

## CHAPTER 4

## ENERGY COMPETITION

## Authority

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

## Source and Effective Date

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

## Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 4, Energy Competition, expires on October 15, 2013. See: 43 N.J.R. 1203(a).

## Chapter Historical Note

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

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

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

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

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

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

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

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

Subchapter 6, Interim Government Energy Aggregation Program Standards, was repealed and Subchapter 6, Government Energy Aggregation Programs, was adopted as special new rules by R.2003 d.322, effective July 11, 2003 (to expire January 11, 2005). See: 35 N.J.R. 3711(a).

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

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

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

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

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

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

Subchapter 1A, Interim Anti-Slamming Standards, was repealed; and Subchapter 2, Energy Anti-Slamming, Subchapter 3, Affiliate Relations, Subchapter 6, Government Energy Aggregation Programs, and Subchapter 7, Retail Choice Consumer Protection, were adopted as new rules by R.2008 d.130, effective May 19, 2008. See: 39 N.J.R. 1405(a), 40 N.J.R. 2526(a).

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 4, Energy Competition, was scheduled to expire on October 15, 2011. See: 43 N.J.R. 1150(a).

## CHAPTER TABLE OF CONTENTS

## SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

- 14:4-1.1 Applicability and scope
- 14:4-1.2 Definitions

## SUBCHAPTER 1A. (RESERVED)

## SUBCHAPTER 2. ENERGY ANTI-SLAMMING

- 14:4-2.1 Scope
- 14:4-2.2 Definitions
- 14:4-2.3 Change order required for switch
- 14:4-2.4 Signing up or switching customers electronically
- 14:4-2.5 Recordkeeping
- 14:4-2.6 LDC notice to customer of a change order
- 14:4-2.7 Slamming complaints and investigation
- 14:4-2.8 Enforcement

## SUBCHAPTER 3. AFFILIATE RELATIONS

- 14:4-3.1 Scope
- 14:4-3.2 Definitions
- 14:4-3.3 Nondiscrimination
- 14:4-3.4 Information disclosure
- 14:4-3.5 Separation
- 14:4-3.6 Competitive products and/or services offered by a utility or related competitive business segments of a utility
- 14:4-3.7 Regulatory oversight
- 14:4-3.8 Dispute resolution
- 14:4-3.9 Violations and penalties

## APPENDIX

## SUBCHAPTER 4. (RESERVED)

## SUBCHAPTER 4A. PUBLIC UTILITY HOLDING COMPANY STANDARDS

- 14:4-4A.1 Scope
- 14:4-4A.2 Definitions
- 14:4-4A.3 Asset investments
- 14:4-4A.4 Access to information
- 14:4-4A.5 Service agreements
- 14:4-4A.6 Structural separation
- 14:4-4A.7 Operational separation

## SUBCHAPTER 5. ENERGY LICENSING AND REGISTRATION

- 14:4-5.1 Scope, general provisions
- 14:4-5.2 Basic requirements for an electric power supplier, gas supplier or clean power marketer license
- 14:4-5.3 Application contents—initial electric power supplier, gas supplier or clean power marketer license
- 14:4-5.4 Processing of an application for an electric power supplier, gas supplier or clean power marketer initial license or renewal
- 14:4-5.5 Requirements that apply after a license is issued
- 14:4-5.6 Term and expiration of an electric power supplier, gas supplier, or clean power marketer license
- 14:4-5.7 Application for renewal of an electric power supplier, gas supplier or clean power marketer license
- 14:4-5.8 Registration procedure—energy agent or private aggregator
- 14:4-5.9 Registration renewal—energy agent or private aggregator
- 14:4-5.10 LDC responsibilities
- 14:4-5.11 Registration procedure—energy consultant
- 14:4-5.12 Fees
- 14:4-5.13 Enforcement

## SUBCHAPTER 6. GOVERNMENT ENERGY AGGREGATION PROGRAMS

- 14:4-6.1 Scope
- 14:4-6.2 Definitions
- 14:4-6.3 General provisions
- 14:4-6.4 Municipal and/or county energy aggregation programs
- 14:4-6.5 Establishing an Option 1 government-private energy aggregation program
- 14:4-6.6 Establishing an Option 2 energy aggregation program
- 14:4-6.7 LDC aggregation agreement for government-private energy aggregation programs
- 14:4-6.8 Advertising for bids, contract award
- 14:4-6.9 Price requirements for government-private programs
- 14:4-6.10 Contents of a contract between a government aggregator and the selected TPS

## SUBCHAPTER 7. RETAIL CHOICE CONSUMER PROTECTION

- 14:4-7.1 Scope
- 14:4-7.2 Definitions
- 14:4-7.3 Advertising standards
- 14:4-7.4 Marketing standards
- 14:4-7.5 Credit
- 14:4-7.6 Contracts
- 14:4-7.7 Customer bills
- 14:4-7.8 Customer information
- 14:4-7.9 Complaints
- 14:4-7.10 Termination of a residential contract by a TPS

## SUBCHAPTERS 8 THROUGH 9. (RESERVED)

## SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

### 14:4-1.1 Applicability and scope

(a) This chapter applies to various regulated entities involved in the supply of electricity and natural gas, as set forth at (b) through (e) below. If more than one subchapter applies to a given type of entity, the entity shall comply with the requirements in all applicable subchapters.

(b) This chapter applies to the following, as these terms are defined at N.J.A.C. 14:4-1.2:

1. Electric public utilities;
2. Electric power suppliers;
3. Gas public utilities;
4. Gas suppliers;
5. Energy agents, including energy consultants;
6. Government aggregators;
7. Private aggregators;
8. Public utility holding companies (PUHCs); and
9. BGS providers.

(c) Additional provisions that may apply to the entities listed at (b) above can be found in the Board's rules on renewable energy at N.J.A.C. 14:8.

(d) In addition to the requirements in this chapter, the regulated entities subject to this chapter are also subject to Board orders and other Board rules, including, but not limited to:

1. N.J.A.C. 14:3, All Utilities, which applies to electric public utilities and gas public utilities, as well as other regulated entities;
2. N.J.A.C. 14:5, Electric Service, which applies to electric public utilities;
3. N.J.A.C. 14:6, Gas Service, which applies to gas public utilities;
4. N.J.A.C. 14:12, Demand Side Management, which applies to electric public utilities and gas public utilities; and
5. N.J.A.C. 14:29, Energy Emergency, which applies to electric public utilities and gas public utilities.

(e) For the purposes of this chapter, a statement, action, or failure to act by a contractor, agent, or representative of a regulated entity shall be deemed to be the statement, action or failure to act by the regulated entity.

### 14:4-1.2 Definitions

The following words and terms, when used in this chapter or in N.J.A.C. 14:8, Renewable Energy and Energy Efficiency, shall have the following meanings unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1.

“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.

“Aggregator” means a government aggregator or a private aggregator, as those terms are defined herein.

“Basic gas supply service” or “BGSS” 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 from a gas supplier 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” or “BGS” means electric generation service that is provided to any customer that has not chosen an electric power supplier, as defined herein, whether or not the customer has received offers for 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.

“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 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 retail customers, but does not take title to the gas.

“Btu” means British thermal unit, a standard unit of energy. One Btu is equal to the amount of heat required to raise the temperature of one pound of liquid water by one degree Fahrenheit at its maximum density, which occurs at a temperature of 39.1 degrees Fahrenheit.

“Clean power marketer” or “CPM” means a person who participates in the Board’s clean power choice program by purchasing and retiring Renewable Energy Certificates (RECs) on behalf of a subscribing customer for an agreed-upon price that is added onto the customer’s utility bill.

“Customer” means the person identified in the account records of a regulated entity as the person responsible for payment of the bill for utility service or another regulated service. A customer may or may not be an end user, as defined in this section.

“Customer information” means information specific to a particular customer, which a regulated entity has acquired or developed in the course of providing services as authorized under this chapter. This term includes, but is not limited to, a customer’s name, address, telephone number, usage habits or history, peak demand and payment history.

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

“Electric distribution company” or “EDC” means an electric public utility, as defined herein. An EDC cannot be an electric power supplier, but may provide basic generation service.

“Electric distribution system” means that portion of an electric system, which delivers electricity from transformation points on the transmission system to points of connection at a customer’s premises.

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

“Electric power supplier” means a person that is licensed by the Board to offer, and to assume the contractual and legal responsibility to provide, electric generation service for use by retail customers. This term includes, but is not limited to, load serving entities, marketers and brokers that offer or provide electric generation service for use by retail customers. An electric power supplier generates electricity or buys electric generation, and sells it to others for use by retail customers. An electric power supplier may provide basic generation service, as defined herein. However, an electric public utility that provides electric generation service only for the purpose of providing basic generation service is not an electric power supplier.

“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 in New Jersey.

“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; the provision of energy consumption management, analysis, and information management; and billing and bill payment services, as authorized by the Board.

“End user” means a person who receives or consumes electricity, gas, telephone, water or wastewater service. An end user may or may not be a customer, as defined herein.

“Energy agent” means a person that is registered with the Board pursuant to N.J.A.C. 14:4-5, and is thereby authorized to arrange the retail sale of electricity, electric related services, gas supply or gas related services between government or private aggregators and electric or gas power suppliers, but does not take title to the electric or gas sold.

“Energy consultant” means an energy agent that is registered with the Board pursuant to N.J.A.C. 14:4-5.11, and is thereby authorized to receive certain customer information from an LDC through electronic data interchange (EDI).

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

“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 in New Jersey.

“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, analysis, and information management; and billing and bill payment services, as authorized by the Board.

“Gas supplier” means a person that is licensed by the Board under EDECA to offer or provide gas supply service to retail customers. This term includes, but is not limited to, marketers and brokers, as defined herein. A non-public utility affiliate of a public utility holding company may be a gas supplier, but a gas public utility or its subsidiary is not a gas supplier. If 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 at N.J.A.C. 14:4-3.

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

“Government aggregator” means an entity that meets both of the following criteria:

1. The entity is subject to the Local Public Contracts Law, 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, N.J.S.A. 18A:64A-25.1 et seq.; or is the New Jersey School Boards Association; and
2. The entity enters into a contract with another government aggregator or with a TPS, as those terms are defined herein, to purchase electric generation service, electric related service, gas supply service, and/or gas related service for one or more of the following purposes:
  - i. For the government aggregator’s own use;
  - ii. For the use of other government aggregators; and/or
  - iii. If the government aggregator is a municipality or county, for use by residential or non-residential customers, as defined herein, within its geographic boundaries.

A government aggregator does not take title to the energy involved in the aggregation program.

“kW” means kilowatts, a unit of power representing 1,000 watts. A kW equals 1/1000 of a MW, as defined herein.

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

“LDC” or “local distribution company” means an electric public utility or a gas public utility, as those terms are defined herein.

“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 the contractual and legal obligation to provide electric generation service, and/or transmission or other services, to a 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 a 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. This term includes direct mailings, telemarketing, internet websites, and in-person solicitation. Advertising is distinguished from marketing by the fact that advertising targets the general public or a group of persons, whereas marketing targets an individual potential customer.

“MW” means megawatts, a unit of power representing 1,000,000 watts. A megawatt equals 1,000 kW.

“Optional service” means an electric related service or a gas related service, as those terms are defined in this section.

“Person” means an individual, firm, joint venture, partnership, copartnership, corporation, association, State, county, municipality, public agency or authority, bi-state or interstate agency or authority, public utility, regulated entity, cable television company, cooperation association, or joint stock association, trust, limited liability company, governmental entity, or other legal entity, and includes any trustee, receiver, assignee, or personal representative thereof.

“PJM Interconnection, L.L.C.” or “PJM” means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, as defined in this section. Additional information regarding PJM and its subsidiaries can be found at <http://www.pjm-eis.com/index.html>.

“PJM Environmental Information Services” or “PJM-EIS,” means the wholly-owned subsidiary of PJM Technologies, Inc., which is in turn a wholly owned subsidiary of PJM Interconnection, L.L.C. PJM Environmental Information Services provides environmental and emissions attributes reporting and tracking services to its subscribers in support of renewable portfolio standards and other information disclosure requirements that may be implemented by government agencies.

“PJM region” means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection, as defined in this section. The PJM region is described in the Amended and Restated Operating Agreement of PJM Interconnection, which is incorporated herein by reference, as

amended and supplemented. The Operating Agreement can be obtained on the PJM Interconnection website at [www.pjm.com](http://www.pjm.com), or by writing to PJM Interconnection, Legal Department, 955 Jefferson Avenue, Norristown, PA, 19403.

“Private aggregator” means a non-government business or non-profit organization authorized to operate in New Jersey, that combines the energy loads of multiple end users, and enters into a contract with an electric power supplier for the purchase of electric generation service on behalf of those end users. A private aggregator does not take title to the energy involved in the transaction.

“Ratepayer Advocate” or “RPA” means the Division of Ratepayer Advocate in the Department of the Public Advocate or any successor agency.

“Regulated entity” has the same meaning as is assigned to this term at N.J.A.C. 14:3-1.1.

“Retail” means the sale of energy to, or the purchase of energy by, one or more end users, regardless of whether the delivery of the energy will be through infrastructure owned or operated by the seller.

“Retail competition” means both of the following:

1. The ability of retail customers to purchase electric generation service from an electric power supplier, or to choose basic generation service; and
2. The ability of any electric power supplier, upon meeting basic licensing requirements, to offer electric generation service to retail customers.

“Retail customer” means a customer, as defined in this section, that purchases energy for its own use, or for use by other end users whose relationship with the customer is not an arms-length energy purchase transaction. This term includes government or private aggregator, as well as its customers.

“Slamming” means switching a customer from one TPS or LDC (for electric generation service or gas supply service) to another TPS, without obtaining authorization from the customer in accordance with this subchapter.

“Third party supplier” or “TPS” means an electric power supplier or a gas supplier as those terms are defined in this section.

“Therm” means 100,000 Btus.

“Wholesale customer” means a customer, as defined herein, that is not a retail customer, as defined herein.

Special amendment, R.2008 d.175, effective May 23, 2008 (to expire November 23, 2009).

See: 40 N.J.R. 3751(a).

In definition “Electric distribution system”, deleted the last sentence.

Amended by R.2009 d.91, effective March 16, 2009.

See: 40 N.J.R. 3586(a), 41 N.J.R. 1261(a).

In definition “Electric distribution system”, inserted a comma preceding “which”; and incorporated the special amendment previously adopted as R.2008 d.175.

