant's name, address, telephone number and website address

(2) the applicant's business affiliation or business profile

(3) evidence of financial integrity

i. income statements and balance sheets covering for the past two years or the life of the business, whichever is shorter, and

ii. a reference from a lending institution

(4) evidence of knowledge of the energy industry

(5) a list of licensed electric power and/or gas suppliers through which the registrant has arranged for the delivery of electric generation or gas supply service.

(6) statement disclosing any existing, pending or past adverse rulings, judgments, litigation, contingent liabilities, revocations of authority, administrative regulatory (State, FERC or SEC) investigations and any other matters relating to financial or operational status for the past three years that materially affect current financial or operational status;

(7) Ownership interests of the supplier;

(8) Statement detailing any criminal activities of which the applicant, its subsidiaries, affiliates or parent has been charged or convicted, or of which the principal or corporate officers of the applicant, its subsidiaries, affiliates or parent has been charged or convicted;

i. Applicant may be required to authorize a release of criminal history record information from the New Jersey State Police.

(c) Private Aggregator registration shall be valid for one year.

(1) A private aggregator must apply for renewal within 30 days before the expiration date of the current registration.

i. The application for renewal must be on such form(s) as prescribed by the Board. Application forms can be obtained at the Board of Public Utilities' offices in Newark, NJ, by writing to the Board, by calling 973-648-2065 or through the BPU website at www.njin.net/njbpu.

ii. The renewal application shall provide an update to all information contained in the energy agent's previous application or renewal and be accompanied by a renewal fee of \$200 or, as prescribed by the Board.

iii. If an energy agent has filed a completed renewal application in accordance with Sections 1 and 2 above, the applicant's current registration shall not expire until the renewal application is acted upon by the Board.

(2) After processing by the Board and upon a determination by the Board that the renewal application is complete and acceptable, the Board shall issue a one year registration renewal.

14:4-2.9 Confidentiality

Except for sample contracts filed in compliance with subsection 3-3(a)5(i), and sales volumes and revenues, by customer class, filed in compliance with subsection 3-2(a)2ii and subsection 3-3(a)11, all information provided as a part of the Electric Power Supplier licensing process, the Gas Supplier licensing process, both license renewal processes, Energy Agent registration process, Private Aggregator registration process, and both registration

renewal processes shall be considered public information by the Board and Board Staff.

14:4-2.10 Enforcement

A failure to comply with the licensing or registration requirements of these Standards will subject the licensee or registrant to the authority of the Board pursuant to Sections 31, 32, 33, 34 and 35 of the Act.

In considering 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.

SUBCHAPTER 3. INTERIM RETAIL CHOICE CONSUMER PROTECTION STANDARDS

14:4-3.1 Scope

The following standards shall apply to all electric power suppliers, and gas suppliers. Except where specifically addressing residential customers, the consumer protections contained herein shall pertain to all customers.

14:4-3.2 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).

"Advertising" means the activity of attracting public attention to a product, service, or business, etc., as through announcements in print, radio, television, telemarketing, electronically, internet, etc.

"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 (BGS)" 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.

“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, or a duly licensed gas supplier that assumes the contractual and legal obligation to provide gas supply service to end-use retail customers, but does not take title to the gas.

“CFR” means the Code of Federal Regulations.

“Customer” means any person that is connected to any part of the transmission and distribution system within a LDC’s service territory within this State.

“Customer information” means individual proprietary information as defined below.

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

“Electric power supplier” means a person or entity that is duly licensed pursuant to the provisions of the Act and pursuant to the Board’s licensing standards promulgated pursuant thereto, 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 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 management measurement and billing services.

“Energy agent” means a person that is duly registered pursuant to the provisions of this act, that arranges the sale of retail electricity or electric related services or retail gas supply or gas related services between government aggregators or private aggregators and electric power suppliers or gas suppliers, but does not take title to the electric or gas sold.

“FTC” means the Federal Trade Commission or its successor agency.

“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 management measurement and billing services.

“Gas supplier” means a person that is duly licensed pursuant to the provisions of the Act and pursuant to the Board’s licensing standards promulgated pursuant thereto, to offer and assume the contractual and legal responsibility 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 the Act.

“Gas Supply Service” means the provision of the retail commodity of gas, but does not include any regulated distribution service.

“Individual proprietary information” or “customer information” means, but is not limited to, a customer’s name, address, telephone number, electricity and/or gas usage, peak demand and payment history.

“LDC” means local distribution company, referring to the electric and/or gas public utility responsible for distributing power and/or gas to retail customers on behalf of electric power suppliers and/or gas suppliers.

“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.

“Marketing” means a direct solicitation by a TPS to an individual customer for the purpose of persuading a customer to enter into an agreement for the purchase of electric generation service, gas supply service, electric related service and/or gas related service, such direct solicitation to include direct mailings, telemarketing, internet websites and in-person solicitation.

“Optional services” means services other than electric generation service and/or gas supply service.

“Private aggregator” means a non-government aggregator that is a duly-organized business or non-profit organization authorized to do business in this State enters into a contract with a duly licensed electric power supplier for the purchase of electric energy and capacity, or with a duly licensed gas supplier for the purchase of natural gas supply service, on behalf of multiple end-use customers by combining the loads of those customers.

“Redlining” means a procedure which involves unreasonable discrimination based upon race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location.

“Retail sales” means the bundled service provided by the LDC.

“Slamming” means the unauthorized change of 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.

“Transmission and distribution system” means any facility or equipment that is used for the transmission, distribution and/or delivery of electricity or gas to the end-use customers including, but not limited to, the land, structures, meters, lines, pipes, switches, valves and all other appurtenances thereof and thereto, owned or controlled by the electric or gas public utility, or LDC, respectively.

14:4-3.3 Advertising standards

All types of advertising

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

Electronic, radio and/or television advertising

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

- i A toll-free or local telephone number which a customer may call to request detailed information concerning the average price per kWh for and environmental characteristics of electric generation service or average price per

therm for gas supply service over the term of a contract for the service being offered, exclusive of any charges for any optional services other than electric generation or gas supply service; and

- ii. The LDC(s) in whose service territory(ies) the TPS is offering services.

14:4-3.4 Marketing standards

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

- i. The average price per kWh for electric generation service or average price per therm for gas supply service over the term of a contract for the service being offered, exclusive of any charges for any optional services other than electric generation or gas supply service;

- ii. The period of time over which the advertised price is valid; and

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

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

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

- a. The estimated percentage savings on the total electric bill, referred to in v. above, shall not include and shall only represent the savings above and beyond the rate reductions which all electric customers receive under the Act whether they switch suppliers or not; or

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

the term of the contract being offered; such TPS shall also clearly indicate the period of time for which the savings offer is valid, and the term (duration) of the contract being offered.; and

vii. The TPS' license number;

viii. The LDC(s) in whose service territory(ies) the TPS is offering the advertised services; and

ix. Other materials or information which may be required to comply with the Environmental Disclosure Standards.

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

(b) The TPS shall comply with all FTC telemarketing rules, including the restriction on telemarketing between the hours of 9 pm. and 8 am.

(c) A TPS may not market to retail customers prior to its receipt from the Board of a supplier license, and in no event prior to August 1, 1999.

