

- a. Said Petition must include the following to show that the competitive service offering(s) will not impair the EDC/GDC's ability to provide safe, adequate and proper service and that the service shall be offered on a non-discriminatory basis:
 - i. Dispatching schedules;
 - ii. A prioritization schedule which would show how the EDC/GDC will handle emergency, same day customer originated orders and proposed appliance service orders;
 - iii. Detailed description of how new competitive service offering(s) will affect this schedule, meter reading schedules, routine maintenance, etc.;
 - iv. Titles, competitive and non-competitive service responsibilities and number of all employees who are anticipated to be involved in the proposed competitive service offering(s);
 - v. Detailed description of how the proposed competitive service offering(s) will be marketed throughout demographic segments of the customer base;
 - vi. Indicate where the proposed competitive service offering(s) will be marketed;
 - vii. Detailed description of the proposed competitive service offering(s), including a list of the parts covered under said offering(s);
 - viii. Draft bill inserts shall state that:
 1. The Board has not approved the rates;
 2. "All prices may vary and will depend upon contractor and type of work performed" if rates vary;
 3. These services are also available from independent contractors;
 4. The EDC/GDC will provide free of charge, such services as gas leak investigations and other safety related services.
 - ix. Derivation of the proposed charge(s) for each competitive service offering, which shall include calculations, working papers, statistical data and other information utilized. Said proposed charge(s) should exceed the fully allocated current cost of providing the proposed competitive service offering(s), which shall include the current cost of all equipment, vehicles, labor, fringe benefits, and overheads and administration expenses, other assets utilized and costs incurred, directly or indirectly, all current promotional, advertising and marketing costs, and the current fully loaded labor cost of management involved with this proposed competitive service offering(s);
 - x. Estimate of market penetration which may be defined as the estimated number of orders or calls;
 - xi. Estimated three year proforma revenue and expense statements relating to the proposed competitive service offering(s) which shall include all relevant calculations, working papers, surveys and other data in support of the projected revenues and expenses based upon a fully loaded labor rate and all promotional expenses;
 - xii. A comparison of proposed charges with those of other EDC/GDCs and independent contractors for the same type(s) of service and specifically provide service charges for the following:
 1. EDC/GDC itself;
 2. 5 to 10 in-State independent contractors;
 3. Any out-of-State utility affiliates;
 4. Any out-of-State independent contractors;
 5. Any New Jersey EDC/GDC that offers the proposed competitive services offering(s) outside of its franchise area.
 - xiii. Detailed explanation of the accounting treatment of revenues and costs of proposed competitive service offerings including whether the proposed competitive service offering(s) will be above or below the line;
 - xiv. Accounts and Account Numbers that will be utilized in booking the revenues and expenses pertaining to the proposed competitive service offerings to ensure that there is strict separation and allocation of the EDC/GDC's revenues, costs, assets, risks and functions between competitive business segment and EDC/GDC;
 - xv. Detailed explanation of how prices will be conveyed to customers if subcontractors are used;
 - xvi. Complete list of all competitive service offering(s) currently offered by the EDC/GDC, the date of implementation, date of Board Order and Docket Number;
 - xvii. In the alternative to xvi above, Competitive Service Tariffs, Competitive Service Schedules, etc., shall be maintained similar to EDC/GDC tariffs, rates schedules, etc., and should provide a full description of the service, current rates and may be filed in redacted and unredacted versions, with the date of the Board Order approving the current tariff as well as the respective Docket Number reflected on the bottom of the tariff sheet;
 - xviii. Detailed description of the procedures the EDC/GDC will utilize to resolve any consumer complaints, dissatisfaction, etc., if the proposed competitive service offering(s) will be performed rendered by a participating subcontractor;
 - xix. Copies of a standard contract between the EDC/GDC and customer, the subcontractor and the customer, and EDC/GDC and the subcontractor which shall include provisions guaranteeing work quality assurance, customer satisfaction, warranties on parts and labor, response to customer complaints, pricing and response time, as agreed by the participating subcontractors.
2. Petition Confidentiality
 - a. If the EDC/GDC claims that certain information contained in said Petition should be treated as confidential and proprietary, the EDC/GDC must file a motion requesting confidentiality which motion shall include:
 - i. Redacted Petition;
 - ii. Unredacted Petition with appropriate staff;
 - iii. All relevant documents, pages, etc., marked as confidential; and
 - iv. Detailed explanation as to why the information should be treated as confidential.

SUBCHAPTER 6. GOVERNMENT ENERGY AGGREGATION PROGRAMS

Authority

N.J.S.A. 48:3-92, 93.1 through 93.3, and 94; 48:3-85.

Subchapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Subchapter 6, Interim Government Energy Aggregation Program Standards, expires on July 10, 2005. See: 37 N.J.R. 388(a).

Subchapter Historical Note

Subchapter 6, Interim Government Energy Aggregation Program Standards, was readopted by R.2002 d.313, effective August 21, 2002. See: 34 N.J.R. 1524(d), 34 N.J.R. 3230(a).

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

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:

1. Electric generation service, as defined at N.J.A.C. 14:4-6.2;
2. Gas supply service, as defined at N.J.A.C. 14:4-6.2;
3. Electric related service, as defined at N.J.A.C. 14:4-6.2, including appliance repair; and/or
4. Gas related service, as defined at N.J.A.C. 14:4-6.2, including appliance repair.

(b) This subchapter applies to government entities, local distribution companies (LDCs), and third party suppliers (TPSs), as those terms are defined at N.J.A.C. 14:4-6.2.

(c) This subchapter authorizes the establishment by a government aggregator of any of the following three types of energy aggregation programs:

1. A stand-alone energy aggregation program, as defined at N.J.A.C. 14:4-6.2;
2. A multi-government energy aggregation program, as defined at N.J.A.C. 14:4-6.2; and
3. A government-private energy aggregation program, as defined at N.J.A.C. 14:4-6.2.

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. 14:4-4.3 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.

“Basic gas supply service” (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 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.

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

“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, and includes agreements and arrangements related to the provision of the retail electric energy and capacity.

“Electric public utility” has the meaning assigned to this term at N.J.A.C. 14:4-1.2. An electric public utility is a type of LDC, as defined herein.

“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; billing and bill payment services, as authorized by the Board pursuant to N.J.S.A. 48:3-94a(4)(b).

“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.

“Gas public utility” has the meaning assigned to this term at N.J.A.C. 14:4-1.2.

“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; the provision of energy consumption measurement, analysis, and information management; billing and bill payment services, as authorized by the Board pursuant to N.J.S.A. 48:3-94a(4)(b).

(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 rule; 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.

Amended by R.2002 d.313, effective September 16, 2002.
See: 34 N.J.R. 1524(d), 34 N.J.R. 3230(a).
Rewrote the section.

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, as applicable:

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

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 charged 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 www.bpu.state.nj.us, 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. 14:4-6.2, 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. 14:4-8, 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 electric 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, as defined at N.J.A.C. 14:4-6.2.

(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. 14:4-8.2, that exceeds the applicable percentage required under the renewable portfolio standards at N.J.A.C. 14:4-8.3; 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 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:

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

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

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

iv. Provisions allocating 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;