# CHAPTER 12

# DEMAND SIDE MANAGEMENT

**Authority**

N.J.S.A. 48:2–12 and 13, 52:27F–11(g) and (q), and 52:27F–18.

**Source and Effective Date**

R.1991 d.549, effective November 4, 1991
See: 22 N.J.R. 3616(b), 23 N.J.R. 1283(a), 23 N.J.R. 3368(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 12, Demand Side Management, expires on November 4, 1996.

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## SUBCHAPTER 1. PUBLIC UTILITY PROGRAMS

### 14:12–1.1 Purpose and scope

The rules in this chapter are designed to encourage and promote cost-effective investment in demand side management initiatives. These rules are intended to foster the increased penetration and use of energy efficiency technologies applicable to the use and supply of electric and gas energy in the State. One mechanism to encourage cost-effective investment in such demand side initiatives is the provision of financial incentives to electric and gas utilities with respect to investment aimed at fostering the increased use of energy efficiency technologies. Increased energy efficiency is regarded as a viable alternative to the construction or procurement of new electric and gas supply sources. These rules are designed to put in place mechanisms which permit utilities to earn financial returns equivalent to or, in recognition of the potential positive impact on society, greater than, the returns provided on utility owned supply side projects. The rules are also designed to create an environment for utilities to utilize their resources and unique position as major energy providers in the State to foster increased energy efficiency. Finally, the rules are intended to provide significant increased opportunities for the delivery of energy efficiency services and measures by independent non-utility energy service companies, contractors and suppliers.

### 14:12–1.2 Definitions

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

"Avoided cost savings" means the level of fuel, operation and maintenance, labor costs, capital costs, taxes and any other costs which the utility avoids having to incur as a result of displacement of customer demands through demand side management efforts.

"Board" means the New Jersey Board of Regulatory Commissioners.

"Core Programs" means a set of conservation programs required to be performed by the utilities and which are not subject to the incentive provisions established in N.J.A.C. 14:12–3.1(a). The Core Programs shall constitute activities undertaken by the utility in order to foster the dissemination of energy efficiency information to the public as well as to accomplish certain socially desirable or other public benefit goals.

"Demand side management (DSM)" means the management of a public utility's existing and/or future capacity and/or energy needs through the implementation of cost-effective energy efficiency technologies, including, but not limited to, installed conservation, load management and energy efficiency measures in the residential, commercial, industrial, institutional and governmental premises and facilities in the State.

"Demand Side Management Program (DSM Program)" means the provision of program measures by a utility, directly or indirectly, pursuant to a DSM Plan at a utility's delivery system and/or one or more participants' premises and/or facilities.

"Demand Side Management Resource Plan (DSM Plan)" means a comprehensive presentation of a utility's demand side management activities over a specified period as well as mechanisms for DSM program cost and revenue erosion recovery and incentive mechanisms to encourage DSM activities as specified in N.J.A.C. 14:12–2, 3 and 4.

"Energy service company (ESCO)" means a company which provides energy efficiency and load management equipment and/or services to end user customers.

"Fixed cost revenue erosion" means the reduction in contribution towards a utility's fixed costs resulting from a reduction in energy usage or billing demand which results from a DSM Program. This figure is determined on a per unit basis by dividing total test year retail revenues minus the sum of test year:

1. Gross receipts and franchise taxes;

2. Fuel costs; and

3. Any other variable costs which may be approved by the Board by total test year retail sales.

"Free rider effects" means energy and capacity savings resulting from measures which would have been implemented even in the absence of the utility program.

"Fuel Adjustment Clause" means an electric utility's Levelized Energy Adjustment Clause (LEAC) or a gas utility's Raw Materials Adjustment (RMA) or Levelized Purchased Gas Adjustment (LPGA) or Levelized Gas Adjustment Clause (LGAC).

"Measurement plan" shall have the meaning set forth in N.J.A.C. 14:12–3.6.

"Participant" means the end user at whose site a DSM Program measure has been installed or rendered.