(d) The TPS must clearly state in its solicitations to the customer, and in its marketing materials, whether in hardcopy, electronically or via internet website, that switching to a competitive third party supplier is not mandatory, and the customer has the option of remaining with the LDC for basic generation service or basic gas supply service.

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

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

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

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

Prohibition of Discriminatory Marketing

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

i. Marketing to specific groups, such as housing associations, developments, senior citizen organizations, church/religious associations, and the like, shall not be considered discriminatory pursuant to this subsection or the Act.

a. However, once a TPS has received applications from specific groups, the decision to accept or reject any customer or groups thereof, shall not be based upon race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location.

ii. Marketing to specific LDC service territory(ies) shall not be considered discriminatory pursuant to this subsection or the Act.

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

14:4-3.5 Credit

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

(b) A TPS shall maintain a written explanation of its income, security deposit and credit requirements, in compliance with the Licensing Standards, which shall be made available on a confidential basis to the Board and the Division of Consumer Affairs within 48 hours upon request, in the event of a formal investigation of the TPS' credit or income requirement practices;

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

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

14:4-3.6 Contracts

(a) A TPS shall not be permitted to provide electric generation service or gas supply service to a retail customer without the customer's written signature on a contract or such alternative forms of verification as the Board may permit to initiate such service(s), for switching TPSs or for renewal thereof;

(b) A TPS contract shall clearly and conspicuously state that the purpose of this document is to authorize a change in the customer's TPS, and includes explicit terms and conditions which shall include, at a minimum:

i. a clear statement of the duration of the contract;

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

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

iv. A statement of the residential customer's rights, which shall provide that the customer will receive a confirmation notice of its choice of supplier and that, at a minimum, the customer will have 14 calendar days from the date of the confirmation notice to contact its LDC and rescind its selection. Furthermore, that a contract for electric generation or gas supply service shall not be legally binding upon the residential customer until the 14 day confirmation period has expired, and the customer has not, directly or indirectly, rescinded his/her selection.

v. A statement of the TPS' termination rights, which shall explain the specific conditions under which the TPS may terminate service, and that at a minimum the TPS provide the customer with at least a separate 30 days' written notice of the termination and opportunity to remedy the termination condition.

vi. No statement which asks that any customers waive any rights they have under New Jersey or federal Consumer Protection laws.

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

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

(e) A TPS contract shall explicitly permit a residential customer to terminate the contract, with 48 hour notice

without penalty, as a result of a relocation within or outside the LDC's franchise area, disability and/or death;

(f) A TPS contract must clearly and conspicuously display the TPS' name and license number issued by the Board;

(g) In compliance with the Licensing Standards, a TPS shall file a sample copy of its residential contract(s) with the Secretary of the Board, with a copy provided to the Division of Consumer Affairs and the Division of Ratepayer Advocate on a confidential basis; the initial filing of the sample copy of TPS contract(s) shall include a consumer complaint resolution process; a TPS shall file a sample copy of subsequent revisions of its contract(s) with the Secretary of the Board, with a copy provided to the Division of Consumer Affairs and the Division of Ratepayer Advocate on a confidential basis, within three (3) business days;

(h) In no event shall a TPS cease to deliver electric power supply, or natural gas supply, subject to the terms and conditions of the contract and the LDC tariff, to the LDC on behalf of a residential customer, upon less than the minimum 30 days' notice period;

(i) Where an affirmative written signature is not obtained for renewal of a residential electric generation service or gas supply service contract, the existing contract shall continue on a month-to-month basis under the current terms and condition and pricing.

14:4-3.7 Customer bills

(a) TPS bills must be in clear and conspicuous language and include the name, address and local and/or toll-free telephone number of the Board and TPS and toll-free customer service and emergency telephone numbers of the LDC.

(b) TPS bills must contain sufficient information to allow customers, to calculate their bills which information shall include but not be limited to kWh or therm usage billing period which shall include the start and end dates, billing date, next estimated meter reading date, remaining balance and payment(s) applied.

(c) A TPS or a LDC shall not charge a fee to residential customers to either commence and/or terminate electric generation service or gas supply service.

(d) If optional services are provided, the associated charge(s) shall be itemized separately on the customer's bill.

(e) The TPS and LDC's charges shall be separately identified on the bill if the customer chooses the one-bill option.

14:4-3.8 Customer information

(a) Customer information shall not be disclosed, sold or transferred to a third party without the affirmative written consent of the customer or alternative Board-approved con-

sent methodology, except under certain conditions, e.g., a third-party performing services directly for a TPS under a binding confidentiality agreement.

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

14:4-3.9 Complaints

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

i. If the TPS has been advised that the customer is not satisfied with the TPS' response, the TPS must advise the customer that customer can contact the Secretary of the Board, at 973-648-3426, to request an Alternate Dispute Resolution procedure or to file a formal complaint.

(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.

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 March 11, 2002).
See: 32 N.J.R. 3617(a).

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.

“Energy Information Administration” means the Energy Information Administration of the United States Department of Energy.

“Environmental characteristics” means, in respect to electricity that is supplied to a retail customer:

1. The fuel mix used to provide the energy; and
2. The amount of emissions associated with electric generating resources which produced the electricity.

“Generating company” means a company that owns electric generating resources.

“Fossil fuel” means natural gas, petroleum, coal, or any form, of solid, liquid, or gaseous fuel derived from such material.

“Fuel” means the material used in an electric generating unit to provide the energy to produce electricity.

“Generator” means a device that produces electricity.

“Incumbent utility” means, in New Jersey, the following electric public utilities: Atlantic Electric Company, GPU Energy, Rockland Electric Company and Public Service Electric and Gas Company or, as applicable, their corporate successors.

“Imported power” means electricity sold into the PJM control area from another control area.

“Load-serving entity,” or “LSE” means an electric utility providing basic generation service, or an entity or organization that is licensed to serve retail load in New Jersey, otherwise referred to as an electricity supplier.

“Marketer” means a duly licensed electricity supplier that has no owned generation, but that takes title to electricity and/or electric-generating capacity from electric power generators and other wholesale suppliers, and procures transmission and distribution services from T & D facilities, and then resells the electricity to retail customers.

“On-site generation facility” means a generation facility, and equipment and services appurtenant to electric sales by such facility to the end use customer located on the property or on property contiguous to the property on which the end user is located. An on-site generation facility shall not be considered a public utility. The property of the end use customer and the property on which the on-site generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an easement, public thoroughfare, transportation or utility-owned right-of-way.

“Owned generation” means electric power produced by electric generating resources located within the PJM control area that are owned by an electricity supplier. However, an electricity supplier that is an unregulated affiliate of an incumbent utility shall not be considered an owner of electric generating resources that are owned by such utility.

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

“PJM ISO” means PJM Interconnection L.L.C., the independent system operator which serves a control area that includes portions of Pennsylvania, New Jersey, Maryland, Virginia and all of Delaware and the District of Columbia.

“Program Administrator” means the office, to be established by the Board, to implement and oversee New Jersey’s environmental information disclosure program.