Public Notice.

See: 41 N.J.R. 1532(b).

## SUBCHAPTER 1A. (RESERVED)

## SUBCHAPTER 2. ENERGY ANTI-SLAMMING

**14:4-2.1 Scope**

(a) This subchapter is intended to protect against unauthorized changes or “switches” 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, N.J.S.A. 48:3-86 et seq.

(b) This subchapter applies to local distribution companies (LDCs) and third-party suppliers (TPSs), as these terms are defined at N.J.A.C. 14:4-1.2.

(c) This subchapter applies to the switching of a customer in either of the following situations:

1. A switch from one TPS to another TPS; or
2. A switch from an LDC to a TPS.

(d) In advertising and marketing to customers, and in switching customers from one TPS to another, or from an LDC to a TPS, a TPS shall comply with the Board’s consumer protection standards for electric power suppliers and natural gas suppliers at N.J.A.C. 14:4-7.

**14:4-2.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1 and in N.J.A.C. 14:4-1.2.

“Authorized TPS” means a TPS that a customer has voluntarily chosen in accordance with this subchapter.

“Change order” means a request, submitted by a TPS to an LDC, to switch the customer from one provider of electric generation service or gas supply service to another provider. A change order can apply to a switch from a TPS to another TPS, or from an LDC to a TPS.

“Subject customer” means a customer whose account is the subject of a change order, slamming complaint, or other action related to this subchapter.

**14:4-2.3 Change order required for switch**

(a) No TPS shall submit a change order to an LDC, unless the change order complies with this subchapter.

(b) To comply with this subchapter, a change order shall meet all of the following requirements:

1. The change order shall be transmitted from the TPS to the LDC through an Electronic Data Interchange (EDI)

transaction, or through another electronic information exchange system with equivalent speed and security. Information on EDI may be found at the Board’s website at <http://www.nj.gov/bpu/divisions/energy/edi.html>; and

2. The change order shall demonstrate, through compliance with the verification requirements at (c) below, that the customer has authorized the switch affirmatively and voluntarily.

(c) The change order shall be verified through one of the following:

1. Documentation that the switch occurred pursuant to an opt-out municipal aggregation program established in accordance with N.J.A.C. 14:4-6;

2. An audio recording of a third-party verification, performed verbally over the telephone by an independent third party. The verification shall:

- i. Identify the customer;
- ii. Verify that the person speaking is the customer of record, or is authorized to make the change;
- iii. Indicate the date of the recording;
- iv. Confirm that the person speaking voluntarily wishes to make the TPS change;
- v. Identify the name of the TPS; and
- vi. Indicate the account number of the LDC and the type of service to be switched;

3. A signature in ink on a paper form, showing that the customer voluntarily authorized the switch. This form shall:

- i. Identify the customer;
- ii. Verify that the signatory is the customer of record;
- iii. Confirm that the signatory is authorized to make the change;
- iv. Indicate the date upon which the document was signed;
- v. Confirm that the signatory voluntarily wishes to make the TPS change;
- vi. Identify the name of the TPS; and
- vii. Indicate the account number of the LDC and the type of service to be switched;

4. An electronic record of an internet transaction that meets the requirements at N.J.A.C. 14:4-2.4; or

5. An audio recording of a telephone call initiated by the customer.

(d) If a customer is switching both electric power supply and gas supply service, the new TPS shall submit a separate

change order for each service, even if the same TPS is chosen to provide both electric service and natural gas service.

(e) A TPS that switches a customer without complying with this subchapter shall be subject to enforcement in accordance with N.J.A.C. 14:4-2.9.

(f) Pursuant to N.J.A.C. 14:4-1.3(c) and 1.5(b), a switch requested by a customer through the internet would still be subject to the separate "negative verification" process initiated by the utility through regular mail.

(g) All change orders shall contain the following customer information transmitted in accordance with the Board's approved EDI protocol. The change order shall not provide any additional customer information, as defined at N.J.A.C. 14:4-1.2, without the customer's express consent:

1. Name;
2. Address at which utility service is delivered;
3. Telephone number;
4. Utility account number; and
5. Meter number, if a TPS or LDC requires this to complete enrollment.

#### **14:4-2.4 Signing up or switching customers electronically**

(a) A TPS that uses electronic methods to sign up customers, renew customers' contracts for service, and/or obtain authorization to switch a customer, shall comply with this section.

(b) If a TPS uses electronic methods to sign up, renew, or switch customers, the TPS shall comply with the Federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001 through 7006, which is incorporated herein by reference as amended and supplemented and is available at [http://www.access.gpo.gov/uscode/title15/chapter96\\_subchapteri\\_.html](http://www.access.gpo.gov/uscode/title15/chapter96_subchapteri_.html).

(c) A TPS that uses electronic signup, renewal, or switching shall maintain a website that includes, at a minimum, the following:

1. A statement that the customer, by using electronic signup, renewal, or switching, is consenting to the terms and conditions listed on the website in electronic form;
2. A separate statement as to the hardware and software requirements for a customer to access and retain electronic records of the transactions made on the website; and
3. A mechanism to obtain the customer's acknowledgement of the customer's affirmative obligation to provide the TPS with any change in e-mail address, and/or with any withdrawal of consent for the electronic retention of contracts or other customer information.

(d) The website through which a customer may sign up for, renew service with, or switch TPSs shall require the customer to pass through separate web pages that provide and collect, at a minimum, all of the following:

1. Customer information including, at a minimum, name, service address, e-mail address, utility account number and, where required by a utility to complete enrollment, meter number;
2. The full terms and conditions of the contract. The customer shall be required to affirmatively indicate that the customer has read the terms and conditions;
3. A requirement that the customer assent to a statement indicating that:
  - i. The customer has the authority to sign up, renew, and/or change its TPS for the account listed;
  - ii. The customer has read, understands and agrees to the terms and conditions of the contract; and
  - iii. The customer is voluntarily authorizing a new enrollment, a renewal, or a switch in its TPS;
4. The environmental disclosure information for the service being purchased or renew, as required under N.J.A.C. 14:8-3, or a prominently displayed link to this information;
5. A prompt to the customer to print or save the terms and conditions to which the customer assents; and
6. An electronic method and/or an e-mail address for the customer to submit a request to cancel the contract, consistent with the terms of the contract.

(e) When a customer switches to a TPS, enrolls with, or renews TPS service, the receiving TPS shall retain a record of all of the following:

1. The date and time of the customer's acceptance of service;
2. The terms and conditions of service that the customer accepted, in the same form and exact wording as the terms of service were presented to the customer; and
3. The product that the customer accepted.

(f) The TPS shall provide the customer with a separate electronic message from the TPS, acknowledging receipt of the enrollment, renewal, or change.

(g) Each TPS shall ensure that all information that is transferred electronically between a customer and the TPS is encrypted, using an encryption standard that will ensure the privacy and security of all customer information.

(h) The TPS shall ensure that any electronic contract containing a TPS's terms and conditions shall be identified by a version number in order to ensure that the TPS can verify the particular contract to which the customer assents.

(i) Upon request by the customer, the TPS shall make available to the customer a copy of the terms and conditions, including the environmental disclosure label, of the contract version number that the customer has signed. The TPS shall provide to the customer a toll-free telephone number, Internet means, or an e-mail address for the customer to request this information throughout the duration of the contract.

(j) A contract shall be terminated only in accordance with the termination provisions in the Board's consumer protection rules at N.J.A.C. 14:4-7.10. If a contract for a customer enrolled or renewed via the Internet is terminated, the TPS shall provide a cancellation number to the customer and to the LDC.

#### 14:4-2.5 Recordkeeping

(a) All change orders and records of customer authorization of switches shall be retained by the TPS for a minimum of three years.

(b) The TPS shall maintain a record of all of the following:

1. The date and time of the customer's acceptance of service;
2. The terms and conditions of service that the customer accepted, in the same form as the terms of service were presented to the customer; and
3. The product that the customer accepted.

(c) Each LDC shall submit a quarterly report to the Board's Division of Customer Assistance, containing all slamming complaints received, indicating the customer's name, address, telephone number, type of service, and the name of the TPS that is alleged to have requested the switch. If an LDC receives no slamming complaints during a quarter, no report is required.

#### 14:4-2.6 LDC notice to customer of a change order

(a) When an LDC receives a change order from a TPS to switch a customer's energy supplier, the LDC shall notify the subject customer of the change order.

(b) The notice required in (a) above shall be sent in writing, within one business day after the LDC receives or prepares the change order. The Board may modify this time frame for a particular LDC, in special cases and for good cause shown, by Board order.

(c) If an LDC receives a complaint from a customer about a pending or processed change order, the LDC shall immediately inform the customer that they may contact the TPS for dispute resolution, or Board staff to file a customer complaint. Upon receiving the complaint, Board staff will conduct an investigation.

(d) The LDC shall execute all TPS change orders that comply with this subchapter as soon as possible and without unreasonable delay.

#### 14:4-2.7 Slamming complaints and investigation

(a) A customer that believes it has been the victim of slamming may contact the TPS to resolve the problem, and/or may contact the Board and file a written complaint.

(b) If a customer contacts the Board with an allegation that the customer has been slammed, the portion of the customer's bill that relates to the TPS's services shall be considered in dispute starting upon the date of the switch that is the subject of the slamming complaint. The TPS shall be subject to the same procedures and requirements that apply to a utility involved in a billing dispute, as set forth at N.J.A.C. 14:3-7.6.

(c) The Board may investigate an allegation of slamming or any other violation of this subchapter upon its own initiative or upon a complaint.

(d) In the event of a dispute, the TPS shall produce the customer switch authorization within three days of a request by the customer or the Board.

(e) If the Board finds that a customer has been slammed, the customer shall not be liable to its authorized TPS or its LDC for any charges in excess of those the customer would have been liable for had the slamming not occurred.

(f) If a customer disputes a change order, either before or after the LDC effectuates a switch, the TPS shall produce the documentation required under N.J.A.C. 14:4-2.3(c) within 10 business days after a request by the customer or the Board.

#### 14:4-2.8 Enforcement

(a) For the purposes of this subchapter, the act of any person, as defined at N.J.A.C. 14:4-1.2, acting on behalf of a TPS, shall be deemed to be the act of the TPS; and the act of any person acting on behalf of an LDC shall be deemed to be the act of the LDC.

(b) Any person determined by the Board, after notice and hearing, to have violated any provision of this subchapter shall be subject to one or more of the following:

1. Suspension or revocation of the TPS's authority to conduct business in New Jersey;
2. Financial penalties as permitted by law; and
3. Any and all other remedies authorized by law.

(c) In considering violations of EDECA or this subchapter, the Board may consider every day of each violation against each customer as a separate offense.

(d) A TPS that collects charges from a customer as a result of a violation of this subchapter shall be liable to the customer's authorized TPS or LDC for all charges paid by the

customer as a result of the violation, in addition to any penalties or other remedies authorized under this subchapter or other laws.

(e) In addition to any other penalties, a TPS that violates this subchapter may also be liable, upon Board order, for direct costs incurred by the authorized TPS and/or the LDC as a result of the violation.

### SUBCHAPTER 3. AFFILIATE RELATIONS

#### 14:4-3.1 Scope

(a) This subchapter shall apply as follows:

1. N.J.A.C. 14:4-3.3 through 3.5 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;

2. N.J.A.C. 14:4-3.6 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. 14:4-3.7 through 3.9 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) 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 this subchapter 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. To obtain such an exception, the applicant shall meet the requirements of N.J.A.C. 14:1-1.2(b).

#### 14:4-3.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1 and in N.J.A.C. 14:4-1.2.

“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 in this section and in the Act.

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

“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 ratepayers to the competitive product and/or service or affiliate.

“Dth” means decatherms or ten therms.

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

“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 May 19, 2008.

“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 58(b), which separate business unit shall be a related competitive business segment of an electric public utility or gas public utility as defined in this section and in the Act.

“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.

“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.

“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 that is a public utility holding company by virtue of this definition, unless the Federal Energy Regulatory Commission (FERC), or its successor, by order, declares such company not to be a public utility holding company under Title XII, Subtitle F of the Energy Policy Act of 2005 (known as the Public Utility Holding Company Act of 2005), Pub. L. No. 109-58, §§1261-77, 42 U.S.C. §§15801 et seq. (2005), or its successor; or

2. Any person that the FERC, 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 2005 or its successor.

“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 that 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.

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

#### 14:4-3.3 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.

(b) 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.

(c) 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.

(d) 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. 14:4-3.5(g) and (h), in (i) and (j) or 3.6(a) through (f), provided the transactions specified in N.J.A.C. 14:4-3.6 comply with all other applicable rules.

(e) 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 N.J.A.C. 14:4-3.4, 3.5 and 3.6, provided the transactions specified in N.J.A.C. 14:4-3.6, 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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 (q) through (s) below.

(j) 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.

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

(l) 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.

(m) 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.

(n) 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.

(o) Except as otherwise provided by this subchapter, an electric and/or gas public utility shall not provide any assistance, aid or services to its PUHC or related competitive segment of the PUHC if related to customer enrollment, marketing or business development unless offered to all competi-

tors on a nondiscriminatory 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, 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.

(p) Provided it is in compliance with this subchapter, and subject to the provisions of N.J.A.C. 14:4-3.4(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.

(q) 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 (f) or (g) above; and
8. Procedures by which a non-affiliated entity may request a comparable offer.

(r) 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.

(s) All records maintained pursuant to (q) and (r) above shall also conform to FERC rules, where applicable.

#### 14:4-3.4 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. 14:4-3.5(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), the 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. The suppliers 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 that 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 the 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, that 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 Rate Counsel review upon 72 hours notice, or at a time mutually agreeable to the electric and/or gas public utility and the Board and/or Rate Counsel.

(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.

#### 14:4-3.5 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), 18 CFR Part 101, as amended and supplemented, which is incorporated by reference herein.

(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 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 this subchapter.

i. Prevention of unauthorized access to computer and information systems shall be specifically addressed as part of an electric and/or gas public utility's compliance plan submitted pursuant to N.J.A.C. 14:4-3.7(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 shall 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 this subchapter 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. 14:4-3.4 and this section, as well as other applicable Board pricing and reporting rules.

(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 this subchapter, 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. 14:4-3.7(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 this subchapter, and to ensure the electric and/or gas public utility is not utilizing joint corporate support services as a conduit to circumvent this subchapter.