"Penetration levels" means the number of participants in a particular program relative to total eligible customers for that program.

"Program measure" means the particular device, technology service, or system, or combination thereof, being offered pursuant to a DSM Plan, to be installed or rendered in a participant's premises and/or facilities or in the utility's energy delivery system.

"Public utility" or "utility" means all electric and gas utilities as defined by N.J.S.A. 48:2–13, excluding municipally owned electric or gas utilities. A "public utility" or "utility" shall not be deemed to include a subsidiary or affiliate of a public utility or utility.

"Test year sales" means the level of sales utilized by the Board to set rates in the utility's most recent base rate proceeding.

"Total Resource Cost Test" means a comparison of the avoided cost savings (including line loss factors and reserve margin savings), incidental savings and environmental externalities to the utility program costs plus net participant costs. Incentive payments to customers are not included in this test because they are considered to be a transfer payment.

"Unit" means a unit of measure of energy expressed as one kilowatt-hour (kwh) in the case of electricity, and one therm in the case of gas.

Amended by R.1993 d.96, effective March 1, 1993.
See: 24 N.J.R. 2804(a), 25 N.J.R. 1000(a).
Amended "fixed cost revenue erosion."

## SUBCHAPTER 2. DEMAND SIDE MANAGEMENT RESOURCE PLAN

### 14:12–2.1 Filing

Every utility shall file within two years of the Board's approval date of its last approved DSM Plan pursuant to N.J.A.C. 14:12, a DSM Plan for review and approval by the Board. The Board, however, for good cause, may alter the time for filing. The Board, for reasons such as current DSM Plan success or the need for additional evaluation time, may extend the time for filing, on not less than four months notice. Should the Board direct a utility to file its DSM Plan prior to the end of the two year period, it shall be done only upon a six month notice to the affected utility.

Amended by R.1994 d.82, effective February 22, 1994.
See: 25 N.J.R. 5111(a), 26 N.J.R. 1109(a).

### 14:12–2.2 Plan elements

(a) The DSM Plan shall consist of the following elements, each of which shall be accompanied by technical support sufficient to provide the Board with a basis to evaluate the DSM Plan:

1. A forecast of overall energy and capacity savings including a target which establishes and specifies an overall energy and capacity savings goal in terms of kilowatt-hours (kwh) and kilowatts (kw) for electric utilities and therms for gas utilities to be achieved by virtue of the DSM Plan, as well as a milestone schedule for attaining the goal;

2. A forecast of the effect of the DSM Plan on the utility's overall peak load and energy demand, construction plans, fuel purchase plans, capacity expansion plans, bulk power purchase plans and future capital additions;

3. A list and description of "Performance–Based DSM Programs" which shall present the DSM efforts which the utility intends to implement through its own efforts and/or through the use of ESCOs or contractors over the succeeding two years and for which performance-based incentives will be sought pursuant to N.J.A.C. 14:12–3. DSM efforts proposed by the utility may include investments in increased energy delivery system efficiency in addition to end use efficiency;

4. A list of Core Programs which will be offered by the utility accompanied by a proposed budget, and program description including a goal and target market for each utility. As the benefits to be achieved from Core Programs may transcend a strict economic benefit/cost analysis or be difficult to accurately quantify, the Core Programs shall not be subject to the mechanisms applied to the Performance–Based DSM Programs as set forth in N.J.A.C. 14:12–3. Instead, the utilities will be permitted to expense the costs related to operation of the Core Programs on a timely basis through the DSM Cost Recovery Mechanism, as set forth in N.J.A.C. 14:12–4.1.

i. Unless otherwise directed by the Board, a utility's Core Programs menu must include the following:

(1) The Home Energy Savings Program (HESP) as described in N.J.A.C. 14:38. However, in order to increase the overall cost effectiveness of HESP, the utility may incorporate features such as target marketing, and prescreening of applicants;

(2) A Low Income Direct Grant and/or Seal–Up Program;

(3) A Commercial and Apartment Conservation Service (CACS) energy audit program; features similar to those described in (a)4i(1) above which enhance program cost effectiveness may be incorporated by the utility;