“Renewable energy” means electric energy produced from a source of energy that is replenishable and that has minimal associated adverse environmental impacts. For the limited purpose of these interim standards, renewable energy shall include electric energy produced from Class I and Class II renewables as defined in P.L. 1999, c.23, which includes: solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, hydroelectric facilities, methane gas from landfills, sewage and agricultural waste digesters, biomass provided that the biomass is cultivated and harvested in a sustainable manner, and resource recovery facilities, provided that such facility is located where retail competition is permitted and provided that the NJDEP has determined that such facility meets the highest environmental standards and minimizes any impacts to the environment and local communities. With respect to energy produced by resource recovery facilities, all electricity produced by facilities permitted in New Jersey by the NJDEP shall be considered as renewable energy. In addition, energy generated by a facility located outside of New Jersey may also be considered renewable energy if:

1. The owner or operator of the source provides documentation to the NJDEP that the facility would, taking into consideration the age and type of the unit, meet the applicable requirements of N.J.A.C. 7:27; and

2. After reviewing the documentation submitted, the NJDEP makes a finding that it is satisfied that the unit does meet the applicable requirements of N.J.A.C. 7:27.

For the limited purposes of these interim standards, in respect to hydroelectric power, only electricity produced by hydroelectric facilities, located where retail competition is permitted, and with a capacity of 30 megawatts or less shall qualify as renewable energy until the NJDEP has issued more specific criteria that hydroelectric facilities must meet to ensure that such facility meets the highest environmental standards.

“Residual control area average” means the weighted average fuel mix and emissions associated with the electricity supplied to customers in the PJM control area, as determined by the Program Administrator. In determining this average, the Program Administrator shall take into consideration both the electricity generated in the PJM control area and electricity imported into the control area; and shall exclude the following:

1. Electricity exported from the PJM control area;
2. Both electricity produced by owned generation and electricity purchased by an electricity supplier under a bilateral contract, provided that the electricity is specifically ascribed to the electricity supplier, pursuant to the disclosure rules set forth herein, as electricity used to meet the supplier’s retail load; and
3. Electricity purchased by a supplier through a conversion transaction.

“Retail 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 this State. This term includes customers of a private aggregator or governmental aggregator, but does not include wholesale customers that take electricity directly from the transmission and distribution grid.

“Retail load” means the demand of retail customers for electricity.

“Schedule” means the process by which a generator, electricity supplier, or wholesale power marketer informs the PJM ISO or the NYPP ISO (in the case of Rockland Electric), or the PJM ISO or NYPP ISO itself determines, that a specific generating unit or units will operate for a specific period of time.

“Spot market” means the regional market administered by the PJM ISO in which electricity is scheduled by the PJM ISO for purchase and sale on the basis of a bid price. This term does not include the scheduling of bilateral contracts

for the purchase and sale of hourly energy based on bid prices submitted by market participants other than the PJM ISO.

“System contract” means a bilateral contract between an electricity supplier and a generating company, or between an electricity supplier and a wholesale power marketer, pursuant to which the supplier purchases a share of a generating company’s system power which is specifically identified in the contract and is backed by the generating company’s assets, excluding power that is sold pursuant to unit contracts or contracts for specified resources.

“System power” means all of the electric power generated by all units which are owned by a single generating company and located within the control area from which the power is being sold, excluding power that is sold pursuant to unit contracts or contracts for specified resources.

“Transmission and distribution system” (“TDS”) means, with respect to an electric public utility, any facility or equipment that is used for the transmission, distribution or delivery of electricity to the customers of the electric public utility including , but not limited to, the land, structures, meters, lines, switches and all other appurtenances thereof and thereto, owned or controlled by the electric public utility within New Jersey.

“Unit contract” means a contract between an electricity supplier and a generating company, or between an electricity supplier and a wholesale power marketer:

1. In which the generating unit or units are specified and receipt of electricity is tied to the performance of such unit or units;
2. For electricity for which the supplier has scheduled transmission into the PJM control area, or in Rockland & Orange’s case, into the NYPP control area; and
3. With respect to which the control area operator in the generator’s control area is able to verify the electricity being supplied was generated by the specified unit or units.

For the purposes of environmental disclosure, any contracts entered into under Federal PURPA or other similar state authority between an electric public utility serving retail load in New Jersey and an independent power producer shall be considered a unit contract.

“Wholesale electricity” means power sales or purchases that do not meet the definition of unit or system contracts, or contracts for specified resources.

(b) The following are measurements, abbreviations, and acronyms used in this subchapter:

Board or BPU	New Jersey Board of Public Utilities
Btu	British thermal unit
CO ₂	carbon dioxide

DER	Discrete Emission Reduction (credits)
EIA	Energy Information Administration
hr	hour
ISO	Independent System Operator
kWh	kilowatt hour
lb	pound
LSE	load-serving entity
mmBtu	million Btu
MWh	megawatt hour
NJDEP	New Jersey Department of Environmental Protection
NO _x	nitrogen oxides (or oxides of nitrogen)
NUG	Non-utility generator
NYPP	New York Power Pool
OMET	open market emission trading
PJM	Pennsylvania/New Jersey/Maryland (control area)
SO ₂	sulfur dioxide
T & D	transmission and distribution
ton	2000 pounds
USEPA	US Environmental Protection Agency

14:4-4.4 Requirements of the rules

(a) Pursuant to the mandates embodied in P.L. 1999, c.23, the interim rules for environmental disclosure to retail customers require every electric service supplier to provide the following:

1. Standardized environmental information: Environmental disclosure information distributed to retail customers shall contain the following information:

- i. Fuel mix, expressed in percent of the electricity provided that has been produced from each fuel;
- ii. Air emissions, expressed in pounds of emissions per megawatt-hour of electricity supplied (lbs/MWh); and
- iii. The electricity supplier's support of energy efficiency, expressed in kilowatt-hours (kWh) saved per year;

2. Fuel mix (energy source) information:

- i. Electricity suppliers shall disclose to retail customers the fuels in the fuel mix associated with the generation of the electricity product being provided or offered using the following energy resource categories: coal, gas, hydroelectric (large), nuclear, oil, and renewable energy, including captured methane gas, fuel cells, geothermal, hydroelectric (small), solar, solid waste, wind and wood or other biomass. (See Appendix E.)
- ii. An electricity supplier making a prospective offer for a "renewable energy" product may not be able to predict the exact percentages of each renewable resource it will provide. In this case, the electricity supplier may list a percentage of its fuel mix as being from "renewable energy," without providing specific percentages for wind, solar, hydroelectric or other generating resources. In disclosure for existing products, based on a historical record, specific percentages shall be given for each renewable resource.

iii. If an electric power supplier or basic generator service provider arranges with a customer for the installation and use of fuel cells, geothermal technology, solar technology, or other renewable energy technologies as listed in N.J.A.C. 14:4-4.3 to generate electricity, then the supplier may claim the equivalent amount of electricity generated by the customer-generator as part of its renewable energy fuel mix. This shall not include renewable energy technologies funded through the Societal Benefits Charge;