(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 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 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 this subchapter, 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. For the purposes of this paragraph, "joint participation" includes any sharing of costs or facilities associated with the event, such as using the same signage, handouts, transport, advertising, booth or space, or presentation time; 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, that 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 boards of directors as corporate officers, except for the following circumstances:

1. In instances when this subchapter is 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; and

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. 14:4-3.7(a) through (d), 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 this subchapter.

(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 that 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 competi-

tive 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; and

4. In the event that an employee is returned to the electric and/or gas public utility, such employee cannot be transferred for employment by a related competitive business segment of the public utility holding company that 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, that said related competitive business segment of the public utility holding company would otherwise be precluded from having pursuant to this subchapter.

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 this subchapter 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 this subchapter or other 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; and

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 this subchapter 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; and

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.

#### **14:4-3.6 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 this subchapter, 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 in accordance with N.J.A.C. 14:1-11, 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 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 provided that interactions between the gas public utility and the related competitive business segment are in compliance with this subchapter.

(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, 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 by July 18, 2008, 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 that an electric and/or gas public utility or its related competitive business segment intends to offer, the electric and/or gas public utility shall 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 subchapter Appendix, incorporated herein by reference.

(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 Rate Counsel 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 that 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 this subchapter, the Board may determine that any service shall remain regulated for purposes of public safety and welfare. Notwithstanding the other provisions of this subchapter, 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, shall 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:

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;

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, or 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. The total number of customers;
2. The total revenues received by the utility;
3. The dedicated assets of the utility;
4. The carrying costs on dedicated assets;
5. The portion of shared assets allocated to the competitive service(s);
6. The dedicated expenses incurred in the start-up, promotion, and provision of service;
7. The fully-allocated shared expenses;
8. The total margins, defined as the difference between the total revenues received and the total expenses;
9. The net revenues, defined as the difference between total revenues and dedicated expenses; and
10. Any other item that the Board determines is necessary to enable the Board to evaluate that utility or related competitive business segment's compliance with this subchapter.

(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, in accordance with N.J.S.A. 48:3-7.

(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 accordance with the applicable Uniform System of Accounts (USOA), 18 CFR Part 101. Specifically, the following revenues 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;

2. For electric public utilities and related competitive business segments of electric public utilities except as set forth in (r)<sup>3</sup> below, pursuant to N.J.S.A. 48:3-55(b), 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;

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; and

4. For gas public utilities, the total margins shall be treated above-the-line for ratemaking purposes and credited to ratepayers.

(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 accounts in accordance with

the applicable Uniform System of Accounts (USOA), 18 CFR Part 101 and credited to ratepayers.

(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)<sup>2</sup> 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 shall notify the Board of the proposed change at least 30 days prior its intended implementation. Such notification shall 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 in accordance with (t) above.

(w) An electric and/or gas public utility proposing a substantive change in offering by itself or its related competitive business segment shall 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. 14:4-3.9(b).

(y) In the event that the Board determines as a result of the audit performed pursuant to N.J.S.A. 48:3-56, N.J.A.C. 14:4-3.7(e) through (g) 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, 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 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.

#### 14:4-3.7 Regulatory oversight

(a) Each electric and/or gas public utility shall file its compliance plan with the Board and provide a copy of said plan to the Rate Counsel at least once in every 12-month period or upon changes to the plan, and thereafter, within 12 months of the revised plan.

(b) Said compliance plan shall demonstrate that there are adequate procedures in place to ensure compliance with this subchapter and shall include the electric and/or gas public

utility's dispute resolution procedure pursuant to N.J.A.C. 14:4-3.8(a).

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, and a public posting of the information shall also be made within that time period.

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

(e) Every two years, or more often 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 this subchapter.

1. The scope of the audit shall be established by the Board and shall take into consideration the electric and/or gas public utility's level of activity with its affiliates.

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

#### 14:4-3.8 Dispute resolution

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

1. The procedure shall be included in the electric and/or gas public utility's annual compliance plan.

(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 30 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 this subchapter to the Board, with a copy provided to the Rate Council 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 Rate Counsel and shall contain, at minimum, a summary of the complaint, the man-

ner in which the complaint was resolved, or an explanation why the complaint remains pending.

#### 14:4-3.9 Violations and penalties

(a) If, as a result of an audit conducted pursuant to N.J.A.C. 14:4-3.7(e) through (g) or by any other means, the Board determines that an electric and/or gas public utility has committed violations of N.J.A.C. 14:4-3.3, 3.4, 3.5, 3.7 or 3.8, which are not substantial violations as described in (b) below, 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. 14:4-3.7(e) through (g) 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. 14:4-3.3, 3.4, 3.5, 3.7 or 3.8, which are substantial in nature so as to result in unfair competitive advantages for an electric or gas public utility, 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/or
4. For a second violation:
  - i. Initiate a hearing to reconsider its approval of the formation of the public utility holding company.

### APPENDIX

#### SECTION 1. Timing and Review

##### 1. Time for Filing of Petition

a. The electric distribution company/gas distribution company (EDC/GDC) shall file a petition at least 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 Board 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 Board 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 Rate Counsel, as defined at N.J.A.C. 14:3-1.1, and other interested parties; and
- iii. All confidentiality issues are resolved.

#### SECTION 2. Petition Filing and Confidentiality

##### 1. Required Petition Contents

a. Said Petition shall 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. A detailed description of how new competitive service offering(s) will affect this schedule, meter reading schedules, routine maintenance, etc.;
- iv. The 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. A 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. A detailed description of the proposed competitive service offering(s), including a list of the parts covered under said offering(s);
- viii. Draft bill inserts which 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; and

4. The EDC/GDC will provide free of charge, such services as gas leak investigations and other safety related services;

ix. The 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. An 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. Five to 10 in-State independent contractors;
3. Any out-of-State utility affiliates;
4. Any out-of-State independent contractors; and
5. Any New Jersey EDC/GDC that offers the proposed competitive services offering(s) outside of its franchise area;

xiii. A 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. A detailed explanation of how prices will be conveyed to customers if subcontractors are used;

xvi. A 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. A 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 or rendered by a participating subcontractor; and

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 shall submit a confidentiality claim in accordance with the Board's Open Public Records Act (OPRA) rules at N.J.A.C. 14:1-12.

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## SUBCHAPTER 4. (RESERVED)

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### SUBCHAPTER 4A. PUBLIC UTILITY HOLDING COMPANY STANDARDS

#### 14:4-4A.1 Scope

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

#### 14:4-4A.2 Definitions

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

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

to this subchapter can be found at N.J.A.C. 14:3-1.1 and 14:4-1.2.

“Aggregate investment” means all amounts invested, or committed to be invested, in nonutility associates for which there is recourse, directly or indirectly, to the public utility holding company, excluding:

1. The portion of the public utility holding company’s book investment that is attributable to increases in retained earnings or to indebtedness issued by any subsidiary with respect to which there is no recourse directly or indirectly to the public utility holding company; and

2. The amount invested in one nonutility associate by another nonutility associate.

“Board of directors New Jersey qualification” means residency, employment and/or other significant ties with the State of New Jersey, as determined by the Board on a case-by-case basis.

“Board of directors independence qualification” means the New York Stock Exchange listing requirements pertaining to the independence of directors, as set forth in Section 303A.02(b) of the NYSE Listed Company Manual ([www.nyse.com/regulation](http://www.nyse.com/regulation)) and related NYSE rules ([www.nyse.com/regulation/rules/1098571481177.html](http://www.nyse.com/regulation/rules/1098571481177.html)), as may be amended and supplemented from time to time, which are incorporated by reference herein.

“Board staff” means the staff of the New Jersey Board of Public Utilities, or successor agency. Except as otherwise provided for, any information required to be provided to the Board staff under this subchapter shall be provided at a time, location, and in a manner as determined by Board staff. In addition, if immediate notification to Board staff is required, electronic mail notification shall be submitted to the Board Secretary, the Division of Audits, the Office of the Chief Economist, and the Division of Energy, or any successors.

“Money pool” means an inter-company lending arrangement whereby depository, surplus cash funds are loaned or borrowed by an electric or gas public utility or other utility within the public utility holding company system to meet short-term (under 365 days) operating cash requirements.

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

1. Entities that are developing facilities that will engage in public utility or utility associate activities; and
2. Entities that are directly related and subordinate to, or that directly support, public utility or utility associate activities, including, but not limited to:
  - i. Entities that provides fuel to generating plants;
  - ii. Entities created to facilitate tax advantages;

- iii. Entities created to facilitate financing transactions;

- iv. Captive insurance and other risk management entities; or

- v. Entities that hold or manage emission allowances or other environmental allowances or credits.

“Preexisting director” means a director on the board of directors whose term commenced before April 6, 2009. A preexisting director’s reelection to, or extension of term on, the board of directors after April 6, 2009, terminates the preexisting director designation for that director.

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

“Service agreement” means a contract or agreement whereby a public utility holding company or a subsidiary undertakes to sell, lease, or furnish any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service, information or data, or any goods, equipment, materials, supplies, appliances, or similar property, to an electric or gas public utility in the same public utility holding company system. Nothing in this subchapter shall be deemed to expand the Board’s jurisdiction over service agreements beyond its existing jurisdiction under N.J.S.A. 48:3-7.1.

“Subsidiary” or “subsidiary company” of a public utility holding company means:

1. Any company, for which 10 percent or more of the outstanding voting securities of the company are directly or indirectly owned, controlled, or held with power to vote, by the public utility holding company; and

2. Any person over whose management or policies the public utility holding company has a controlling influence that is sufficient to make it necessary for the rate protection of utility customers that such person be subject to the obligations, duties, and liabilities imposed by this subchapter upon subsidiary companies of public utility holding companies. This shall apply regardless of whether the public utility holding company exercises its influence directly or indirectly, either alone or pursuant to an arrangement or understanding with one or more other persons. The Board shall make this determination after notice and opportunity for hearing.

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

1. Producing, generating, transmitting, delivering, distributing, storing, selling, marketing, and/or furnishing natural gas, heating oil, electricity, propane, thermal energy and/or steam energy to wholesale and/or retail customers;

2. Gas and/or electricity related services, including, but not limited to:

i. Energy management services and demand side management activities;

ii. Development and commercialization of electro-technologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, clean coal technologies, and similar innovations;

iii. Ownership, repair, maintenance, replacement, operation, sale, installation and servicing of refueling, recharging and conversion equipment and facilities relating to electric and compressed natural gas powered vehicles;

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

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

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

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

(3) Renewable energy resources;

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

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

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

ix. Nuclear decommissioning trust activities;

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

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

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

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

xiv. Captive insurance and other risk management activities;

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

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

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

4. Shared services.

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

Amended by R.2009 d.110, effective April 6, 2009.  
See: 40 N.J.R. 1616(a), 41 N.J.R. 1500(a).

In (a), deleted “used” following “meaning as”; in the introductory paragraph of (b), added the last sentence; and in (b), added definitions “Aggregate investment”, “Board of directors New Jersey qualification”, “Board of directors independence qualification”, “Board staff”, “Money pool”, “Preexisting director”, and “Service agreement”.

#### 14:4-4A.3 Asset investments

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

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

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

1. A listing of names and classification (that is, utility associate or nonutility associate) for each subsidiary in the public utility holding company system;

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

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

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

Amended by R.2009 d.110, effective April 6, 2009.

See: 40 N.J.R. 1616(a), 41 N.J.R. 1500(a).

In (a), substituted "investment in" for "assets of" and "does" for "do"; in (c)1, substituted "classification (that is, utility associate or nonutility associate)" for "total assets"; in (c)2 substituted "aggregate investment" for "assets of all nonutility associates"; and rewrote (c)3.

#### 14:4-4A.4 Access to information

(a) An electric or gas public utility or its public utility holding company system shall, upon request, provide the Board and/or Board staff with full and timely access to any books and records, correspondence, memoranda, contracts, or documents containing information relating to the electric or gas public utility's interaction with:

1. Its public utility holding company system; or
2. Any other company.

(b) An electric or gas public utility and its public utility holding company system shall, upon request, make available to the Board and/or Board staff all information that the electric or gas public utility or its public utility holding company system files with the Federal Energy Regulatory Commission (FERC) with regard to merger reviews, service agreements, cost allocations, or any other subject matter that the Board and/or Board staff determines is necessary to evaluate an electric or gas public utility's ability to provide safe, adequate and proper service at just and reasonable rates.

(c) Notice shall be given to the Board within 10 business days if an electric or gas public utility or its public utility holding company system receives notice of a decision by FERC or another Federal or state agency to perform any investigation or audit of:

1. The electric or gas public utility;
2. Any part of its public utility holding company system; or
3. A party with which the electric or gas public utility has a material transactional relationship.

(d) An electric or gas public utility or its public utility holding company system shall provide copies to the Board of any report and/or document that results from the investigation or audit described at (c) above, that could reasonably be expected to have a material impact on the financial condition or operations of the electric or gas public utility or its public utility holding company system.

(e) The public utility or public utility holding company system shall provide the report and/or document described in (d) above to the Board no later than 10 business days after the issuance of the report and/or document, and shall include an executive summary that highlights the findings and recommendations. A description of the investigation and/or final audit report appearing in a transactional, current or periodic filing with the Securities and Exchange Commission (SEC) under the Securities Act of 1933 or the Securities Exchange Act of 1934, will satisfy the requirement of an executive summary. If the Board and/or Board staff request additional material, the electric or gas public utility or public utility holding company system shall supply the additional material within 10 days after such a request.

(f) Upon reasonable notice, an electric or gas public utility shall provide the Board and/or Board staff with access to its Federal income tax returns, including access in its New Jersey office to complete copies of any consolidated Federal income tax filings that include the electric or gas public utility.

(g) In cases where the electric or gas public utility is included in a consolidated Federal income tax filing, the electric or gas public utility may elect to comply with (f) above by providing a summary schedule in lieu of providing the complete consolidated Federal income tax filings. However, if the electric or gas public utility elects to provide the summary schedule, the electric or gas public utility shall also provide the pages from the consolidated Federal income tax return from which the data on this schedule is derived. The electric or gas public utility shall provide this information within 10 business days after a Board and/or Board staff request, or within such other period of time as may be agreed to by the Board and/or Board staff.