(4) A program encouraging the energy efficient design of new construction;

(5) Informational programs designed to foster conservation awareness;

(6) Educational programs designed to enhance the understanding of energy efficiency in the school systems; and

(7) Other programs as proposed by the utility, any interested person, or by the Board upon its own motion which are ultimately approved by the Board.

ii. Electric utilities shall offer the Core Programs identified in N.J.A.C. 14:12–2.2(a)4i(1),(2) and (3) above to non-gas heated customers.

iii. In filing its DSM Plan, each utility shall have the opportunity to propose one or more Core Programs as a performance based DSM Program, it being the intent of this section not to preclude the opportunity to earn incentives if an adequate measurement plan is provided by the utility.

5. For each Performance–Based DSM Program and Core Program, the DSM Plan shall include the following:

i. A program implementation plan, which shall include:

(1) The anticipated manner of the marketing and installation of program measures;

(2) The specific role of the utility, ESCOs and contractors in implementing a DSM Program or in marketing, supplying, installing or maintaining program measures;

(3) A description of the selection process to be employed, with respect to the use of ESCOs and/or contractors and the standards to which the ESCOs and/or contractors will be held in performing work; and

(4) An analysis of the impact of the program on the competitive aspects of existing market infrastructures involved in the sales and installation or other provision of similar measures and/or services.

ii. A detailed description of the customer base which the program will target;

iii. The DSM Program measures to be offered;

iv. The commitments or contributions which will be expected of customers; and

v. The penetration levels and overall energy and capacity savings expected to be achieved by each program.

6. Each utility must prepare an Executive Summary of its DSM Plan filing which provides a brief overview of the DSM Plan including:

i. An overall target of energy and capacity savings;

ii. A brief description of the DSM Programs and Core Programs offered, including the manner of implementation, the projected savings and a measurement plan;

iii. An incentive mechanism and/or standard price offer description;

iv. The basis for the incentives or standard offer, including a summary of avoided costs;

v. A cost recovery mechanism as provided for under N.J.A.C. 14:12–4.1; and

vi. A revenue adjustment mechanism as may be proposed as provided for under N.J.A.C. 14:12–4.3.

7. Each utility must demonstrate an effort to offer DSM Program opportunities to all sectors of its customer base, or demonstrate why such a broad spectrum is not achievable.

8. A utility that opts for the standard offer approach pursuant to N.J.A.C. 14:12–3.5 shall include in its plan a proposed block size, methodology for accepting proposals and filling the block, standard contract terms and conditions, and minimum requirements for participation.

**Case Notes**

Management audit of electric and gas utility; the Board ordered implementation of all but three of 119 recommendations. In Matter of Board's Determination that Management Audit be Performed on Operating Procedures of Public Service Electric & Gas Utility. 92 N.J.A.R.2d (BRC) 69.

## SUBCHAPTER 3. INCENTIVES

### 14:12–3.1 Basis for incentives

(a) Unless otherwise approved or directed by the Board, the basis for the opportunity to earn an incentive shall take one of the following formats:

1. A shared savings approach as set forth in N.J.A.C. 14:12–3.4; or

2. A standard price offer as set forth in N.J.A.C. 14:12–3.5.

### 14:12–3.2 Net benefits

(a) Net benefits of the program shall be defined as the difference between the net present value of benefits associated with the program and the net present value of program costs.