3. Air emissions information: Each electricity supplier shall report for each electricity product it sells in New Jersey, the emissions of sulfur dioxide (SO₂), oxides of nitrogen (NO_x) and carbon dioxide (CO₂), based on a weighted average (expressed in lbs/MWh). Other air pollutants such as mercury or fine particles may be required later by decision of the Board, after consultation with the New Jersey Department of Environmental Protection (NJDEP). The supplier will present the product's emissions data in the uniform label format, relative to a New Jersey benchmark. Initially, and until modified by Board order in consultation with the NJDEP, the specific benchmarks shall be based on 1996 emissions data from the U.S. Department of Energy's Energy Information Administration publication EIA-0629 "State Electricity Profiles," and shall approximate the average of all electric generating units in New Jersey for SO₂ (that is, 2.5 pounds per megawatt hour), CO₂ (that is, 1,213 pounds per megawatt hour) and NO_x (that is, 3.0 pounds per megawatt hour). (See Appendix F.) In the case of NO_x, the average derived from the 1996 Department of Energy data has been adjusted to take into account the new NJDEP ozone season standards for NO_x emissions that first applied in 1999. Upon notice to electricity suppliers doing business in the State, the benchmark may be changed by the Board, in consultation with the NJDEP; and

4. Energy efficiency information: Each electricity supplier serving retail customers in New Jersey shall disclose to its retail customers, in accordance with the provisions set forth herein, the amount of electricity that has been saved through the supplier's investments in energy efficiency. This shall not include electricity saved under energy efficiency programs funded through the Societal Benefits Charge. The supplier shall report the amount of electricity savings, expressed in kilowatt-hours, represented by the retirement of emissions credits based on the implementation of electrical energy efficiency measures. Such credits may be discrete emission reduction (DER) credits, generated pursuant to New Jersey's open market emissions trading (OMET) program (N.J.A.C. 7:27-30), or allowances allocated from the Incentive Reserve under New Jersey's NO_x budget program. Documentation of the kWhs saved is a component of the quantification required for the generation or claiming of these credits; therefore, the value of the credits in kWhs can readily be determined by consulting this documentation. All electricity suppliers will be required to file each disclosure label with the Board or Program Administrator.

14:4-4.5 Determining the fuel and emissions characteristics

(a) For existing electricity products that have been offered for some period of time and are associated with a record of generation, the fuel mix and emissions information associated with such electricity products and disclosed on labels shall be based on "historical" data that reflect the generation of the power provided by the supplier in the preceding year. Initially in Phase I, incumbent utilities with owned generation shall be the only suppliers of existing products. These existing products include electricity the utility provides pursuant to its basic generation service obligations. During Phase I-A, until a Program Administrator is established and is technically and administratively able to assist energy suppliers, each electricity supplier of existing products will develop for itself the environmental information to be set forth in its disclosure label(s) for each product offered. These disclosure labels shall reflect to the extent feasible the characteristics of the emissions and fuel mix information of the actual electric generating units or systems used by an electricity supplier to meet its retail load in the most recent 12-month period, or an approximation of such units or systems, developed pursuant to the methodologies set forth herein and N.J.A.C. 14:4-4.6.

1. Notwithstanding (a) above, where landfill gas or sewage or agricultural waste digester gas is co-fired in a fossil-fuel plant, a supplier may present the fuel mix and emissions characteristics associated with the landfill, sewage or agricultural waste digester gas alone, if the supplier has purchased the electricity generated from the landfill, sewage or agricultural waste digester gas separately and the fossil fuel generator has agreed not to reflect the fuel mix and emissions characteristics of the landfill, sewage or agricultural waste digester gas in disclosure regarding the fossil-fuel plant.

(b) For new products and for new market entrants in New Jersey, electricity suppliers will be permitted to disclose environmental information on a prospective basis for a period up to one year (four quarters). (See N.J.A.C. 14:4-4.6 for greater detail.) Alternatively, for a period of at least 18 months, through December 2000, these suppliers may use the default values for fuel mix and emissions information set forth by the Board. This choice shall be permitted for a limited period of time in recognition that suppliers of new electricity products, including suppliers newly serving retail customers in New Jersey, will not have an historical record on which to base disclosure.

1. If the new supplier, however, is making an environmental claim for its product, then it may not use the default values, but rather shall prospectively disclose fuel mix and emissions of the electricity it intends to provide for a period of at least 12 months. For products with environmental claims, the use of default values shall only be allowed for energy that is purchased from the spot market or wholesale electricity purchased by the supplier only if and as long as contractual information that can

trace the energy to its originating system or unit is not available. (See (c) below.)

2. As of the beginning of the next quarter, once the 12-month or 18-month period (as applicable) has ended, the supplier will commence providing a label based on historical information, as described in the preceding paragraph. After 18 months (beginning January 2001), products that were newly introduced when retail competition commenced will become reclassified for the purpose of environmental disclosure as existing products, if the product's supplier elected to use default values on the product's disclosure label. After 12 months (four quarters), "new" products whose supplier used environmental claims on the initial disclosure label will become existing products as well.

(c) New market entrants and electricity suppliers introducing new products may base their disclosure labels on prospective environmental claims for a period of 12 months. After the 12 months, the supplier will revise its disclosure labels to reflect the environmental information associated with the actual electric generating units or systems that generated the power it supplied during those first 12 months, in accordance with the rules for disclosure based on historical information described herein. Also following the 12 months, for the electricity it supplied during the 12 month period, the electric supplier will document that it has met the fuel mix and emissions specifications set forth in its prospective claims using one or more of the following, as applicable:

1. The emissions and fuel mix characteristics of electricity generated by owned units or systems;

2. The emissions and fuel mix characteristics of electricity that the electricity supplier purchased through unit or system contracts or contracts for specified resources that the electricity supplier enter into for electricity generated within PJM or for imported power, where the electricity supplier has filed with the Board or Program Administration documentation which shows that the unit(s), specified resource(s) or system operated, that the electricity was transmitted to PJM and that the generating company has not sold the electricity to any other party; and

3. The default values for the fuel mix and emissions information set forth herein by the Board, until such time as the Board or Program Administrator makes available more specific or refined default values, including a spot market average or other alternative default environmental characteristics for energy purchased from the market on a spot basis.

(d) As with disclosure based on historical data, electricity suppliers will determine the environmental characteristics of owned generation and electric power purchased through bilateral contracts by reference to information supplied by the generator or to publicly available information and will ascribe the default environmental characteristics set forth to all other resources.

(e) In determining whether a supplier has succeeded in documenting that the electricity provided has met the environmental claim for the new product, electricity suppliers will be permitted a margin of error. In respect to a claim for fuel mix, the claim will be considered to be met if the actual percentage of each given fuel type does not differ from the amount claimed by an amount equal to the lesser of 20 percent of the percentage indicated for any given fuel type or five percent of the total product. Thus, if an electricity supplier indicated that its product would include 10 percent wind power, it would be permitted to include between eight percent and 12 percent wind power. A product advertised as "90 percent hydropower" could range between 85 percent and 95 percent. In no case would the electricity supplier be allowed to serve its retail customers with power generated from fuels other than those claimed on the label. No margin of error for fuel mix shall be permitted for products comprised of 100 percent of a specified resource. In respect to emissions, an emissions claim will not be considered to be met if the emissions exceed the claim by more than five percent. Providing more than the specified percentage of resources defined herein as "renewable energy" shall not constitute noncompliance with an environmental claim.