(h) Any summary schedule submitted under (g) above shall include all of the following:

1. A summary of the actual consolidated income tax filings of the public utility holding company for each of the past 10 years (including estimates for the most recent tax year if it has not yet been filed); and
2. All of the following information by year:
  - i. The name of the public utility holding company that filed the consolidated tax filing and the name of each subsidiary included in the consolidated tax return (indicate by each name whether or not the entity is an electric or gas public utility or a utility certified as such in another state);
  - ii. The taxable income/(loss) shown separately for the public utility holding company and for each subsidiary;
  - iii. The taxable income/(loss) for the electric or gas public utility in total and broken down by electric operations and gas operations if the electric or gas public utility has combined electric and gas operations;

- iv. The total consolidated taxable income;
- v. The Federal income tax rate;
- vi. The consolidated Federal income tax liability;  
and
- vii. The alternative minimum tax payment, if any.

(i) Any electric or gas public utility or its public utility holding company system required to file a Form 60 with FERC shall provide to the Board a copy of such form simultaneously with its filing with FERC.

(j) If an electric or gas public utility has a service agreement with a subsidiary of its public utility holding company and is exempt from filing a Form 60 with FERC, the electric or gas public utility or public utility holding company system shall make an annual filing with the Board no later than May 1 of each year. The filing shall include:

1. A comparative income statement and balance sheet for the subsidiary;
2. A schedule and analysis of billings to the public utility and all other subsidiaries (similar to FERC Form 60, Schedules XVI, XVII and XVIII);
3. Allocation methodologies;
4. Current year plan factors compared with previous year plan factors and variances; and
5. An organizational chart for the subsidiary.

(k) If an electric or gas public utility or its public utility holding company system does not have a service agreement with a subsidiary, but has an agreement to share services with another entity, the public utility or public utility holding company system shall make an annual filing with the Board no later than May 1 of each year. The filing shall include:

1. An analysis of billings for each shared service; and
2. An analysis comparing the direct and indirect charges for subsidiaries and non-subsidiaries.

(l) The Board and/or Board staff may require any public utility or public utility holding company system to keep any record or document that the Board and/or Board staff determines is necessary to enable the Board and/or Board staff to evaluate a public utility's compliance with this subchapter or the Board's orders, policies, and rules.

New Rule, R.2009 d.110, effective April 6, 2009.  
See: 40 N.J.R. 1616(a), 41 N.J.R. 1500(a).

#### 14:4-4A.5 Service agreements

(a) An electric or gas public utility shall obtain Board approval prior to entering into a service agreement.

(b) An electric or gas public utility shall notify the Board in writing of all modifications to any approved service agreement, including the provision of services to a non-affiliate,

and additions or deletions to the categories of services provided under the service agreement.

(c) An electric or gas public utility shall obtain Board approval for any modification to cost allocation methodologies and formulae, which would result in a five percent or greater change in allocation factors. The filing should be submitted at least 60 calendar days prior to the proposed effective date of the modification. The filing shall include the following:

1. All allocation formulas, supporting work papers, and a complete list and description of the services and operations covered by the service agreement; and
2. A comparison of the budget under the existing service agreement and a pro-forma budget under the new service agreement, showing service company costs and charges that will apply to the electric or gas public utility.

(d) Subject to such approvals as required in (c) above, if a public utility holding company system adds or removes a party to a service agreement, the electric or gas public utility shall ensure that the following occurs within 60 business days after such addition or removal:

1. Cost allocation factors are adjusted to reflect the addition or removal of participants at the time service commences or ends, as applicable;
2. Payment by the new participant begins; and
3. Adjustments are made for the electric or gas public utility's share of service company costs to reflect contributions from the new participant.

(e) An electric or gas public utility or its public utility holding company shall notify the Board no later than 10 business days after it receives notice that FERC or any other Federal or state agency has rendered a decision having an impact on a service agreement that the Board has approved or that is pending before the Board.

(f) For ratemaking purposes, an electric or gas public utility shall:

1. Apply to any assets not acquired by the electric or gas public utility, but intended for its use, the same capitalization, expense and depreciation policies that the Board has determined apply to assets acquired directly by the electric or gas public utility; and
2. Apply to assets acquired on behalf of the electric or gas public utility for its use, the rate of return authorized in the electric or gas public utility's most recent base rate case, unless the company acquiring the assets on behalf of the electric or gas public utility finances, or otherwise obtains the assets at a lower cost than the electric or gas public utility could otherwise obtain them. In such a case, the lower cost shall be reflected in service agreement billings to the electric or gas public utility, and the electric

or gas public utility shall pass the resulting benefit on to its ratepayers.

(g) An electric or gas public utility shall not purchase or contract for any product or service otherwise covered under a service agreement that the electric or gas public utility can provide for itself or can procure from another company on more advantageous terms. The determination as to whether to refuse to purchase or contract for any product or service covered under the service agreement shall take into account all relevant factors, including, but not limited to, price, qualifications of the alternative provider, contract terms, quality of the product or service provided, and the efficiency, timeliness, and convenience of delivery or provision of the product or service. The determination above as to whether to refuse to purchase or contract for any product or service covered under the service agreement shall in no way limit the Board and/or Board staff from independently reviewing those activities. An electric or gas public utility shall not be required to take action that would result in a conflict of interest, violation of applicable law, or breach of any pre-existing contractual arrangements.

(h) An electric or gas utility or its designee shall review its purchases and contracts for any service under a service agreement beginning every three years after April 6, 2009, for compliance with (g) above. All reviews shall be documented and shall be provided to the Board and/or Board staff upon request.

(i) Nothing in (g) above shall apply to corporate governance or other activities, such as senior management services, treasury/finance functions, legal, system security and shareholder and external relations. These services shall continue to be subject to the review by Board and/or Board staff to ensure just and reasonable rates.

(j) A public utility holding company system shall not penalize an electric or gas public utility for any refusal of services under (g) above.

New Rule, R.2009 d.110, effective April 6, 2009.  
See: 40 N.J.R. 1616(a), 41 N.J.R. 1500(a).

#### 14:4-4A.6 Structural separation

(a) Commencing October 6, 2009, an electric or gas public utility, having a board of directors comprised of more than one director, shall file all of the following in its annual report with the Board:

1. An annual certification stating that at least 40 percent of the electric or gas public utility's board of directors satisfy separately the board of directors New Jersey qualification and board of directors independence qualification;

2. The name of each director that satisfies the board of directors independence qualification and/or the board of directors New Jersey qualification, and a description of how the director so satisfies the board of directors New

Jersey qualification (a preexisting director, as defined at N.J.A.C. 14:4-4A.2, shall be considered in compliance with the board of directors independence qualification and the board of directors New Jersey qualification for purposes of determining the requirements of this section); and

3. A certification, if the board of directors independence qualification and/or board of directors New Jersey qualification is not satisfied, stating that it was unable to comply with such requirements in good faith and an explanation for the inability to comply with such requirement(s).

(b) An electric or gas public utility shall maintain a distinct corporate identity, as evidenced by a separate corporate credit rating or a separate credit rating for its outstanding securities with a nationally recognized statistical rating organization (NRSRO). For an electric or gas public utility without outstanding securities, the requirement to maintain a separate credit rating shall apply only to the extent that a NRSRO provides or has provided a credit rating of such utility without outstanding securities.

(c) If an electric or gas public utility or its public utility holding company regularly subscribes to the publications of an NRSRO, corporate governance rating agency, or investment banking firm, and the NRSRO, corporate governance rating agency, or investment banking firm releases a report or article that addresses the electric or gas public utility or its public utility holding company, the electric or gas public utility shall submit the report to the Board and/or Board staff. The report or article shall be provided electronically to the Office of the Chief Economist within five business days after the electric or gas public utility or its holding company receives or becomes aware of the report.

(d) If the senior secured credit rating for the outstanding publicly-held securities of an electric or gas public utility, or the senior unsecured credit rating for its public utility holding company, is downgraded after April 6, 2009, to one notch above the speculative grade of any applicable NRSRO (for example, BBB- for Standard & Poor's (S&P) or Baa3 for Moody's Investors Services (Moody's) or lower), the electric or gas public utility shall do both of the following:

1. Within five business days after the downgrade, notify the Office of the Chief Economist and Division of Energy; and

2. Within 30 calendar days after the downgrade, analyze the cost impact of the downgrade on the electric or gas public utility, and if there is a cost impact, submit to the Office of the Chief Economist and Division of Energy a detailed explanation of how the public utility holding company will seek to prevent the credit rating from falling below the then present level.

New Rule, R.2009 d.110, effective April 6, 2009.  
See: 40 N.J.R. 1616(a), 41 N.J.R. 1500(a).

**14:4-4A.7 Operational separation**

(a) No public utility holding company system shall be operated in any way that materially impairs or could reasonably be expected to materially impair the electric or gas public utility's credit, ability to acquire capital on reasonable terms, or ability to provide safe, adequate and proper utility service at just and reasonable rates.

(b) The Board may adopt an appropriate adjustment to the cost of service of an electric or gas public utility if necessary to offset any material adverse effects from its inclusion within a public utility holding company system, including, but not limited to, any adverse effects on the electric or gas public utility's credit ratings.

(c) If an electric or gas public utility's equity to total capitalization ratio, as determined for ratemaking purposes and excluding securitization debt, falls below 30 percent, the electric or gas public utility shall notify the Office of the Chief Economist and Division of Energy. The notice required in this subsection shall be provided within 10 business days after the end of the calendar quarter in which the ratio fell below the required percentage. The Board may adjust the percentage requirement under this subsection if, after notice and hearing, the Board determines an adjustment is necessary to restore the financial integrity of the electric or gas public utility.

(d) If an electric or gas public utility is required to notify the Board under (c) above, the public utility shall not declare a distribution, whether by dividend or by another method, to the public utility holding company system, without prior Board approval, until the public utility's equity to total capitalization ratio increases sufficiently to exceed the applicable percentage level.

(e) An electric or gas public utility shall notify the Board in writing at least 30 days in advance if it intends to do either of the following:

1. Transfer, other than by way of dividend, more than five percent of the electric or gas public utility's retained earnings to the public utility holding company; or
2. Declare a special cash dividend, the effect of which would be to result in an equity to total capitalization ratio below 30 percent.

(f) On or after April 6, 2009, an electric or gas public utility shall not participate in any money pool unless the Board, prior to April 6, 2009, has approved the money pool participation, or unless all of the following requirements are met:

1. The Board has approved the money pool participation in accordance with N.J.S.A. 48:3-7.1 and 48:3-7.2;

2. Participation in the money pool is restricted to the public utility holding company, other electric or gas public utilities within the public utility holding company system, subsidiary companies providing electric or gas utility service outside of New Jersey and certified or classified as electric or gas utilities by the public utility commission of the state where service is provided, or any other subsidiary in the public utility holding company system;

3. A subsidiary company in the public utility holding company system that is not a public utility or an out-of-State utility is prohibited from borrowing from the money pool;

4. All borrowers in the money pool have, at a minimum, investment grade credit ratings from all applicable nationally recognized statistical rating organization (NRSROs);

5. Borrowings from the money pool by any participant are restricted to the limitation on unsecured indebtedness contained in its certificate of incorporation, if applicable;

6. The fees for administering the money pool, if any, are cost-based and subject to review by the Board for ratemaking purposes; and

7. Loan terms are 364 days or less.

(g) If an electric or gas public utility is authorized under (f) above to participate in a money pool, the electric or gas public utility shall:

1. Record all money pool transactions in a separate general ledger account within the electric or gas public utility's books of account, on an aggregate monthly basis;

2. Not borrow funds for the specific purpose of lending to the money pool;

3. Not borrow from the money pool if funds are available at lower costs, either through bank borrowings or through issuance of commercial paper;

4. File with the Board and/or Board staff quarterly statements comparing the money pool interest rates with the prevailing market interest rates for similarly situated public utilities;

5. Deposit cash in the money pool only if the cash is otherwise available for investment in short-term money markets or other short-term investments; and

6. Ensure that the participating public utility's chief financial officer or designee render money pool-related decisions based on the best interests of the electric or gas public utility's ratepayers.

(h) If a money pool participant has a senior secured credit rating for its outstanding publicly-held securities, and that rating falls below any applicable NRSROs investment grade (for example, BBB- for Standard & Poor's, or Baa3 for Moody's), an electric or gas public utility shall by no later than the third business day thereafter demand repayment of any outstanding loans made through the money pool to such participant, and make no further loans to such participant through the money pool until further notice by the Board or until such participant's senior secured credit rating for the outstanding publicly-held securities is again investment grade.

New Rule, R.2009 d.110, effective April 6, 2009.  
See: 40 N.J.R. 1616(a), 41 N.J.R. 1500(a).

## SUBCHAPTER 5. ENERGY LICENSING AND REGISTRATION

### 14:4-5.1 Scope, general provisions

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

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

4. Private aggregators;
5. Clean power marketers; and
6. Local distribution companies.

(b) A BGS provider is not subject to this subchapter, as regards those activities related to providing BGS services.

(c) The requirements in this subchapter apply in addition to all other applicable requirements of this chapter and N.J.A.C. 14:3, 14:5 and 14:6, and other applicable law.

(d) A person shall not do, or offer to do, any of the following, without first obtaining an electric power supplier license under this subchapter:

1. Provide electric generation service or gas supply service for use by retail customers;
2. Advertise or market electric generation service or gas supply service for use by retail customers;
3. Enroll customers for, or arrange for, the provision of electric generation service or gas supply service for use by retail customers; or
4. Contract for, or otherwise assume legal responsibility to provide, electric generation service or gas supply service for use by retail customers.

(e) A person shall not be eligible to participate in the Board's Clean Power Choice program, as set forth in *In The Matter Of A Voluntary Green Power Choice Program*, BPU Docket No. E005010001, dated January 24, 2005, without first obtaining a clean power marketer license under this subchapter.

(f) A person shall not arrange the retail sale of electricity, electric-related services, gas supply or gas-related services between government or private aggregators and electric or gas power suppliers without first registering as an energy agent under this subchapter.

(g) A non-government entity shall not combine the energy loads of multiple end users, and arrange a contract with a TPS to purchase electric generation service or gas supply service on behalf of those end users, without first registering as a private aggregator under this subchapter. Certain government entities are authorized to combine the energy loads of multiple end users through a government energy aggregation program in accordance with N.J.A.C. 14:4-6.

(h) To obtain an electric power supplier, gas supplier or clean power marketer license, or to register as an energy agent (including an energy consultant) or private aggregator, a person shall:

1. Submit a completed application that meets the requirements at N.J.A.C. 14:4-5.3 or 5.6, as applicable;
2. Submit the appropriate fees, as required under N.J.A.C. 14:4-5.12; and

3. If the application is for an electric power supplier or gas supplier license, provide a surety bond that meets the requirements at N.J.A.C. 14:4-5.4.