(b) The net benefits calculation can be expressed utilizing the following formula:

$NB = NPV_B - NPV_C$, where

$NB$ = net benefits

$NPV_B$ = net present value benefits of the energy and capacity savings, calculated using the following formula:

$$\sum_{t=1}^{L} \frac{(E \times AEC)}{(1 + DR)^{t-1}} + \frac{(C \times ACC)}{(1 + DR)^{t-1}}$$

where
- $t$ = years
- $L$ = for shared savings, the duration of the Program measure; for the standard offer, the term of the contract with the utility
- $E$ = kilowatt-hours (electric utilities) or therms (gas utilities) of energy avoided in year t by virtue of the DSM Program measures
- $C$ = kilowatts (electric utilities) or peak therms (gas utilities) of demand avoided in year t by virtue of the DSM Program measures
- $AEC$ = avoided energy cost per unit in year t as approved by the Board under paragraph (c)(3) below. In addition to energy costs AEC must include an adjustment for transmission and/or distribution line losses and a specific incorporation of environmental externalities as provided in N.J.A.C. 14:12-3.8.
- $ACC$ = avoided capacity cost in year t including appropriate reserve margin savings for electric utilities, as approved by the Board under paragraph (c)3. below.
- $DR$ = the appropriate discount rate as approved by the Board in its review of the utility DSM Plan.
- $NPV_C$ = net present value of total costs recovered from ratepayers, including program costs, base level of return and a factor initially set at 0.5 times the fixed cost revenue erosion as adjusted by the Board from time to time.

(c) Each electric and gas utility shall, at the time it submits its DSM Plan, file an avoided cost savings study which demonstrates the energy and capacity cost avoided by the utility by virtue of the existence of reductions in load from conservation and load management. Except for matters related to the timeliness of data, the avoided cost savings which forms the basis for utility incentives shall be consistent with that used as the cap for price offers available for non-utility supply project developers or third party energy service companies through utility bid solicitation or other supply and demand side procurement procedures, as reviewed and approved by the Board.

1. In preparing the avoided cost savings study, utilities shall calculate the fuel, operation and maintenance, labor, capital and other costs and taxes which the utility avoids having to incur, including line loss factors, transmission and distribution capacity costs, maintenance costs, and reserve margin savings, as a result of displacement of customer demands through DSM efforts. The utilities' calculation of avoided costs shall be exclusive of fixed cost revenue erosion, and shall reflect the capacity as well as commodity or energy costs avoided by virtue of displaced supply purchases and/or facilities.

2. Valuation of avoided energy and capacity shall be time-differentiated in order to permit a more accurate valuation of those DSM Program measures which are designed to shift and reduce customer usage during certain times of day, days of week or seasons of the year.

3. Avoided costs savings filings that are made pursuant to this section shall be subject to review and approval by the Board as part of its review of the utility's DSM Plan, as provided for in N.J.A.C. 14:12–2.1.

**14:12–3.3 Incidental savings**

(a) Subject to the express approval of the Board, a utility may request to receive additional incentives in excess of those established in N.J.A.C. 14:12–3.1 and 3.2 conditioned upon a demonstration of incidental savings related to a particular DSM Program. For purposes of this mechanism, incidental savings are defined as savings of non utility-provided energy sources (for example, heating oil savings related to an electric utility program).

1. In the event that an electric utility requests additional incentives for particular programs related to incidental savings, the utility may propose a modification to the net benefits formula specified in N.J.A.C. 14:12–3.2(a) which reflects those savings.

(b) A measurement and verification plan for the incidental savings shall be submitted to the Board for review and approval with respect to all proposals for receipt of additional incentives.

**14:12–3.4 Shared savings**

(a) Incentives to be provided to a utility pursuant to N.J.A.C. 14:12–3.1(a) shall be based upon a shared savings between the utility shareholders and its ratepayers of the net benefits as determined in N.J.A.C. 14:12–3.2.

(b) The incentives shall be calculated as a retention by the utility of a percentage of the net benefits achieved by virtue of each DSM Program.

(c) Net benefits shall be calculated for each DSM Program after the completion of Program measure installation and DSM Program measurement and verification. The level of energy and capacity savings utilized in these calculations shall be based upon the most recent measurement plan approved for that DSM Program by the Board pursuant to N.J.A.C. 14:12–3.6, and subject to the approved verification plan also filed pursuant to N.J.A.C. 14:12–3.6(g). The critical variables in the actual net benefit calculation shall be the verified post installation energy and equivalent capacity savings, DSM Program measure performance, and the level of actual DSM Program costs. Actual DSM Program costs shall include a deduction from utility incurred costs for participant contributions and shall include an appropriate allocation of program support from general utility operations as determined and approved by the Board.