(f) A new market entrant that does not choose to base disclosure labels on prospective environmental claims shall disclose the default claim set forth by the Board for the emissions and fuel mix information for all products it sells in New Jersey for a period of 18 months, after which time it will update its disclosure labels to reflect actual electric generating units or systems that generated the power it supplied during those first 18 months, in accordance with the rules for disclosure based on historical information described herein. 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 adjusted PJM average set forth in Appendix F. The default values can be used by electricity suppliers until January 2001 for new electricity products or by electricity suppliers newly serving retail customers in New Jersey that do not have an historical record on which to base disclosure. Electricity suppliers making prospective environmental claims or electricity suppliers with existing products with a record of generation shall use the default values set forth herein 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.

14:4-4.6 Methodology for developing a disclosure label

(a) During Phase I, each electricity supplier shall disclose the emissions and fuel mix associated with the electricity used to meet its retail load (except for new products) using information that is readily available to the supplier and verifiable by the Board or Program Administrator. The electricity will fall in one of the following categories:

1. Electricity generated by units owned by the supplier;
2. Electricity purchased by the supplier through bilateral unit contracts (including imported power);
3. Electricity purchased by the supplier through bilateral system contracts or contracts for specified resources (including imported power);
4. Wholesale electricity purchased by the supplier; and
5. Electricity purchased by the supplier from the spot market administered by the PJM ISO.

(b) With respect to electricity where its point of generation is known by the supplier (that is, owned generation or electricity generated or controlled by another company with which the supplier has a bilateral contract; and unit or system power scheduled with the PJM ISO for sale to the supplier), the supplier shall use the actual emission rates and fuel characteristics for the most recent year for which they are available pertaining to the specific electric generating units in determining the fuel mix and emissions values to be disclosed on its label. (See (d) below.) The supplier can determine these characteristics utilizing information that is reported to, and made available by, the US Environmental Protection Agency (USEPA) and Energy Information Administration (EIA), or information supplied by the generator that is made available to and is verifiable by the Board or Program Administrator. Each electricity supplier that is relying on publicly available information to determine the actual emission rates and fuel characteristics associated with electricity supplied will use 1996 data, the most recent year for which data is available, to develop its disclosure labels until the Board or the Program Administrator provides notice that more recent data is available. The source of publicly available information shall be the USEPA's Emissions and Generation Resource Integrated Database (EGRID) which can be accessed at: www.epa.gov/acidrain/egrid/egrid.htm.

1. These 1996 emission rates and fuel characteristics shall be applied to the actual generating units or systems used by the electricity supplier to meet its retail load for the 12-month period being reported on the label. If the electricity supplier has more recent data than the 1996 emission rates and fuel characteristics, and the more recent information can be verified by the Board or Program Administrator, this data may be used instead of the 1996 EGRID data by the electricity power supplier or generation service provider.

2. In the case where information regarding emissions associated with NUG contracts is not available from the generator, the electricity supplier may calculate the emissions characteristics for the contract using the generation permit levels of the NUG, as allowed by the NJDEP, and a conservative estimated emission heat rate factor. (See Appendix G,) incorporated herein by reference.

(c) With respect to electricity where its point of generation can not be readily known by the supplier (that is, electricity purchased on the spot market or from a wholesale supplier), or if the electricity supplier of a new product chooses to disclose default information during the initial 18-month period of Phase I-A, default values set forth in Appendix F shall be used to determine the environmental information to be disclosed on the label. During Phase I, the default values for fuel mix shall initially be the average characteristics of the PJM control area and the default values for air emissions shall initially be the adjusted PJM average set forth in Appendix F, and used as explained in N.J.A.C. 14:4-4.5(b)2, until such time as the Board and/or the Program Administrator is able to provide more accurate or complete information.

(d) In developing disclosure labels, each category of electric generating resources shall be treated as follows:

1. Owned generation. An electricity supplier that owns electric generating units located in the PJM control area shall disclose the fuel mix and emissions associated with all electricity generated from those units, unless the electricity was sold in the wholesale market through a unit or system contract, or contract for specified resources. If, in the previous calendar year, an electricity supplier's owned generation exceeded its retail load, the electricity supplier shall ascribe the average environmental characteristics of its owned electric generating units (minus the electricity sold through unit or system contracts or contracts for specified resources to the wholesale market) to its retail sales. If, in the previous calendar year, the electricity supplier's owned generation was less than its retail load, the electricity supplier shall ascribe the average environmental characteristics of its owned generation (again subtracting the electricity sold through unit or system contracts or contracts for specified resources to the wholesale market) to the portion of its retail load that is equal to the electricity it generated during that period. The remaining retail load shall be ascribed the environmental characteristics of unit contracts, system contracts or the default values set forth herein, as applicable, until the Board or a Program Administrator makes available alternative default emissions and fuel mix information.

2. Unit contracts. An electricity supplier that purchases electric power through a unit contract shall ascribe the fuel mix and emissions associated with the specified unit or units to all electric power purchased through that contract. With respect to a unit contract for imported power, the electricity supplier may characterize this power with the electric generating unit's emissions and fuel mix information after filing the following with the Board or the Program Administrator: documentation that the unit or units generated the amount of electricity claimed during the specified period; documentation that the electricity was scheduled for transmission into the PJM control area, or in the case of Rockland & Orange, into the NYPP control area; and certification from the generating

company that it has not sold the electricity claimed by the electricity supplier to any party other than that electricity supplier. The certification documentation shall be included in the annual certification completed by an independent entity as set forth in N.J.A.C. 14:4-4.9. In the event that the electricity supplier does not file such information, the supplier shall characterize the electricity with the average environmental characteristics of the generating units owned by the company from which the electricity was purchased.

3. Contracts for specified resources. An electricity supplier that purchases electric power through a contract for specified resources shall ascribe the fuel mix and emissions associated with the resources actually used to supply the contract. With respect to imported power, the electricity supplier may characterize this power with the electric generating unit's emissions and fuel mix information after filing the following with the Board or the Program Administrator: documentation that the unit or units generated the amount of electricity claimed during the specified period; documentation that the electricity was scheduled for transmission into the PJM control area, or in the case of Orange & Rockland, into the NYPP control area; and certification from the generating company or wholesaler supplying the electricity supplier that the electricity claimed by the electricity supplier has not been sold to any party other than that electricity supplier. The certification documentation shall be included in the annual certifications completed by an independent entity as set forth in N.J.A.C. 14:4-4.9. In the event that the electricity supplier does not file such information, the supplier shall characterize the electricity with the average environmental characteristics of the generating units owned by the company in the control area from which the electricity was purchased.

4. System contracts. Electricity suppliers that purchase electric power through bilateral system contracts shall characterize this power with the generating company's average fuel mix and emissions (less any electricity sold through unit contracts) if, in the previous calendar year, the generating company's owned generation exceeded its retail load. Such purchases shall be considered to be undifferentiated power obtained from a wholesale supplier and characterized by the default fuel mix and emissions set by the Board, if the seller's retail load exceeded its owned generation in the previous calendar year.