(i) The licenses and registrations provided for under this subchapter are non-transferable. The merger or acquisition of a licensee shall be subject to N.J.A.C. 14:4-5.5.

(j) Applications, forms and information relating to this subchapter may be obtained at:

New Jersey Board of Public Utilities  
ATTN: Division of Audits/Licensing  
44 South Clinton Avenue, 9th Floor  
PO Box 350  
Trenton, New Jersey 08625-0350  
[www.bpu.state.nj.us](http://www.bpu.state.nj.us)  
(973) 648-4450

(k) All information provided to BPU as part of the process of obtaining or renewing an electric power supplier, gas supplier or clean power marketer license, or obtaining registration as an energy agent (including an energy consultant) or private aggregator, shall be deemed public information, except for the following:

1. A submittal for which a request for confidentiality is filed and approved under the Board's Open Public Records Act (OPRA) rules at N.J.A.C. 14:1-12; and
2. Sales volumes and revenues sorted by customer class.

(l) Definitions for terms used in this subchapter can be found in the rules for all utilities at N.J.A.C. 14:3-1.1, and in the general provisions for this chapter at N.J.A.C. 14:4-1.2.

(m) A licensee or registrant shall comply with all terms and conditions of the license or registration.

Administrative change.  
See: 43 N.J.R. 1896(a).

#### **14:4-5.2 Basic requirements for an electric power supplier, gas supplier or clean power marketer license**

(a) An electric power supplier, gas supplier or clean power marketer license shall be issued only if an applicant meets the applicable requirements in this section, in addition to all other applicable requirements in this subchapter.

(b) To be eligible for an electric power supplier, gas supplier or clean power marketer license, an applicant shall maintain an office in New Jersey for the purposes of accepting service of process, maintaining the records required under this subchapter, and ensuring the licensee's accessibility to State agencies, consumers, and electric public utilities. To satisfy this requirement, an applicant shall:

1. Lease or own space in a building in New Jersey. The space shall be sufficient to house all records required to be

kept under this subchapter. The records may be kept in electronic form; and

2. Provide the street address of the New Jersey office. A post office box or rented mail-receiving space at a mail service store (for example, Mailboxes, Etc.) shall not constitute a New Jersey office.

(c) The applicant shall document that it will make itself accessible to customers and regulators by maintaining the following:

1. An Internet website and e-mail address through which Board staff and customers can contact the applicant;

2. A customer service representative, who is available by toll-free telephone during normal New Jersey business hours to respond to complaints or inquiries from customers; and

3. A regulatory affairs representative, who is available by telephone during normal New Jersey business hours, and who will do the following:

i. Assist Board staff in pursuing investigations on behalf of the Board and/or the Division of Consumer Affairs in the New Jersey Department of Law and Public Safety; and

ii. Facilitate the resolution of billing complaints and other problems.

(d) An automated telephone service shall not, by itself, satisfy the requirements in (c)2 and 3 above. Rather, the applicant shall make it possible for customers, Board staff and/or Division of Consumer Affairs staff, to speak to an individual. It is not necessary that these representatives be located in New Jersey. However, a representative shall be available to Board staff and/or customers within 24 hours, if necessary to resolve a problem.

(e) To be eligible for an electric power supplier license, an applicant shall, in addition to meeting the other requirements in this section, demonstrate that it meets all of the following reliability criteria, as applicable:

1. Membership in PJM Interconnection, L.L.C. as defined at N.J.A.C. 14:4-1.2;

2. A signatory to the PJM Reliability Assurance Agreement, as a load serving entity;

3. Compliance with the reliability requirements of the New York Independent System Operator;

4. Compliance with the reliability standards and requirements of the following, as applicable:

i. The Federal Energy Regulatory Commission (FERC);

ii. All Board rules, orders, and directives; and

iii. Any other applicable reliability standards or requirements issued by any state, regional, Federal or industry body with authority to establish such standards.

(f) To be eligible for a gas supplier license, an applicant shall, in addition to meeting the other requirements in this section, meet all of the following:

1. All applicable reliability standards and requirements of the Federal Energy Regulatory Commission;

2. The requirements of the rules for natural gas service at N.J.A.C. 14:6;

3. The requirements in the Liquefied Natural Gas Facilities: Federal Safety Standards 49 CFR Part 193, which are incorporated herein by reference, as amended and supplemented; and

4. The requirements of the National Fuel Gas Code, ANSI Z223.1/NFPA 54, published by the American National Standards Institute, which are incorporated herein by reference, as amended and supplemented, may be obtained at [www.ansi.org](http://www.ansi.org).

(g) The applicant shall agree, as a condition of the license, to provide all information requested by Board staff, or by the Division of Consumer Affairs in the New Jersey Department of Law and Public Safety, for the purpose of determining compliance with the license or this subchapter. This information shall be certified by an officer of the corporation.

#### **14:4-5.3 Application contents—initial electric power supplier, gas supplier or clean power marketer license**

(a) An application for an electric power supplier, gas supplier or clean power marketer license shall include all of the information required by the instructions accompanying the application form for the appropriate license. The application form and instructions shall be available from the BPU through its website at [www.bpu.state.nj.us](http://www.bpu.state.nj.us), or by telephone at (973) 648-4450.

(b) A complete application for an electric power supplier, gas supplier or clean power marketer license will require an application form, completed as directed in the instructions that accompany the application form. The application form shall require the following types of information:

1. Information identifying the applicant and the applicant's business, including past and present name(s), address(es), and contact information for the company, dating back to its original formation and/or incorporation;

2. The name of the registered New Jersey energy agent that the business will retain, including the agent's New Jersey office address;

3. The appropriate application fee, set forth at N.J.A.C. 14:4-5.12;

4. Descriptive information regarding the applicant, and the applicant's business, including the business profile and history;

5. A list of services and/or products the applicant plans to offer in New Jersey;

6. Samples of documents that the applicant will use in the course of business, including a sample residential contract;

7. Evidence of financial integrity, including records of and information on past financial dealings and conditions, and references from financial institutions;

8. A statement disclosing existing, pending or past adverse investigations, judgments, litigation, criminal charges or convictions, in New Jersey or in any other jurisdiction, against any of the following:

- i. The applicant;
- ii. Any corporate officers, directors, partners, or owners of the applicant;
- iii. Any key operating personnel of the applicant; or
- iv. Any person that owns or controls 10 percent or more of the shares of the applicant;

9. Any releases necessary to authorize the BPU to obtain or receive criminal history information;

10. A list of all affiliated TPSs, public utilities, and other persons;

11. A list of all persons, as defined at N.J.A.C. 14:4-1.2, that have a 10 percent or greater ownership interest in the applicant's business;

12. Any other information that the Board requires for a particular applicant, in order to enable the Board to evaluate compliance with this subchapter, or to ensure compliance with State and/or Federal law;

13. If the application is for an electric power supplier or gas supplier license, a certification, signed by an officer of the corporation, stating that the applicant is in compliance with the retail choice consumer protection rules at N.J.A.C. 14:4-7; and

14. A certification, under oath, of truth and accuracy, signed by a corporate officer, partner, sole proprietor, or other appropriate legal representative of the applicant, attesting to the accuracy of the contents of the application, and to the fact that the sample contract and other material submitted as part of the application complies with this subchapter.

(c) The acceptance and/or approval of an application does not constitute a determination that all of the materials submitted as part of the application comply with this chapter.

#### **14:4-5.4 Processing of an application for an electric power supplier, gas supplier or clean power marketer initial license or renewal**

(a) This section sets forth the procedures for acceptance and processing of an initial application for an electric power supplier, gas supplier or clean power marketer license and also for renewal of a license.

(b) Within 60 days after receiving an application for a license or renewal under this subchapter, Board staff shall notify the applicant if additional information or investigation is needed to determine whether the applicant has met the requirements of this subchapter.

(c) If Board staff requests additional information under (b) above, the following shall apply:

1. The applicant shall have 45 days from the date of the request to submit the additional information;

2. If the additional information is not submitted within this 45-day period, Board staff shall cancel the application and provide notice of the cancellation to the applicant; and

3. If an application is cancelled, any later application submitted by the same entity shall be deemed a new application and shall be accompanied by a new application fee.

(d) If there is a material change in the information provided in the application during the processing of the application, the applicant shall immediately inform Board staff in writing within 30 days after the change. Failure to so notify Board staff may result in denial of the license.

(e) Board staff shall notify the applicant when the issuance or renewal of a license is approved.

(f) Upon receipt of the notice issued under (e) above, the applicant shall submit a surety bond for the following amount:

1. \$250,000 for an electric power supplier license or a gas supplier license; or

2. \$25,000 for a clean power marketer license.

(g) The surety bond required under this section shall be:

1. Issued by a company that is licensed by the New Jersey Department of Banking and Insurance; and

2. Posted for a term that will extend for at least as long as the license remains in effect, including any time during which the license term is extended under N.J.A.C. 14:4-5.6(a).

(h) The Board may grant a modification of the surety bond amount for the initial license, if the applicant submits substantial evidence in support of the modification. Any modification shall be commensurate with the amount of anticipated business to be conducted in New Jersey. A request for modification of the initial license bonding amount shall be made in conjunction with the initial application.

(i) Upon the applicant's posting of the surety bond required under this section, the electric power supplier, gas supplier or clean power marketer license, or license renewal, shall be issued.

(j) If, after issuance of a license, it is discovered that any part of the application was inaccurate or noncompliant with this chapter, the Board is not foreclosed from bringing enforcement action against the licensee for the inaccuracy or noncompliance, including suspension or revocation of the license.

#### **14:4-5.5 Requirements that apply after a license is issued**

(a) Once licensed, an electric power supplier, gas supplier or clean power marketer shall meet the requirements in this section. Failure to do so shall subject the licensee to penalties and to Board proceedings for revocation, suspension, or denial of a license renewal.

(b) Within 10 days after the license is issued, the licensee shall provide a copy of the license to all LDCs within whose territory the licensee provides service.

(c) A licensed gas supplier shall meet the same requirements for heating value and gas purity that apply to gas public utilities under N.J.A.C. 14:6-3.3 and 3.4.

(d) A licensee shall maintain the following records for at least three years, and shall make them available to Board staff within 48 hours after a request. These records shall be maintained in a form that can be inspected by Board staff or transmitted to the Board within 48 hours after a request:

1. Records, in summary form, of energy contracts or transactions entered into with New Jersey customers, and of services provided by the supplier or clean power marketer to New Jersey customers;
2. Copies of all contracts or other writings entered into by the supplier or marketer, authorizing the supplier or clean power marketer to provide service to one or more New Jersey customers; and
3. A list of all customer complaints received by the licensee during the previous three years or the term of the license, whichever is longer, and the resolution of each complaint.

(e) A licensee shall maintain the surety bond required under N.J.A.C. 14:4-5.4 throughout the duration of the license, including any time during which the license term is

extended under N.J.A.C. 14:4-5.6(a). The Board may increase the bond amount required if the Board determines that an increase is necessary to protect the interests of the ratepayers of New Jersey. A licensee shall report to the Board at any time when its sales volume has increased by 33 percent from its previously reported amount, and the Board may increase its surety bond accordingly.

(f) A licensee shall notify Board staff in writing within 30 days after any material change in the organizational structure or operation of a licensee's business. If the change affects compliance with this chapter or any other Board rule or order, Board staff shall require the licensee to file an update describing the change, for approval by Board staff.

(g) If a licensee undergoes a merger or acquires, or is acquired by, another company, the following requirements shall apply:

1. If the name of the resulting company remains the same, the licensee shall submit a licensing update, including any information about the new entity that is necessary for Board staff to evaluate the entity's compliance with this chapter, including information regarding any changes in the company's services or customer population;
2. If the resulting company does not retain the name of the original licensee, the new entity shall submit an application for a new license in accordance with this subchapter, and shall meet all of the requirements that would apply if the entity had never held a license, including application fees and the issuance of a new surety bond;
3. The licensee shall ensure that the submittals required by this subsection are received by the Board at least 30 days prior to the merger or acquisition; and
4. The licensee may continue to serve its existing customers pending the Board's final decision on the license update or application.

#### **14:4-5.6 Term and expiration of an electric power supplier, gas supplier, or clean power marketer license**

(a) An electric power supplier, gas supplier or clean power marketer license shall be valid for one year from the date of issue, except where a licensee has submitted a complete renewal application within the 30-day deadline in N.J.A.C. 14:4-5.7(a), in which case the existing license shall not expire until a decision has been reached upon the renewal application.

(b) If a license expires without being extended under (a) above, or if a surety bond expires, the licensee shall:

1. Immediately stop all advertising and marketing activities;
2. Immediately stop enrolling new customers;

3. Continue to serve all existing customers (as of the date of license expiration) until directed otherwise by Board staff; and

4. Submit a complete application for a new license (not a renewal) within 45 days after license expiration, and/or submit a new surety bond within 45 days after surety bond expiration, as applicable.

(c) If the former licensee has not complied with (b)4 above within the 45-day deadline provided, the former licensee shall immediately stop acting as, or representing themselves to others as, an electric power supplier, gas supplier, or clean power marketer, as applicable.

(d) A licensee may file a request for an extension of the 45-day deadline in (b)4 above, based on extraordinary hardship.

(e) An LDC shall provide Board staff with a quarterly report, within 15 days after the end of each quarter, listing all electric power suppliers, gas suppliers, and clean power marketers that are serving customers in the LDC's service territory.

(f) If the Board notifies an LDC in writing that a supplier or marketer that is serving customers in the LDC's service territory does not have a valid license under this subchapter, or does not have the required surety bond, the LDC shall, within one business day after said notice, stop doing business with the supplier or marketer, except pursuant to any specific instructions of the Board that may be included in the notice under (b)3 above, or under an extension issued under (d) above. This subsection shall apply regardless of whether the person has never had a license; a license has expired; or a license has been denied, suspended or revoked.

#### **14:4-5.7 Application for renewal of an electric power supplier, gas supplier or clean power marketer license**

(a) An applicant for renewal of an electric power supplier, gas supplier or clean power marketer license shall submit a complete application for renewal in accordance with this section, at least 30 days before the expiration date of the existing license.