(d) In the event that net benefits of a DSM Program are less than one, negative incentives to utility shareholders shall result. These negative incentives shall be determined based upon the same percentages that the utility proposes to use to determine positive incentives as provided in (f) below. Negative incentives shall be based upon poor performance resulting from such factors as poor penetration levels, program cost overruns in DSM Program costs and substandard actual performance of Program measures, and not upon retroactively applied changes in the measurement criteria.

(e) A base level of return may be proposed by the utility and provided for utility shareholder investments in DSM Programs implemented in accordance with this section. A base level of return is optional and is intended to provide a base level of incentive for high risk DSM Programs that the utility would not implement on a pure shared savings basis as defined in N.J.A.C. 14:12–3.4(f). The base level of return may represent the percentage return on utility shareholder program investment to be provided the utility. Incentives (or negative incentives) achieved for each DSM Program as established in (b) through (d) above shall be added to (subtracted from) the base return.

(f) Proposals for specific shared savings percentages, base returns, or a combination thereof, shall be included in the filed DSM Plans. Such proposals shall provide an adequate balance between risks and incentives for DSM initiatives as determined by the Board. Unless otherwise permitted by the Board, allowed shared savings percentages will be inversely related to the base level of return.

(g) The utilities' DSM Plan shall be designed in a manner such that ESCOs, contractors, and customers are provided with a reasonable opportunity to participate in the provision of DSM services at customer premises and to propose innovative DSM applications. To that end, each utility that opts for the shared savings approach must also make available, as part of its DSM Plan, a program for the purchase of electric and/or gas energy and capacity savings delivered by non-utility entities from DSM Programs not specifically covered and sufficiently different from utility-sponsored core or performance-based programs.

(h) Utilities that opt for the shared savings approach described in N.J.A.C. 14:12–3.4 are eligible to receive incentive payments for DSM measures implemented by ESCOs, contractors or customers.

**14:12–3.5 Standard pricing offers**

(a) In the event that a utility opts to make available, pursuant to N.J.A.C. 14:12–3.1(a)2, a standard price offer in lieu of shared savings programs pursuant to N.J.A.C. 14:12–3.1(a)1, the standard price offer shall contain the following:

1. A price for which the utility will pay ESCOs, contractors or customers who meet minimum threshold requirements for delivery of verifiable energy and capacity savings from DSM measures. The utility may also propose to deliver verifiable DSM savings through various programs and be permitted to receive revenues equivalent to the standard price offer for delivery of such savings; and

2. The price of the standard offer shall be determined by the following formula:

i. Avoided Energy Costs plus Avoided Capacity Costs as defined in N.J.A.C. 14:12–3.2(b) minus Fixed Cost Revenue Erosion times 0.5;

ii. An appropriate discount below the formula may be applied to reflect the anticipated benefits which would result from a competitive bid; and

3. A demonstration that measures or programs procured via a standard price offer are cost-effective pursuant to the requirements of N.J.A.C. 14:12–3.7.

4. Standard offer payments shall apply uniformly to all verifiable DSM technologies meeting minimum threshold criteria and shall be made available for any energy and capacity savings delivered to the utility provided savings have not exceeded the approved block size.

(b) Utilities' DSM programs implemented pursuant to this subsection shall be held to the same standards as non-utility entities participating in the standard offer with regard to security for the delivery of savings, performance standards and penalties/rewards, measurement and verification of savings, pricing, and other applicable contract terms.

**14:12–3.6 Measurement plan**

(a) A measurement plan for each DSM Performance–Based Program shall be filed as part of the Plan.

(b) The measurement plan shall set forth for each DSM Program the basis for annual and life-cycle energy and capacity savings estimates for each program, as well as the specific mechanism to be employed for verifying the actual savings produced.