5. With respect to a system contract for imported power, an electricity supplier may characterize this power with the generating company's average emissions and fuel mix information after filing the following with the Board or the Program Administrator: documentation that the specified system generated the amount of electricity claimed during the specified period; documentation that the electricity was scheduled for transmission into the PJM control area, or in the case of Orange & Rockland, into the NYPP control area; and certification from the generating company that it has not sold the electricity

claimed by the electricity supplier to any party other than that electricity supplier. The certification documentation shall be included in the annual certification completed by an independent entity as set forth in N.J.A.C. 14:4-4.9. In the event that the electricity supplier does not file such information, the supplier shall characterize the electricity with the average environmental characteristics of the generating units located in the control area from which the electricity was purchased.

6. Spot market purchases and wholesale electricity contracts. Electricity suppliers shall ascribe the default fuel mix and emissions set forth herein to all electricity purchased from the spot market or purchased through wholesale electricity contracts until such time as the Board or Program Administrator develops alternative default emissions and fuel mix information to ascribe to such purchases. If a supplier can confirm the environmental characteristics of the energy from an undifferentiated wholesale electricity contract, it may report this data to the Program Administrator.

(e) Except for new products for which such information is not available, suppliers shall base disclosure for a product on a weighted average of the characteristics of the various electric generating units contracted to produce the electricity over the period of a single calendar year. The average emission rate (pounds per MWh) of a generating unit can, for most units, be determined by reference to the most recent data reported to, and made available to the public by, the USEPA and the EIA.

(f) Each electricity supplier shall be permitted to differentiate its electricity supply portfolio into discrete retail products. Such differentiation is subject to the following restrictions:

1. An electricity supplier's demonstration that a new electricity product supplied to New Jersey retail customers during a specific period met the environmental claims made for that product shall be based on owned generation or on one or more bilateral contracts. Any source of supply, where the generating unit or units are not so documented, shall be ascribed the default values for fuel mix or emissions characteristics set forth by the Board herein, until such time as the Board or Program Administrator develops alternative default emissions and fuel mix information.

2. The electricity supplier shall demonstrate its sources of electric supply, either from owned resources or through acquisitions in the wholesale market. The supplier shall be required to show that over a course of a given year its sources of supply were sufficient to meet its retail load for each of its products and for any wholesale sales it has made. The supplier shall also be able to demonstrate that no electricity has been double counted.

3. The weighted average of the fuel mix and emissions disclosed for all products sold by an electricity supplier (both products for which an environmental claim is made and product(s) based on the remainder of the supplier's portfolio) must correspond to the average fuel mix and emissions of the supplier's wholesale portfolio, minus the supplier's wholesale sales, or to the default fuel mix and emissions information provided by the Board or the Program Administrator.

(g) All electricity suppliers shall be required to disclose in the standard format authorized by the Board the amount of electricity saved as a result of their investment in energy efficiency measures in New Jersey, including an indication that no electricity has been saved if the supplier has not made any such investments. Electricity savings that result from energy efficiency programs subsidized by the State-mandated Societal Benefits Charge may not be included in the electricity savings disclosed to retail customers. In order to be eligible to claim the savings, electricity suppliers shall document electricity savings resulting from efficiency measures by generating and retiring discrete emission reduction ("DER") credits pursuant to New Jersey's Open Market Emissions Trading ("OMET") program or by retiring NO_x allowances allocated under the State's NO_x budget program on the basis of implementation of energy efficiency measures. (See N.J.A.C. 14:4-4.4(a)4 on energy efficiency information.) Electricity suppliers may also claim credit for energy efficiency by purchasing and retiring DER credits or allowances created through energy efficiency measures implemented by another company. Emission credits and allowances shall be translated into electricity savings based on the MWh savings reported in the documentation for the generation of the emission credits for the claim of the allowances.

14:4-4.7 Disclosure information updating and reporting requirements

(a) Each electricity supplier (except for suppliers of new products) will be required to update and distribute the environmental information on its label(s) semi-annually. The disclosure shall be based on data reflecting the product sold during the most recent 12-month period. Suppliers relying on historical information for disclosure shall be required to provide updated labels on April 1 and October 1. This information shall be based on four quarters' information, but recognizing that some period is needed for information gathering and processing, a three month lag will be allowed between the date that disclosure of an updated label is required and the last day of the period on which the label is based. For example, an updated label issued on April 1, 2000, shall be based on data reflecting the generation of power provided from January 1 through December 31, 1999. An updated label issued on October 1, 2000 shall be based on data reflecting the generation of power from July 1, 1999 to June 30, 2000. An updated label issued on April 1, 2001, shall be based on data reflecting the generation of power provided between January 1, 2000, and December 31, 2001. (See Appendix H, incorporated herein by reference.)

(b) For the limited purposes of these interim standards, suppliers of basic generation service shall develop and distribute to their basic generation customers, no later than September 15, 1999, environmental information as defined in N.J.A.C. 14:4-4.5 and 4.6 and illustrated in Appendix A. Thereafter, suppliers of basic generation service shall provide environmental information to basic generation customers according to the schedule as set forth in the preceding paragraph and in Appendix H.

(c) Each electricity supplier of a new product for which an environmental claim is made shall be required to update its label after a 12-month period for which power was supplied to the customer, as set forth in Appendix H. However, suppliers of new products shall distribute the label to their customers semi-annually, as set forth in Appendix H, whether making an environmental claim for the product or using the default label.

(d) A supplier that does not differentiate the electricity it supplies into distinct products on the basis of environmental characteristics shall disclose the same information on fuel mix, emissions and support of energy efficiency for all the electricity it sells. An electricity supplier that does create distinct products on the basis of environmental characteristics shall follow the rules for product differentiation set forth in N.J.A.C. 14:4-4.6(f) to develop different labels for different products, and shall document that the weighted average of all its products is consistent with the supplier's overall portfolio of electricity used to meet its total retail load.

(e) The electricity supplier shall develop the environmental information for the existing product's disclosure label by determining the fuel mix and emissions associated with the electric generating resources it relied on in the most recent four quarters to meet the retail load resulting from sales of that product. The supplier will base its calculation of this environmental information upon: actual information associated with generation from which the fuel use and emissions characteristics are readily known by the supplier; and default fuel mix and emission characteristics associated with generation from which fuel use and emissions characteristics are not readily known by the supplier. For existing products, the use of default values set forth herein shall only be allowed for energy that is purchased from the spot market or wholesale electricity purchases only if and as long as contractual information that can trace the energy to its originating system or unit is not available.

14:4-4.8 Environmental disclosure distribution

(a) Electricity suppliers will be required to disclose environmental information, in the uniform label format approved by the Board, to all prospective retail customers prior to signing them as customers. This does not apply in the case of a customer being returned to basic generation service provided by the local distribution company. Customers returned to basic generation service shall receive the

next scheduled semi-annual report, as well as all subsequent reports. In addition, electricity suppliers shall include disclosure labels in: semi-annual mailings to all retail customers; all product-specific direct mail marketing materials or if a supplier offers only one product, in all direct mail marketing materials; all marketing materials that include a solicitation seeking to have the recipient sign up as a retail customer or that include an opportunity to enter into a contract, including those that are accessible to retail customers via computer; and any statement of terms and conditions sent to retail customers following sign-up.