(b) Board staff shall not accept an application for a license renewal that is submitted after the 30-day deadline in (a) above. If the renewal application is incomplete, or is not submitted within the 30-day deadline in (a) above, the initial license shall expire at the end of its term, and the provisions at N.J.A.C. 14:4-5.6 for expiration of a license shall apply.

(c) In accordance with N.J.A.C. 14:4-5.6(a), if a licensee has submitted a complete renewal application within the 30-day deadline in (a) above, the existing license shall not expire until a decision has been reached upon the renewal application.

(d) An application for renewal of an electric power supplier, gas supplier or clean power marketer license shall include the following types of information:

1. Any changes to the information submitted in the licensee's most recent application for an initial license or license renewal;

2. The appropriate fee, set forth at N.J.A.C. 14:4-5.12;

3. Information regarding the number, types, and locations (by zip + 4 code) of residential customers being served by the licensee as of the date the renewal application is submitted;

4. Information regarding the licensee's sales and revenue, by month and customer class, during the term of the license that is being renewed;

5. Copies of relevant tax forms and reports;

6. Documentation that the licensee has maintained and continues to maintain the surety bond required under this subchapter;

7. Any other information necessary to enable Board staff to evaluate the licensee's continued compliance with the license being renewed, or with this subchapter;

8. If the application is for an electric power supplier or gas supplier license, a certification, signed by an officer of the corporation, stating that the applicant is in compliance with the retail choice consumer protection rules at N.J.A.C. 14:4-7;

9. A certification under oath, signed by an officer of the corporation, of the truth and accuracy of the application; and

10. Documentation that a notice has been sent, return receipt requested, to all LDCs in whose territory the licensee will do business, stating that the application has been submitted to the Board. This documentation may be in the form of a U.S. Postal Service Certified Mail Receipt.

(e) Bonding requirements for license renewals shall be commensurate with the amount of business that the licensee has conducted in New Jersey under the expiring license.

(f) Board staff shall use the procedures at N.J.A.C. 14:4-5.4 to accept and review an application for renewal of an electric power supplier, gas supplier or clean power marketer license.

(g) Once a license has been renewed, the licensee shall, within 10 days after the renewal is issued, provide a copy of the renewal to all LDCs within whose territory the licensee provides service.

(h) If Board staff discovers after issuance of a renewal that any part of the application was inaccurate or noncompliant with this chapter, the Board is not foreclosed from bringing enforcement action against the licensee for the inaccuracy or

noncompliance, including suspension or revocation of the license.

#### 14:4-5.8 Registration procedure—energy agent or private aggregator

(a) To be eligible to operate in New Jersey as an energy agent or a private aggregator, as defined at N.J.A.C. 14:4-1.2, a person shall register as required in this section.

(b) A registration shall be submitted on forms provided by the BPU, available on the Board's website at [www.bpu.state.nj.us](http://www.bpu.state.nj.us). All registration forms shall be accompanied by the appropriate fee set forth at N.J.A.C. 14:4-5.12.

(c) Within 60 days after receiving a registration form, Board staff shall notify the registrant if additional information or investigation is needed.

(d) If Board staff notifies the registrant that additional information or investigation is needed, the registrant shall have 45 days to supply any requested information. If the registrant does not submit the requested information within 45 days after the date of the notice issued under (c) above, Board staff shall return and reject the request for registration.

(e) If Board staff does not notify the registrant that additional information or investigation is needed, the registration shall be reviewed for approval or denial.

(f) The registration form shall require the following types of information:

1. Identifying and contact information for the registrant and the registrant's business;
2. Background information on the registrant's business, including any business affiliations;
3. Evidence of financial integrity, including relevant financial records and references;
4. Information regarding the registrant's knowledge of and experience in the energy industry;
5. Information regarding any existing, pending or past adverse rulings, litigation, liabilities, investigations or other matters relating to financial or operational status, including criminal charges against the registrant, its employees, or any affiliated entities; and
6. Information on all persons with ownership interests in the registrant's business, and the form of the ownership.

(g) A registration obtained under this subchapter shall be valid for one year from the date of issue.

(h) A registrant shall notify Board staff in writing within 30 days after any material change in the organizational structure or operation of the registrant's business.

(i) If, after approval of a registration, it is discovered that any part of the registration was inaccurate or noncompliant

with this chapter, the Board is not foreclosed from bringing enforcement action against the registrant for the inaccuracy or noncompliance, including suspension or revocation of the registration.

#### 14:4-5.9 Registration renewal—energy agent or private aggregator

(a) A registered energy agent (including a registered energy consultant) or registered private aggregator shall submit a registration renewal form at least 30 days before the expiration date of the existing registration.

(b) If a registrant fails to submit a complete registration renewal form within the 30-day deadline in (a) above, all of the following shall apply:

1. The initial registration shall expire at the end of its term;
2. Board staff shall not accept a registration renewal; and
3. The former registrant shall not act as, or represent themselves to others as, an energy agent or private aggregator, as applicable, until the former registrant completes and submits a new registration, accompanied by the fee for an initial registration, which is approved in accordance with this subchapter.

(c) If a registrant has filed a complete renewal application in the time required under (a) above, the applicant's existing registration shall not expire until the renewal application is acted upon by the Board.

(d) The registration renewal form shall require updates to the information in the original registration form.

(e) If Board staff does not notify the registrant that additional information or investigation is needed, the registration renewal shall be reviewed for approval or denial.

(f) A registration renewal obtained under this subchapter shall be valid for one year from the date of issue.

#### 14:4-5.10 LDC responsibilities

(a) An LDC shall notify the Board of any alleged violations of this subchapter, of which it becomes aware.

(b) Except pursuant to N.J.A.C. 14:4-5.6(b) or (d), an LDC shall not accept, or contract for acceptance of, either of the following from a person unless the person has a valid license issued under this subchapter, including the required surety bond:

1. Electric generation service for use by its retail customers;
2. Gas supply service for use by its retail customers; or
3. Clean power service for use by its retail customers.

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

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

**14:4-5.11 Registration procedure—energy consultant**

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

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

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

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

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

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

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

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

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

**14:4-5.12 Fees**

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

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

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

**14:4-5.13 Enforcement**

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

1. Denial, suspension or revocation of the license or registration;
2. Financial penalties;
3. Prohibition on accepting new customers; and/or
4. Any and all other remedies authorized by law.

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

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

2. The gravity of the violation or failure to comply with the requirements in this subchapter;

3. The number of past violations by the entity charged regarding this subchapter and other Board rules or orders; and

4. The appropriateness of the sanction or fine to the financial situation or customer base of the company charged.

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

## SUBCHAPTER 6. GOVERNMENT ENERGY AGGREGATION PROGRAMS

### 14:4-6.1 Scope

(a) This subchapter governs the establishment of an energy aggregation program for the purchase of electric and gas utility services by a government aggregator. An energy aggregation program is a government-operated purchasing cooperative through which multiple energy consumers purchase energy together. An energy aggregation program established under this subchapter may include the purchase of one or more of the following, as these terms are defined at N.J.A.C. 14:4-1.2:

1. Electric generation service;
2. Gas supply service;
3. Electric related service, including appliance repair; and/or
4. Gas related service, including appliance repair.

(b) This subchapter applies to government entities, local distribution companies, and third-party suppliers, as those terms are defined at N.J.A.C. 14:4-1.2.

(c) This subchapter authorizes the establishment by a government aggregator of any of the following three types of energy aggregation programs, as these terms are defined at N.J.A.C. 14:4-6.2:

1. A stand-alone energy aggregation program;
2. A multi-government energy aggregation program; and
3. A government-private energy aggregation program.

### 14:4-6.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. In addition, definitions set forth at

N.J.A.C. 14:4-1.2 and 14:3-1.1 shall apply to this subchapter, unless the context clearly indicates otherwise.

“Appliance repair service” means the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user’s premises.

“Energy aggregation program” means an arrangement for the procurement of energy and/or energy-related services, in which a lead agency contracts with a TPS, so as to provide for the energy needs of participants in the program. An energy aggregation program established by a government aggregator is a type of cooperative purchasing system, as defined in the rules of the Department of Community Affairs governing local public and public school cooperative purchasing, set forth at N.J.A.C. 5:34-7.

“Government energy aggregation program” means a program under which a government aggregator that is a municipality or county enters into a written contract for the provision of electric generation service or gas supply service on behalf of residential or non-residential customers within its geographic boundaries.

“Government-private” means, with regard to an energy aggregation program, a program that provides energy not only for the facilities of the municipality or county that establishes the energy aggregation program (the lead agency), but also for residential and/or non-residential customers within the geographic boundary of one or more of the participating municipalities or counties. A government-private energy aggregation program shall be established only by a municipality or county. There are two types of government-private energy aggregation programs, designated Option 1 program and Option 2, in accordance with N.J.A.C. 14:4-6.4(g).

“Lead agency” means the government aggregator that establishes and manages an energy aggregation program.

“Multi-government” means, with regard to an energy aggregation program, a program that provides energy for the facilities of the government aggregator that establishes the program, as well as for facilities of other government entities.

“Non-residential customer” means a commercial, industrial or institutional energy customer that is not a government entity that is subject to the Local Public Contracts Law, 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, N.J.S.A. 18A:64A-25.1 et seq.

“Option administrator” means the person, as defined at N.J.A.C. 14:3-1.1, responsible for receiving and recording customer submittals indicating that the customer wishes to opt-in or opt-out of the energy aggregation program.

“Opt-in” means for a gas or electric customer to affirmatively indicate a choice to participate in a program from which the customer would be automatically excluded unless

the customer affirmatively indicated the intention to participate.

“Opt-out” means for a gas or electric customer to affirmatively indicate a choice not to participate in a program in which the customer would be automatically included unless the customer affirmatively indicated the intention not to participate.

“Stand-alone” means, with regard to an energy aggregation program, a program that provides energy only for the facilities of the government aggregator that establishes the energy aggregation program.

“Twelve-month historical usage” means the amount of gas or electricity used by a customer or group of customers during the most recent 12-month period for which data are available, including electric interval data if available and requested.

### 14:4-6.3 General provisions

(a) A government aggregator may establish an energy aggregation program to purchase electric generation service, electric-related service, gas supply service or gas-related service, as these terms are defined at N.J.A.C. 14:4-1.2. The energy aggregation program may purchase these services either separately or bundled, for use by one or more of the following:

1. The government aggregator’s own facilities (stand-alone program);
2. Facilities of other government aggregators (multi-government program); and/or
3. If the government aggregator is a municipality or county, residential and/or non-residential customers (government-private program).

(b) Unless otherwise specified, any obligation of a government aggregator, TPS, or LDC under this subchapter may be performed on behalf of the government aggregator, TPS, or LDC by a contractor, consultant, or other designee. Any such designee shall execute a confidentiality agreement or provide other guarantee(s) of compliance with the consumer protection standards at N.J.A.C. 14:4-7, and the customer information requirements at (f) below.

(c) For any energy aggregation program, the lead agency, as defined at N.J.A.C. 14:4-6.2, is responsible for responding to specific inquiries regarding the particular energy aggregation program, in accordance with the LDC aggregation agreement.

(d) The LDC is responsible for responding to general inquiries regarding the establishment and operation of government energy aggregation programs.

(e) In contracting for services under this subchapter, a government aggregator shall comply with all applicable

requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., the County College Contracts Law, N.J.S.A. 18A:64A-25.1 et seq., and N.J.A.C. 14:4-6.8, as applicable.

(f) All customer information provided to a government aggregator, or its designee, by an LDC under this subchapter shall be deemed confidential and is exempt from the public disclosure requirements of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. Such information shall not be used or disseminated by any person for any purpose other than the facilitation of the aggregation program.

(g) A government entity shall be included in an energy aggregation program only if the government entity indicates its desire to participate in the program by opting-in.

(h) A non-residential customer, as defined at N.J.A.C. 14:4-6.2, shall be included in an energy aggregation program only if the non-residential customer indicates its desire to participate in the program by opting-in in accordance with N.J.A.C. 14:4-6.5 or 6.6.

(i) If a residential customer is located within the geographic boundaries of a municipality or county that establishes a government-private energy aggregation program, the residential customer shall automatically be included in the program unless the customer indicates its desire not to participate in the program by opting-out in accordance with N.J.A.C. 14:4-6.5 and 6.6.

(j) A government aggregator may enter into a contract with more than one TPS for the purchase of electric generation service and/or gas supply service, provided that:

1. Each residential and each non-residential customer shall receive electric or gas service from only one TPS; and
2. Each contract specifies which is the default provider for any customer that does not choose one of the providers.

### 14:4-6.4 Municipal and/or county energy aggregation programs

(a) A municipality or county may choose to establish and/or participate in a stand-alone energy aggregation program, a multi-government energy aggregation program, or a government-private energy aggregation program.

(b) If one or more members of an energy aggregation program is a municipality or county, the energy aggregation program shall comply with all applicable requirements in the rules of the Department of Community Affairs governing local public and public school cooperative purchasing, set forth at N.J.A.C. 5:34-7.

(c) If a municipality or county chooses to establish or participate in a government-private energy aggregation program, such a program shall be authorized by municipal ordinance or county resolution, as appropriate.

(d) A county shall establish a government-private energy aggregation program only if all of the following conditions are met:

1. One or more municipalities with residential and/or non-residential customers that will be eligible to participate in the program has authorized participation in the county energy aggregation program by ordinance;
2. All residential and non-residential customers included in the program are within the geographic boundaries of a municipality that has approved such participation in the program; and
3. The county energy aggregation program will not provide services in a municipality that are already provided by an existing energy aggregation program in that municipality.

(e) A municipality or county may choose to include appliance repair services in its energy aggregation program. These services may be obtained for government use or, in a government-private energy aggregation program, for use by residential and/or nonresidential customers. However, appliance repair services shall be provided only to residential and non-residential customers that affirmatively choose to obtain these services through the energy aggregation program. Potential customers shall be advised of the option to obtain these services through the energy aggregation program as follows:

1. For an Option 1 program, the LDC shall explain this service as an option in its written notice to customers, issued pursuant to N.J.A.C. 14:4-6.5; or
2. For an Option 2 program, the municipality or county shall explain this service as an option in its written notice to customers, issued pursuant to N.J.A.C. 14:4-6.6(b).

(f) The lead agency of a government-private energy aggregation program shall be a municipality or county. If the lead agency in an energy aggregation program is not a municipality or county, the program shall not include any municipality or county that operates a government-private energy aggregation program.