(c) Where practicable, the preferred measurement methodology shall be implemented through a metering arrangement, with appropriate adjustments for weather normalization and/or other factors influencing usage levels. If metering alone is impractical, engineering estimates or other appropriate methods may be utilized in conjunction with or as an alternative to metering, if demonstrated to be accurate and reliable.

(d) Estimates of energy and capacity savings shall expressly reflect deductions for any free rider effects. Free rider effects shall be determined prior to program implementation and subsequent changes will apply only to prospective installations.

(e) Program net benefits calculated pursuant to N.J.A.C. 14:12–3.2 shall be periodically reviewed to ensure that they reflect implementation experience as well as advances in measurement techniques. Said review shall be undertaken at least every two years concurrent with the filing and review process related to succeeding DSM Plans filed pursuant to N.J.A.C. 14:12–2, at which time the utility must demonstrate that the existing measurement plan remains the most appropriate. In the event of the development of new technologies the Board, on its own motion or at the request of an interested party may review an existing DSM Plan in less than two years to reconsider measurement techniques. Once a DSM Program measurement plan is approved by the Board, it shall remain the basis for evaluation of a DSM Program until a revision is approved. Revised measurement criteria shall only apply to prospective installations.

(f) In order to ensure a competitive DSM marketplace, where appropriate, measurement criteria for utility Performance–Based DSM Programs must be consistent with measurement requirements imposed by the utility on third parties pursuant to competitive bid solicitations or standard price offers.

(g) Each utility shall fund the procurement of a contractor to verify installation of measures and delivery of savings from DSM Programs implemented by the utility. Said contractor shall be selected by and report directly to the Board.

Amended by R.1993 d.96, effective March 1, 1993.
See: 24 N.J.R. 2804(a), 25 N.J.R. 1000(a).
Added reference to DSM programs at (g).

**14:12–3.7 Benefit–Cost Test**

In order to receive Board approval and be eligible for incentives, each Performance–Based DSM Program must be demonstrated to result in a benefit/cost ratio of at least 1.0 as defined by the Total Resource Cost Test.

**14:12–3.8 Environmental externalities**

(a) The avoided societal cost of environmental impacts related to construction and operation of electric and natural gas supply projects and electric and natural gas consumption, hereinafter referred to as environmental externalities, shall be explicitly reflected in net benefits calculations, avoided cost savings studies, standard offer pricing, competitive offer pricing and the TRC Test.

1. For the initial DSM Plan filing and until otherwise modified by the Board, the following environmental externality values shall apply:

i. For electric utility DSM Programs, the environmental externality value shall be $.02 per kilowatt-hour (kwh). The electric environmental externalities shall be time-differentiated consistent with time differentiation of avoided cost schedules in order to reflect the changing mix of generation sources during different time periods. Nonetheless, the average value shall be $.02 per kwh.

ii. For gas utility DSM Programs, the environmental externality value shall be $.95 per one million British thermal units (MMBtu).

iii. The environmental externalities provided for herein are in 1991 dollars. These values shall be adjusted annually at a rate equal to the GNP deflator index.

## SUBCHAPTER 4. ADDITIONAL ELEMENTS OF THE DSM PLAN

**14:12–4.1 Cost Recovery Mechanism**

(a) A Demand Side Management Cost Recovery Mechanism proposal shall be filed, as part of the DSM plan, by each electric and gas utility to permit the timely recovery of:

1. Actual program costs plus incentives or disincentives or standard offer payments; and

2. Fixed cost revenue erosion.

(b) The DSM Cost Recovery Mechanism shall be a deferred accounting mechanism which shall be adjusted on an annual basis or some other period concurrent with implementation of each utility's fuel adjustment clause to reconcile the difference between:

1. Actual program costs plus incentives or disincentives or standard offer payments plus fixed cost revenue erosion; and

2. The level of expenditures recovered in rates for the most recent annual period.

(c) The Cost Recovery Mechanism shall be limited to:

1. Actual program costs plus incentives or disincentives or standard offer payments; and

2. Fixed cost revenue erosion incurred in the implementation of DSM Programs which have been previously approved by the Board pursuant to these rules.