1. Electricity suppliers shall be required to disclose that environmental information is available to the customer if electricity suppliers advertise in print advertisements such as newspapers published in New Jersey or newspapers that permit the purchase of advertising space for distribution in New Jersey in which a specific product is advertised. For specified products advertised, electricity suppliers shall indicate in all such materials that environmental information is available upon request, which, at a minimum, includes the environmental information provided in the standard label attached hereto as Appendices A, B, or C, and shall provide a toll-free telephone number through which retail customers can access this information, in addition to any mailing address or Internet website address.

2. In other marketing efforts (for example, broadcast, telemarketing) in which a specific product is advertised or offered, electricity suppliers shall inform retail customers that environmental information on the advertised products is available which, at a minimum, includes the environmental information provided in the standard label attached hereto as Appendices A, B or C, and shall provide a toll-free telephone number. If the electric power supplier or generation service provider maintains an Internet website, then the Internet address shall be provided.

(b) In April of each year, all New Jersey electric suppliers shall submit to the Board or the Program Administrator an annual report for the preceding calendar year (January through December) in accordance with guidelines established by the Board or the Program Administrator. In its report, each electricity supplier shall, on an annual basis, disclose all of the electricity products it has offered for sale in New Jersey, including the weighted average emissions performance (expressed in lbs/MWh) for NO_x, SO₂, and CO₂ and the weighted average fuel mix of all products sold to retail customers in New Jersey. An electricity supplier's annual report shall also include information, including the weighted average emissions performance (expressed in lbs/MWh) for NO_x, SO₂, and CO₂ and the weighted average fuel mix of the generating resources owned by all affiliated companies in the Eastern Interconnection. In addition, each electricity supplier shall report on other matters as required by the Board or the Program Administrator, such as whether it has succeeded in meeting any prospective claims it has

made, and whether it has been found to be in violation of any requirements related to disclosure in the previous year.

1. An electricity supplier shall also inform all its retail customers annually that such a report is available upon request and shall provide a toll-free telephone number through which retail customers can obtain this information. An electricity supplier shall also provide to all its retail customers the Internet site address maintained by the Board or Program Administrator as set forth in (c) below to allow customer Internet access to its annual report.

(c) The Program Administrator shall maintain an Internet site with information relevant to environmental disclosure. The Administrator shall see that the disclosure labels of all products supplied in New Jersey by all New Jersey registered electricity suppliers are posted on the site. The Internet site shall include other related information such as each supplier's annual report and whether each company has met its claims, and whether it has been fined or penalized by any State agency in relation to State disclosure requirements.

14:4-4.9 Certification by an independent entity

(a) Prior to distributing disclosure information to customers and annually thereafter, each supplier of an existing product shall obtain a certified verification of the environmental information to be disclosed from a certified public accountant (CPA) that is independent of such electricity supplier. Any electricity supplier of a new electricity product who makes a specific environmental claim on the product's disclosure label, including a claim of support for energy efficiency, shall, following the 12-month or longer period during which the claim is made, demonstrate that the claim was met within the allowable limits, and obtain a certified verification from an independent CPA that the demonstration is complete, accurate and true. Electricity suppliers of new electricity products who rely on the allowed default values for the initial 18-month period are not required to obtain verification or audit of the default emissions and fuel mix information.

(b) The CPA shall certify that the environmental information disclosed on the label has been properly determined, including that the supplier's wholesale portfolio information is based on an accurate calculation of the emissions of owned generation units and of units and/or systems for which the supplier has bilateral contracts; and that proper default values have been used for electricity obtained from wholesale electricity purchases and purchases through the spot market.

(c) Both for existing products and for verification that the product environmental claims have been met, the electricity supplier shall be required to file the CPA's certified verification with the Board or Program Administrator. Power purchase contracts do not need to be provided to the Board as supporting documentation, unless specifically requested by the Board or Program Administrator.

14:4-4.10 Verification and penalties

(a) Until a Program Administrator is able to execute its function, the Board will be responsible for periodically auditing compliance with environmental disclosure requirements, including the proper development and distribution of disclosure labels. When the Program Administrator is in place, it shall provide reports of such audits to the Board, the NJDEP, the Office of the Ratepayer Advocate, and the Division of Consumer Affairs, for their review. The Board shall set up a dispute resolution process through which electricity suppliers can obtain a review of the Program Administrator's calculations and findings.

1. Electricity suppliers that have made prospective claims shall provide to the Board or Program Administrator in their semiannual report a demonstration either that appropriate progress has been made toward meeting the claim or, after the end of the year, that the electricity provided met the environmental claims made. Following the 12-month period for which the claim was made, electricity suppliers shall have their demonstrations reviewed, verified, and certified by an independent CPA, prior to their submittals to the Board of Program Administrator. Actions taken by the Program Administrator or the Board to address a supplier's failure to meet environmental claims shall not be confidential.

2. With respect to prospective claims, while electricity suppliers shall be allowed a full calendar year to meet an environmental claim, they shall report on their progress to the Program Administrator quarterly. To do this, electricity suppliers shall "close the books" on each product after each three-month period and calculate the extent to which it has met the environmental claims for the product. This assessment shall be done with a simple average. For example, to demonstrate progress toward meeting a fuel mix claim, an electricity supplier that has provided electricity in the first two quarters based on purchases of natural gas to meet 20 percent and 30 percent, respectively, of its retail load for a particular product would average these percentages to show that it is on target to create an annual product consisting of 25 percent natural gas.

3. If the Program Administrator determines that any supplier has failed to meet its obligations, including its obligation to meet its environmental claims over the calendar year, the Program Administrator shall refer the matter to the Board for further action.

(b) The Program Administrator shall refer violations of disclosure requirements to the Board for their consideration and possible proceedings before the Board, the Office of Administrative Law, the Division of Consumer Affairs, or other venue. Where applicable and appropriate, the Board shall consult the Attorney General, the NJDEP, the Division of Consumer Affairs, and the Office of Ratepayer Advocate, in respect to these referrals.

1. Any party determined by the Board, after notice and hearing, to have violated any provision of these standards relating to environmental disclosure shall be subject to any one or more of the following penalties consistent with provisions of P.L. 1999, c.23:

- i. Suspension or revocation of the electric power supplier's license;
- ii. Financial penalties as permitted by law; and
- iii. Prohibition on accepting new customers.

2. In determining the appropriate sanction, the Board shall consider the following criteria and any other factors

deemed appropriate and material to the supplier's failure to comply:

- i. The good faith efforts, if any, of the entity charged in attempting to achieve compliance;
- ii. The gravity of the violation or failure to comply with the requirements defined herein;
- iii. The number of past violations by the entity charged regarding this standard and other standards adopted by the Board; and
- iv. The appropriateness of the sanction or fine to the size of the company charged.