(g) There are two types of government-private energy aggregation programs, as follows:

1. An Option 1 government-private energy aggregation program. An Option 1 program has the following characteristics:
  - i. The program automatically includes all residential customers in each participating municipality unless:
    - (1) The residential customer has contracted for service with a TPS prior to establishment of the program; or
    - (2) The residential customer opts-out, as defined at N.J.A.C. 14:4-6.2, of the program;

- ii. The program may, at each participating municipality's discretion, include non-residential customers, as defined at N.J.A.C. 14:4-6.2, if the non-residential customers are located within the geographic boundaries of the participating municipality and opt-in, as defined at N.J.A.C. 14:4-6.2, to the program;

- iii. The LDC is responsible for notifying residential customers of their option to participate in the program or to opt-out, and of notifying non-residential customers of the right to opt-in. This notice shall be provided prior to the advertisement for the receipt of bids for a TPS; and

- iv. The LDC shall be the option administrator, as defined at N.J.A.C. 14:4-6.2; and

2. An Option 2 government-private energy aggregation program. An Option 2 energy aggregation program has the following characteristics:

- i. The program automatically includes all residential customers in each participating municipality unless:

- (1) The residential customer has contracted for service with a TPS prior to establishment of the program; or

- (2) The residential customer opts-out of the program;

- ii. The program may, at each participating municipality's discretion, include non-residential customers that:

- (1) Are located within the geographic boundaries of the participating municipality; and

- (2) Opt-in in accordance with N.J.A.C. 14:4-6.6; and

- iii. The following duties shall be performed either by the lead agency or by the participating municipalities:

- (1) Notifying residential customers of their option to participate in the program or to opt-out. This notice shall be provided after a TPS is selected;

- (2) Issuing a public notice to alert non-residential customers of their eligibility to participate in the program by opting-in; and

- (3) Acting as the option administrator, as defined at N.J.A.C. 14:4-6.2.

(h) If a municipality or county is a participant in an energy aggregation program and becomes a member of a larger energy aggregation program, it shall comply with the notice requirements in the rules of the Department of Community Affairs governing local public and public school cooperative purchasing, at N.J.A.C. 5:34-7.18 and 7.19.

- (i) An option administrator may choose to use the Internet as a means to accept opt-in or opt-out responses from potential participants in an energy aggregation program. Use

of the Internet shall be accompanied with other, more widely accessible, forms of communication.

#### **14:4-6.5 Establishing an Option 1 government-private energy aggregation program**

(a) Each municipality or county that wishes to establish or participate in a government-private Option 1 energy aggregation program shall provide a copy of the ordinance or resolution adopted pursuant to N.J.A.C. 14:4-6.4(c) to each LDC that serves the geographic area governed by the municipality or county.

(b) Each participating municipality in an Option 1 government-private energy aggregation program shall execute an LDC aggregation agreement with each LDC that serves customers in the municipality, using the applicable form agreement, obtainable from Board staff upon request. A detailed description of the LDC aggregation agreement is set forth at N.J.A.C. 14:4-6.7.

(c) The LDC shall provide written notice of the energy aggregation program to customers in accordance with (d) through (h) below, prior to the advertisement for the receipt of bids under N.J.A.C. 14:4-6.8.

(d) The LDC shall send the notice required under (c) above to all residential electric and gas customers within the geographic boundaries of each participating municipality, except residential customers that already obtain electric generation service or gas supply service from a TPS. If requested by the municipality, the LDC shall also send a notice to all non-residential electric and gas customers located in the municipality.

(e) The LDC shall send the notice required under (c) above no later than 25 calendar-days after both of the following:

1. The LDC aggregation agreement has been signed by all parties to the agreement; and
2. If the LDC aggregation agreement contains any prior conditions that must be met before the notice is sent, all of these prior conditions have been met.

(f) The notice of customers required under (c) above shall include the following:

1. A statement that the participating municipality is establishing or participating in an energy aggregation program;
2. If the notice is to a residential customer, a statement that the residential customer has a right to opt-out of the program, but that if no opt-out response is submitted the customer will be included in the program;
3. If the notice is to a non-residential customer, a statement that the customer has a right to opt-in to the program, but that if no opt-in response is submitted the customer will not be included in the program;

4. If the notice is to a non-residential customer, a statement that by choosing to opt-in to the program, the customer has authorized the participating municipality or lead agency to obtain the non-residential customer's 12-month historical usage information;

5. A requirement that any opt-out or opt-in response be submitted to the option administrator within 30 calendar-days after the postmark on the notice;

6. Directions on how to submit an opt-in or opt-out response; and

7. A telephone number and e-mail address for customer inquiries regarding the energy aggregation program.

(g) The Board shall make available upon request a form for use in notifying customers under (c) above. The form notice shall be used for all government-private energy aggregation programs, except if a program uses special pricing for renewable energy in accordance with N.J.A.C. 14:4-6.9(g), or includes appliance repair service. For these programs, the lead agency shall submit a draft notice to the Board Secretary for prior approval. The draft notice shall include, at a minimum, all of the information required at (f) above.

(h) If a residential customer does not submit an opt-out response to the LDC within 30 calendar-days after the postmark on the notice required under this section, the customer shall be included in the energy aggregation program.

(i) If a non-residential customer does not submit an opt-in response to the LDC within 30 calendar-days after the postmark on the notice required under this section, the customer shall not be included in the energy aggregation program.

(j) Within 10 calendar-days after the expiration of the 30-day response period for customers to opt-in or opt-out, the LDC shall provide the following information to the person identified in the government aggregator agreement:

1. The number of that LDC's residential customers, by rate class, that:
  - i. Are located within the geographic boundary of the participating municipality;
  - ii. Are not already being served by a third-party supplier; and
  - iii. Did not submit an opt-out response during the 30-day response period;
2. The 12-month historical usage for each non-residential customer located within the geographic boundary of the participating municipality, that has chosen to opt-in to the energy aggregation program. Less than 12 months of data may be supplied if the customer is new to the LDC system or, in the case of electric interval data, if the appropriate metering has been installed less than 12 months previously; and

3. The 12-month historical usage for each government facility that each participating government aggregator has indicated will be included in the energy aggregation program. Less than 12 months of data may be supplied if the customer is new to the LDC system or, in the case of electric interval data, if the appropriate metering has been installed less than 12 months previously.

(k) Within six months after the end of the 30-day response period required under this section, the lead agency shall advertise for the receipt of bids in accordance with N.J.A.C. 14:4-6.8. If the advertisement is not issued within this time, the customer notice and opt-in/opt-out process required under (c) through (f) above shall be repeated. The lead agency may voluntarily choose to provide a copy of draft bidding documents to the Board and/or Rate Counsel, as defined at N.J.A.C. 14:3-1.1, for comments prior to advertising for bids. Any such voluntary submittal shall provide at least 15 calendar days for the Board and/or Rate Counsel to comment on the documents.

(l) Upon completion of the bidding process in accordance with N.J.A.C. 14:4-6.8, the lead agency shall determine whether to award a contract to a TPS in accordance with N.J.A.C. 14:4-6.8, and to which TPS the contract shall be awarded. The lead agency may voluntarily choose to provide a copy of the draft contract to the Board and/or Rate Counsel for comments prior to executing the contract. Any such voluntary submittal shall provide at least 15 calendar days for the Board and/or Rate Counsel to comment on the draft contract.

(m) Upon award of a contract, each affected LDC shall be promptly notified of the identity of the selected TPS(s). This notice shall be provided by the lead agency, unless it is provided by participating municipalities.

(n) The lead agency shall execute a contract with the selected TPS. The contract shall comply with N.J.A.C. 14:4-6.9 and 6.10.

(o) Within 10 calendar days after the postmark on the notice to the LDC required under (m) above, the LDC shall provide to the lead agency or its designee, the name, address and account number of each residential and non-residential customer that will be included in the program, as indicated by the opt-in and opt-out responses that were submitted to the LDC.

(p) The government aggregator shall begin operation of the program promptly upon selection of a TPS.

#### **14:4-6.6 Establishing an Option 2 energy aggregation program**

(a) Each municipality or county that wishes to establish or participate in a government-private Option 2 energy aggregation program shall provide a copy of the resolution or ordinance adopted pursuant to N.J.A.C. 14:4-6.4(c) to each

LDC that serves the geographic area governed by the municipality or county.

(b) If the program is open to non-residential customers, the lead agency and each participating municipality shall issue a public notice. The notice shall advise nonresidential customers located within the geographic boundaries of the municipality or county that they are eligible to participate in the program if they submit an opt-in response to the option administrator within 30 calendar days after the resolution or ordinance authorizing the program.

(c) Each participating municipality in an Option 2 government-private energy aggregation program shall execute an LDC aggregation agreement with each LDC that serves customers in the municipality, using the applicable form agreement found on the Board's website at <http://nj.gov/bpu/>. A detailed description of the LDC aggregation agreement is set forth at N.J.A.C. 14:4-6.7.

(d) If a non-residential customer does not submit an opt-in response to the option administrator within the 30 calendar-day response period set forth in the public notice required under (b) above, the customer shall not be included in the energy aggregation program.

(e) If the energy aggregation program includes non-residential customers, the option administrator shall provide to the LDC the names and account numbers of the nonresidential customers that submitted opt-in responses during the 30-day response period set forth in the public notice required under (b) above.

(f) Within 10 calendar-days after the date upon which both of the following have occurred, the LDC shall provide the customer information described at (g) below to the lead agency:

1. If the LDC aggregation agreement contains any conditions that must be met prior to the provision of the information required under (g) below, all of these prior conditions have been met; and
2. If the energy aggregation program includes non-residential customers, the option administrator has provided the information required under (e) above.

(g) The LDC shall provide the lead agency with the following information as required under (f) above:

1. The number of residential customers, by rate class, that are located within the geographic boundaries of the participating municipality and are not being served by a third-party supplier;
2. The 12-month historical usage of the non-residential customers that the option administrator has identified as program participants. This information may be provided separately for each customer or as an aggregate amount; and

3. The 12-month historical usage for each government facility that each participating government aggregator has indicated will be included in the energy aggregation program. Less than 12 months of data may be supplied if the customer is new to the LDC system or, in the case of electric interval data, if the appropriate metering has been installed less than 12 months previously.

(h) After receiving the information required under (g) above, the lead agency shall prepare draft bidding documents that meet the requirements at N.J.A.C. 14:4-6.8.

(i) The lead agency shall provide a copy of the draft bidding documents to the Board and to Rate Counsel, as defined at N.J.A.C. 14:3-1.1, for their comment at least 30 calendar days prior to advertising for bids. The Board and Rate Counsel shall have 15 calendar days from receipt of the draft bidding documents to provide comments. The lead agency may accept or reject comments submitted by the Board and Rate Counsel.

(j) The lead agency shall advertise for the receipt of bids, shall determine whether to select a TPS, and shall determine which TPS to select, in accordance with N.J.A.C. 14:4-6.8.

(k) The lead agency shall prepare a draft contract with the selected TPS. The contract shall meet the requirements of N.J.A.C. 14:4-6.9 and 6.10.

(l) The lead agency shall provide a copy of the draft contract to the Board and Rate Counsel for their comment. The Board and Rate Counsel shall have 15 calendar days after receipt of the draft contract to provide comments to the lead agency.

(m) The lead agency may accept or reject comments submitted by the Board and/or Rate Counsel. However, the lead agency shall not execute the contract until the earlier of the following dates:

1. The date upon which the Board and Rate Counsel have both submitted comments on the contract or have both indicated that they will not comment; or
2. Twenty days after the Board and Rate Counsel received the draft contract.

(n) After the requirements for Board and Rate Counsel comments at (l) and (m) above are met, the lead agency may execute a contract with the selected TPS(s) that meets the requirements of N.J.A.C. 14:4-6.9 and 6.10.

(o) After execution of the contract, the lead agency and/or each participating municipality shall provide written notice to all affected LDCs of the identity of the selected TPS(s).

(p) Within 10 business days after the postmark on the notice to the LDC required under (o) above, the LDC shall provide the lead agency with the name, address and account number of each residential customer located in a participating municipality, that is not already being served by a TPS.

(q) After receiving the information required under (p) above from the LDC, the lead agency or each participating municipality shall provide written notice in accordance with (r) and (s) below to all residential electric and/or gas customers within the jurisdiction of a participating municipality, except residential customers that already obtain electric generation service or gas supply service from a TPS.

(r) The notice to residential customers required under (q) above shall include the following:

1. A statement that the participating municipality is establishing an energy aggregation program;
2. A statement that the residential customer has a right to opt-out, as defined at N.J.A.C. 14:4-6.2, of the program; but that if no opt-out is submitted the customer will be included in the program;
3. A specific statement of the cost to customers of participation in the program, and any other information necessary to enable customers to compare the program to other alternatives;
4. A requirement that any opt-out response be submitted to the option administrator within 30 calendar days after the postmark on the notice;
5. Approximate start date for the program, and program duration;
6. Directions on how to submit an opt-out response; and
7. A contact name, phone number, and e-mail address for customer inquiries.

(s) The Board shall post a form notice to customers on its website at <http://nj.gov/bpu/>. This form notice shall be used for all government-private energy aggregation programs, except if a program uses special pricing for renewable energy in accordance with N.J.A.C. 14:4-6.9(g), or includes appliance repair service. For these programs, the lead agency shall submit a draft notice to the Board Secretary for approval. The draft notice shall include, at a minimum, all of the information required at (r) above.

(t) If a residential customer does not submit an opt-out response to the option administrator within 30 calendar-days after the postmark on the notice required under this section, the customer shall be included in the energy aggregation program.

(u) The government aggregator shall begin operation of the program promptly upon completion of the 30-day response period for customer opt-outs.

#### **14:4-6.7 LDC aggregation agreement for government-private energy aggregation programs**

(a) After the adoption of an ordinance or resolution authorizing establishment of a government-private energy aggreg-

gation program, each participating municipality shall execute an LDC aggregation agreement with each LDC that serves customers in the municipality, using the applicable form agreement found on the Board's website at <http://nj.gov/bpu/>. This agreement governs the working relationship between the participating municipality and the LDC during the establishment and operation of the government-private energy aggregation program.

(b) The LDC aggregation agreement shall require the government aggregator to do the following:

1. Respond to specific inquiries regarding the details of the particular government-private energy aggregation program;
2. In the case of an Option 2 government-private energy aggregation program:
  - i. Notify residential customers of the program in accordance with N.J.A.C. 14:4-6.6(q) through (s); and
  - ii. Act as the option administrator, as defined at N.J.A.C. 14:4-6.2;
3. Reimburse the LDC for certain costs, as specified in the form LDC aggregation agreement provided by the Board; and
4. Ensure compliance with all other requirements of this chapter that apply to the government aggregator.