(d) Each utility shall implement procedures and accounting standards sufficient to ensure that all expenses associated with the utility's DSM Plan are accurately accounted for and that strict cost accounting standards are followed in determining both the nature and amount of expenses attributable to any self implemented utility DSM Program whether through a standard price offer, competitive bidding or shared savings program.

Amended by R.1993 d.96, effective March 1, 1993.
See: 24 N.J.R. 2804(a), 25 N.J.R. 1000(a).
Added throughout reference to fixed cost revenue erosion.

**14:12–4.2 Recovery of fixed cost revenue erosion**

(a) Along with the filing of its DSM Plan, each utility may propose for consideration by the Board a mechanism for the recovery of fixed cost revenue erosion which addresses the impact of DSM initiatives on the overall level of revenues collected by the utility. Such proposals shall address:

1. The erosion of fixed cost contributions from ratepayers and resultant earnings erosion from the reduction in sales caused by customer participation in DSM Programs. DSM impacts previously accounted for in the development of current base rates forecasts shall not be incorporated into the calculation of erosion of fixed cost contributions; and

2. The recovery between base rate changes of fixed cost revenue erosion.

(b) The full recovery of fixed cost revenue erosion occurring over a particular period will be allowed provided that a utility's overall return on equity (ROE) during that period does not exceed 50 basis points above its allowed return on equity. No recovery of fixed cost revenue erosion occurring over a particular period will be allowed if a utility's overall return on equity during that period exceeds its allowed return on equity by 100 basis points or more. If a utility's overall return on equity is between 50 and 100 basis points above its allowed return on equity, the percentage of fixed cost revenue erosion it may recover will vary linearly from 100 percent at 50 basis points above its allowed return on equity to zero percent at 100 basis points above its allowed return on equity. The time period over which fixed cost revenue erosion and ROE calculations are made shall be annual, unless it is specifically determined by the Board that a longer period is appropriate.

1. The return on equity for an annual period shall be calculated by dividing the utility's net income after preferred dividends over the period by the utility's average 13 month common equity balance for such annual period as reflected in the utility's monthly reports to the Board. The utility's annual period shall consist of the 12 months for which the utility is requesting the recovery of fixed cost revenue erosion. The average 13 month common equity balance shall be the common equity balance at the beginning of the annual period and the month ending balances for each of the 12 months in the annual periods divided by 13.

i. Fixed cost revenue erosion recovered pursuant to this subchapter shall be excluded from this calculation of a utility's ROE.

ii. DSM incentives/disincentives and income/losses from standard offer programs shall be excluded from the calculation of a utility's ROE.

iii. A utility may propose other adjustments to the calculation of ROE subject to Board approval.

(c) A utility may collect fixed cost revenue erosion for a forecasted year subject to true-up with interest.

Recodified from N.J.A.C. 14:12–4.3 by R.1993 d.96, effective March 1, 1993.
See: 24 N.J.R. 2804(a), 25 N.J.R. 1000(a).

**14:12–4.3 Earnings**

(a) Lost revenues plus incentives/disincentives from shared savings programs and income/losses from standard offer programs shall be excluded from the determination of a utility's base rate revenue requirement.

(b) For the shared savings option, the Board shall set the split of the savings based on a targeted rate of return for the plan based on forecasts of costs and savings and the level of risks associated with the plan.

(c) The Board retains the ability to re-evaluate the treatment of incentives/disincentives and/or income/losses and the recovery of fixed cost revenue erosion from DSM programs. However, any changes will apply prospectively only and any DSM measures implemented in accordance with a particular set of rules shall be exempt from future changes for the life of the measure.

New Rule: R.1993 d.96, effective March 1, 1993.
See: 24 N.J.R. 2804(a), 25 N.J.R. 1000(a).

### 14:12–4.4 DSM bidding for gas utilities

(a) As part of its initial DSM Plan filing, each gas utility shall file a proposed pilot DSM competitive bidding or standard pricing offer procedure.