**APPENDIX A
Label Based on Actual Generation Data**

Environmental Information for the Electricity Product
Electricity supplied from January through December, 1998

(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																																			
(Insert company name) relied on these energy resources to provide the electricity product.	<table style="width: 100%; border-collapse: collapse;"> <tr><td>Coal</td><td style="text-align: right;">_35_ %</td></tr> <tr><td>Gas</td><td style="text-align: right;">_10_ %</td></tr> <tr><td>Hydroelectric (large)</td><td style="text-align: right;">_3_ %</td></tr> <tr><td>Nuclear</td><td style="text-align: right;">_46_ %</td></tr> <tr><td>Oil</td><td style="text-align: right;">_5_ %</td></tr> <tr><td>Renewable energy</td><td></td></tr> <tr><td> Captured methane gas</td><td style="text-align: right;">_0_ %</td></tr> <tr><td> Fuel cells</td><td style="text-align: right;">_0_ %</td></tr> <tr><td> Geothermal</td><td style="text-align: right;">_0_ %</td></tr> <tr><td> Hydroelectric (small)</td><td style="text-align: right;">_0_ %</td></tr> <tr><td> Solar</td><td style="text-align: right;">_0_ %</td></tr> <tr><td> Solid waste</td><td style="text-align: right;">_0_ %</td></tr> <tr><td> Wind</td><td style="text-align: right;">_0_ %</td></tr> <tr><td> Wood or other biomass</td><td style="text-align: right;">_1_ %</td></tr> <tr><td colspan="2" style="border-top: 1px solid black;"></td></tr> <tr><td>Renewable energy sources subtotal</td><td style="text-align: right;">_ _ %</td></tr> <tr><td>TOTAL</td><td style="text-align: right;">100%</td></tr> </table>	Coal	_35_ %	Gas	_10_ %	Hydroelectric (large)	_3_ %	Nuclear	_46_ %	Oil	_5_ %	Renewable energy		Captured methane gas	_0_ %	Fuel cells	_0_ %	Geothermal	_0_ %	Hydroelectric (small)	_0_ %	Solar	_0_ %	Solid waste	_0_ %	Wind	_0_ %	Wood or other biomass	_1_ %			Renewable energy sources subtotal	_ _ %	TOTAL	100%
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Renewable energy sources subtotal	_ _ %																																		
TOTAL	100%																																		
Air Emissions																																			
The amount of air pollution associated with the generation of the electricity product is shown. This amount is compared to a New Jersey benchmark. The benchmark approximates the average emission rate for all electricity generation in New Jersey.	<table style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <tr><td style="text-align: center;">NJ Benchmark</td><td style="text-align: right;">100 %</td></tr> <tr><td style="text-align: center;">CO₂</td><td style="text-align: right;">90%_a</td></tr> <tr><td style="text-align: center;">NO_x</td><td style="text-align: right;">110%_a</td></tr> <tr><td style="text-align: center;">SO₂</td><td style="text-align: right;">100%_d</td></tr> </table>	NJ Benchmark	100 %	CO ₂	90% _a	NO _x	110% _a	SO ₂	100% _d																										
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Energy Conservation																																			
The electricity generation and associated air emissions were avoided through (insert company name) _____ investments in conservation measures. Energy conservation measures means less electricity needs to be generated and pollution is avoided.	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Avoided generation</td> <td style="text-align: center;">Avoided Air Emissions</td> </tr> <tr> <td style="text-align: center;">___ KWh</td> <td style="text-align: center;">___ tons CO₂</td> </tr> <tr> <td></td> <td style="text-align: center;">___ tons NO_x</td> </tr> <tr> <td></td> <td style="text-align: center;">___ tons SO₂</td> </tr> </table>	Avoided generation	Avoided Air Emissions	___ KWh	___ tons CO ₂		___ tons NO _x		___ tons SO ₂																										
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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 B

Label for New Product Based on an Environmental Claim

Environmental Information for the Electricity Product (Insert Product Identification)

(This is a new energy product. The data shown below are prospective values based on the guarantees for electricity to be supplied from January through December, 2000.)

(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

(Insert company name) guarantees that these energy resources will be used to generate this new electricity product.

*38% of the renewable energy sources used to produce the product will be a combination of (list the renewable sources that will be used.)

Coal	0 %	
Gas	40 %	
Hydroelectric (large)	20 %	
Nuclear	0 %	
Oil	2 %	
Renewable energy		
Captured methane gas*	18 %	
Fuel cells*	0 %	
Geothermal*	0 %	
Hydroelectric (small)*	15 %	
Solar*	3 %	
Solid waste*	0 %	
Wind*	2 %	
Wood or other biomass*	0 %	
TOTAL		100%

Air Emissions

(Insert company name) guarantees that the amount of air pollution associated with the generation of the electricity product will not exceed the amount shown. 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 unhealthful component of "smog."

NJ Benchmark		
90%	70%	30%
CO ₂	NO _x	SO ₂

Energy Conservation

(Insert company name) will invest in energy conservation measures sufficient to avoid the electricity generation shown and the associated air emissions. Energy conservation measures means less electricity needs to be generated and pollution is avoided.

Avoided generation Avoided Air Emissions

___ KWh ___ tons CO₂

 ___ tons NO_x

 ___ tons SO₂

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 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.

Renewable energy sources subtotal ___%

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_ %
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."

NJ Benchmark 100 %
126%
153%
396%

0 % CO₂ NO_x SO₂

↑ greater pollution
↓ lesser pollution

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 contact your Energy Supplier for additional information or a copy of the Terms of Service at (762) 525-3333.

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	Hydro	LPG Pumped Storage Hydro Powered by Gas
Gas	Natural Gas—Steam Turbine Natural Gas—Simple Combustion Turbine Natural Gas—Combined Cycle Combustion Turbine	Nuclear	Pondage Hydro Run-of-River Hydro Boiling & Pressurized Water Reactors Pumped Storage Hydro Powered by Nuclear
		Oil	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	Municipal Solid Waste
	Fuel Cells Powered by Methane	Tire Waste
Biomass	Urban Wood Waste	Wave/Tidal Action
		Geothermal
		Solid Waste
		Incineration
		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 NOx 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 is¹:

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 NOx and SO2

New Jersey DEP collects annual fuel consumption and NOx 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 NOx 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 NOx 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 NOx 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 NOx 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		Fuels with unknown heat content that were not estimated						
MGALS=(x)Barrels	23.81	#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:

	No _x (lbs/MWh)	SO ₂ (lbs/Mwh)
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:

$$NO_x: [(0.87*1.0) + (0.02*2.2) + (0.11*1.6 \text{ lb/MWh})]=1.2 \text{ lbs/MWh}$$

$$SO_2: [(0.87*.05) + (0.02*2) + (0.11*1.5 \text{ lb/MWh})]=0.3 \text{ lbs/MWh}$$

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:

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:

$$[(0.87*1,053) + (0.02*1,680) + (0.11*2,070 \text{ lb/MWh})]=1,200 \text{ lbs/ MWh}$$

Reasonable NUG defaults Summary

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

Emission Rates

	NO _x (lbs/MWh)	SO ₂ (lbs/MWh)	CO ₂ (lbs/MWh)
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

¹EIA 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

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.

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.		

APPENDIX I

Conversion Factors

Table-1. Heat Rates

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.409, effective September 11, 2000 (to expire March 11, 2002).
See: 32 N.J.R. 3633(a).

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 personalty 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, 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.

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 busi-

ness 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.410, effective September 11, 2000 (to expire March 11, 2002).
See: 32 N.J.R. 3642(a).

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 municipal-ity 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: _____