(c) The LDC aggregation agreement shall require the LDC to:

1. Respond to general customer inquiries regarding government energy aggregation programs;
2. In the case of an Option 1 government-private energy aggregation program:
  - i. Notify residential customers of the program in accordance with N.J.A.C. 14:4-6.5(c) through (f);
  - ii. Notify non-residential customers, if requested; and
  - iii. Act as the option administrator;
3. Exercise reasonable care in the disclosure of customer information. However, the LDC shall not be responsible for errors or omissions in the preparation or the content of the customer information;
4. Charge the government aggregator no more than the actual, incremental costs incurred as a result of this subchapter; and
5. Ensure compliance with all other requirements of this chapter that apply to the LDC.

(d) The LDC aggregation agreement shall set forth the methods and procedures to be followed by both parties in performing their obligations under the agreement, including

procedures for the transfer and handling of confidential customer information.

#### 14:4-6.8 Advertising for bids, contract award

(a) A lead agency that is establishing an energy aggregation program shall issue an advertisement for the receipt of bids from TPSs interested in supplying services to the program. Such an advertisement for bids shall include bid specifications and shall, at a minimum, meet the requirements of this section and other applicable law.

(b) Bid specifications for a government-private energy aggregation program shall include:

1. An estimate, by rate class, of the number of residential customers, if any, that will participate in the aggregation program;
2. An estimate of the energy needs of the non-residential customers, if any, that will participate in the aggregation program; and
3. A specific listing of all government facilities that will be served under the energy aggregation program, and an estimate of the energy needs of each.

(c) Bid specifications shall not include provisions for "take or pay" contracts, under which an entity commits to pay for a specified level of service, whether or not the specified level is actually used. However, if a government aggregator lists a facility in the bid specifications under (b)3 above, the government aggregator shall continue to obtain services for that facility from the government-private energy aggregation program for the duration of the program contract, and may not obtain that service from another TPS during that time.

(d) The bid specifications shall require that any reimbursement made by the TPS to the government aggregator for expenses shall be made only for costs actually incurred by the government aggregator, in establishing or operating the energy aggregation program, as reflected in invoices or vouchers authorized and paid by the government aggregator. Bid specifications shall not include provisions for the payment by a TPS of concession fees, finders' fees or other direct monetary benefits to the government aggregator.

(e) If bid specifications include a requirement that a TPS reimburse a government aggregator for expenses incurred in establishing or operating the energy aggregation program, the bid specifications shall include:

1. A description of the items for which reimbursement shall be required;
2. An estimate of the costs; and
3. A maximum amount that may be reimbursed by the TPS.

(f) All expenditures and reimbursements of preliminary costs under this chapter shall be budgeted in accordance with

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.

(g) The lead agency shall evaluate bids received and shall select a bid based on the following:

1. For a government-private energy aggregation program, the lead agency shall select the most advantageous proposal, price and other factors considered; or

2. For a stand-alone or multi-government energy aggregation program, the lead agency shall select the lowest responsible bidder in accordance with the rules of the Department of Community Affairs governing local public and public school cooperative purchasing, set forth at N.J.A.C. 5:34-7.

(h) If a government-private energy aggregation program will provide appliance repair service, the lead agency shall prepare and issue a separate advertisement for the receipt of bids, which shall comply with all applicable requirements of this chapter.

#### 14:4-6.9 Price requirements for government-private programs

(a) This section governs the rates for services provided to residential and non-residential customers under a government-private energy aggregation program.

(b) A contract providing for electric generation service and/or gas supply service to residential customers shall not set a rate for such service that, at the time of the contract award, exceeds the benchmark price, as determined pursuant to this section, except that the rate for electric generation service may exceed the benchmark price in accordance with (g) below.

(c) The contract may set a fixed price per kilowatt hour, or may include a pricing structure that allows for fluctuations in price during the life of the contract. However, the pricing structure shall not be changed without notice to the customers in accordance with N.J.A.C. 14:4-6.11(a).

(d) The benchmark price for each rate class shall be calculated using a worksheet provided by the Board on its website at <http://nj.gov/bpu/>, and shall not exceed the applicable amount specified at (e) or (f) below.

(e) The benchmark price for electricity generation service shall be:

1. The cost of basic generation service, as defined at N.J.A.C. 14:4-1.2, for the rate class; plus

2. The pro rata value of the cost of compliance with the renewable energy portfolio standards at N.J.A.C. 14:8-2, which value is derived from a non-utility generation contract with an electric public utility that provides for the transfer of certain environmental attributes from the elec-

tric public utility to a supplier of basic generation service. This pro rata value shall be determined by the Board.

(f) The benchmark price for gas supply service shall be the rate for basic gas supply service.

(g) A contract providing for electric generation service and/or gas supply service to residential customers under a government-private energy aggregation program may set a rate for such service that is higher than the benchmark price only if both of the following criteria are met:

1. The electricity provided contains a percentage of class I and class II renewable energy, as defined at N.J.A.C. 14:8-1.2, that exceeds the applicable percentage required under the renewable portfolio standards at N.J.A.C. 14:8-2; and

2. The participating municipality notifies all residential customers that will participate in or are eligible to participate in the program that an electricity rate higher than the benchmark price is under consideration. This notice shall be provided through the customer opt-out notice letter required under N.J.A.C. 14:4-6.5(g) and 6.6(s).

(h) The contract price for energy service to non-residential customers under a government-private energy aggregation program shall be determined through the bidding process.

#### 14:4-6.10 Contents of a contract between a government aggregator and the selected TPS

(a) A contract between a government aggregator and a TPS for an energy aggregation program shall meet all requirements in this subchapter and shall include, at a minimum:

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

2. The charges, rates, and fees for services under the energy aggregation program;

3. If applicable, the method and procedures to be followed by the TPS to enroll and educate customers concerning the energy aggregation program;

4. The terms and conditions that shall govern the relationship between the TPS and each customer, which shall include provisions that:

i. Allocate the risks associated with providing services, between the TPS and the customer receiving the services;

ii. Allocate risks associated with circumstances or occurrences beyond the control of the parties to the contract;

iii. Define default, and establishing remedies in case of default by a party to the contract; and

- iv. Allocate the responsibility for any penalties that may be imposed by an LDC as a result of over-delivery of electricity or gas, under-delivery of electricity or gas, or non-performance by the TPS;
5. Provisions for the use by the TPS of the government aggregator's resources, equipment, systems or employees in connection with the contract;
6. The term of the contract;
7. Provisions indemnifying and holding the government aggregator harmless from all liabilities, damages and costs associated with any contract between a customer and the TPS;
8. A requirement that the TPS provide a performance bond if required by the government aggregator;
9. Procedures to ensure that participation in the aggregation program is consistent with this subchapter;
10. Any provisions necessary to ensure compliance with the Board's consumer protection rules at N.J.A.C. 14:4-7;
11. If appropriate, provisions requiring the TPS to provide certain communications to customers in a language other than English; and
12. Any other terms and conditions that the government aggregator deems necessary.

## SUBCHAPTER 7. RETAIL CHOICE CONSUMER PROTECTION

### 14:4-7.1 Scope

This subchapter shall apply to all electric power suppliers, and gas suppliers. Except where specifically addressing residential customers, the consumer protections contained in this subchapter shall pertain to all customers.

### 14:4-7.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. In addition, definitions set forth at N.J.A.C. 14:4-1.2 and 14:3-1.1 shall apply to this subchapter, unless the context clearly indicates otherwise.

"FTC" means the Federal Trade Commission or its successor agency.

"Redlining" means a procedure that 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.

### 14:4-7.3 Advertising standards

(a) Any advertisements by a TPS that offers customers optional services, as defined at N.J.A.C. 14:4-1.2, 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 whether such optional services are provided at an additional charge that is not reflected in the advertised cost per kWh or per therm, or the advertised percentage savings.

(b) If the costs of the optional services are included in the advertised price per kWh or therm, or the advertised percentage savings, the advertisement shall provide a toll-free number, local telephone number or website where customers may obtain a detailed breakdown of the price per kWh or price per therm so the customers may view the rates with and without optional services included.

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

1. A toll-free or local telephone number that a customer may call or website that a customer may access 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; and
2. The LDC(s) in whose service territory(ies) the TPS is offering services. If the TPS offers its services throughout New Jersey, the advertisement may state this fact, rather than listing all New Jersey LDCs.

### 14:4-7.4 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, and that in either (b)1 or 2 below, shall be provided:

1. A toll-free or local telephone number, which a customer may call or website, which a customer may access to request detailed information concerning 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;
2. The period of time over which the advertised price is valid;
3. The term (duration) of the contract for which the advertised price is being offered;

4. 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;

5. The TPS's license number;

6. The LDC(s) in whose service territory(ies) the TPS is offering the advertised services. If the TPS offers its services throughout New Jersey, the materials may state this fact, rather than listing all New Jersey LDCs;

7. Other materials or information that may be required to comply with the Environmental Disclosure Standards; and

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

(b) The marketing materials provided by the TPS to residential customers shall also include either of the following:

1. 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; or

2. 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.

(c) If the Board determines, either on its own motion or in response to a petition, that information, other than that required under (a)4 and/or (b) above, would provide customers with a more accurate understanding of the potential savings from obtaining energy through the TPS instead of through BGS or BGSS, the Board may, by Order, require that TPS marketing materials include that information in addition to, or instead of, the information listed in (a)4 and/or (b) above.

(d) The TPS shall comply with all FTC telemarketing rules, including the restriction on telemarketing between the hours of 9:00 P.M. and 8:00 A.M., Eastern Standard Time.

(e) A TPS shall not market to retail customers prior to its receipt from the Board of a supplier license.

(f) The TPS shall clearly state in its solicitations to the customer, and in its marketing materials, whether in hard-copy, 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.

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

(h) 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.

(i) 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.

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

(k) 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.

(l) 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 section. However, once a TPS has received applications from specific groups, the decision to accept or reject any customer or group 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.

(m) Marketing to specific LDC service territory(ies) shall not be considered discriminatory pursuant to this section. 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 group 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.

#### 14:4-7.5 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, which shall be made available to the Board and the Division of Consumer Affairs within 48 hours after a request by either agency.

(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 shall be maintained in an interest bearing escrow account, and the customer shall be provided a receipt.

(e) A TPS shall provide to the customer, upon request a written copy of its policy with respect to income, security deposit, and credit requirements.

#### 14:4-7.6 Contracts

(a) A TPS shall not 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 identified in N.J.A.C. 14:4-2.3 and 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 the document is to authorize a change in the customer's TPS, and include explicit terms and conditions, which shall include, at a minimum:

1. A clear statement of the duration of the contract;
2. 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 shall clearly and conspicuously state the percentage savings being guaranteed, as well as the price or charges to which the percentage savings is being compared;
3. 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;
4. 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 or her selection;

5. A statement of the TPS's termination rights, which shall explain the specific conditions under which the TPS may terminate service, and that at a minimum the TPS shall provide the customer with 30 days written notice of the termination and an opportunity to remedy the termination condition. The notice shall state the TPS's rights to terminate the contract, regardless of whether the customer remedies the condition that triggered the termination notice; and

6. No statement that asks any customers to 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 shall 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 state that, for a residential customer, there is no charge for starting or stopping electric generation service or gas supply service, if done within the terms of the contract. This subsection does not prohibit an early termination fee or other penalty for failure to adhere to a valid TPS contract.

(f) A TPS contract shall explicitly permit a residential customer to terminate the contract, with 48 hours notice without penalty, as a result of a relocation within or outside the LDC's franchise area, disability that renders the customer of record unable to pay for the TPS's service, and/or the customer of record's death.

(g) A TPS contract shall clearly and conspicuously display the TPS' name and license number issued by the Board.

(h) 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 Rate Counsel, as defined at N.J.A.C. 14:3-1.1; 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 Rate Counsel, within three business days. A TPS may elect to file a request for confidentiality for submitted information under the Board's Open Public Records Act (OPRA) rules at N.J.A.C. 14:1-12.

(i) 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 to the customer.

(j) 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.

(k) The TPS shall provide notice to the customer at least 30 days prior to the end of the electric generation service or gas supply service contract, informing the customer of the date upon which the service contract term ends.

#### 14:4-7.7 Customer bills

(a) All TPS bills shall be in clear and conspicuous language and shall contain sufficient information to enable a customer to accurately calculate the correct bill amount.

(b) All TPS bills shall include, at a minimum, all of the following:

1. The billing period and billing date;
2. The number of kWhs or therms used;
3. The unit price for each kWh or therm;
4. If the number of kWhs or therms is based on estimates or averages, or on information from a remote reading device, the bill shall clearly indicate the basis of the number of kWhs or therms;
5. If the bill includes charges for optional services provided by the TPS, a separate itemization of these charges;
6. The name, address and local and/or toll-free telephone number of each TPS for which billing is provided, and of each billing aggregator acting on behalf of a TPS;
7. The toll-free customer service and emergency telephone numbers of the LDC;
8. The address of the Board and the telephone number of the Board's Division of Customer Assistance: (973) 648-2350 and 1-800-624-0241; and
9. Any other information the Board requires by order after May 19, 2008.

(c) If a TPS does not issue separate bills for its services, the TPS shall provide to the LDC all of the following information for inclusion in the LDC's consolidated bills:

1. For all customers except for commercial and industrial electricity customers, the information required at (b)3 above;
2. For commercial and industrial electricity customers, the customer's current and total charges;
3. If the LDC includes charges for TPS-provided optional services on the LDC's consolidated bills, the itemization described at (b)4 above; and
4. The information required at (b)9 above.

(d) LDC bills shall comply with the Board's rules for all public utility bills at N.J.A.C. 14:3-7.5 and 7.6.

#### 14:4-7.8 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 consent methodology, except pursuant to N.J.A.C. 14:4-2.3, or under certain conditions, for example, 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.

#### 14:4-7.9 Complaints

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

(b) If a TPS has been advised that the customer is not satisfied with the TPS's response, the TPS shall advise the customer that the customer can contact the Board, at 1-800-624-0241, to request an alternate dispute resolution procedure or to file a formal complaint.

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

#### 14:4-7.10 Termination of a residential contract by a TPS

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

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SUBCHAPTERS 8 THROUGH 9. (RESERVED)