(b) For competitive bidding, the proposed procedure shall include proposed weighting criteria for economic factors, most notably price, as well as additional factors such as project viability, environmental, measurement plan, marketing plan and site control.

(c) The proposed competitive bidding procedure shall also include proposed minimum criteria for acceptance of bids as well as a proposed avoided cost ceiling price.

(d) The procedure may address a particular DSM measure or be more broad in scope.

(e) The filing shall also identify a specific block size to be targeted.

(f) Review by the Board of bidding and standard offer procedures in subsequent DSM Plan filings shall be based upon the experience with the pilot bidding procedure.

### 14:12–4.5 DSM bidding for electric utilities

(a) To the extent that, notwithstanding DSM initiatives undertaken pursuant to this chapter, an electric utility projects a need for additional generating capacity to be procured via a competitive bid procedure, said competitive bid procedure is subject to the following:

1. The basis for establishing the ceiling price for DSM bids as well as evaluation criteria must be consistent with the formulae and guidelines for utility DSM incentives and standard price offers as established in this chapter; and

2. A utility which implements a DSM standard pricing offer pursuant to N.J.A.C. 14:12–3.5 concurrent with the bid solicitation process will be exempt from including DSM in the bidding procedure.

### 14:12–4.6 Program Transition Strategy

As part of the initial DSM Plan filed pursuant to this chapter, each utility shall file a DSM Program Transition Strategy which describes the utility's proposed plan to merge its existing DSM efforts into the DSM Plan. Such strategy shall address the proposed future status of each of the utility's existing programs, that is, whether an existing program is proposed to be rolled into the Performance–Based Programs or the Core Program established in N.J.A.C. 14:12–2, or whether it is proposed to be eliminated based upon a finding of non cost-effectiveness and insufficient public benefits. A supporting rationale shall be included which underlies the proposed status of each program. Further, the DSM Program Transition Strategy must address the impact, if any, of utility programs implemented as a result of these regulations, on existing DSM contracts that resulted from previous competitive bid solicitations.

Recodified from N.J.A.C. 14:12–4.2 by R.1993 d.96, effective March 1, 1993.
See: 24 N.J.R. 2804(a), 25 N.J.R. 1000(a).

## SUBCHAPTER 5. AGENCY REVIEW

### 14:12–5.1 Impact on non-utility markets

(a) In reviewing each proposed DSM Plan and DSM Program, the Board will assess the impact on existing non-utility market infrastructures involved in the sales and installation or other provision of DSM measures and/or services.

1. The Board's review of proposed DSM Plan and DSM Programs will take into account the Board's policy to encourage the development of non-utility market infrastructures.

2. The existence or absence, as well as the size, of a non-utility market infrastructure for the distribution, sale or installation, operation, or maintenance of a particular DSM measure or service will bear on the Board's assessment with respect to paragraph (a) above.

### 14:12–5.2 Consistency with competitive bid programs

Review by the Board of each proposed DSM Plan and DSM Program will include an assessment of pricing, quality assurance mechanisms, measurement plans and savings verification plans. This review is to ensure that utility-sponsored DSM programs are held to similar standards as comparable projects designed and implemented by non-utility interests pursuant to a utility-sponsored DSM competitive bid solicitation process or standard pricing offer.

### 14:12–5.3 Public notice and hearing

(a) Concurrent with the filing of its DSM plan, each utility shall contact Board staff to arrange for a public hearing on the DSM Plan.

(b) Subsequent to its filing, each utility shall provide public notice of its filing by publication in newspapers published and circulated in the utility's service area. The public notice shall be subject to review by Board staff prior to its release. The public notice shall include the date, time and location of the public hearing, and a contact for obtaining a copy of the Executive Summary prepared pursuant to N.J.A.C. 14:12–2.2(a)6 or the complete DSM Plan.

(c) Concurrent with the filing of its DSM Plan with the Board, each utility shall provide the Department of the Public Advocate, Division of Rate Counsel with a copy of the Plan and notice of the public hearing.

(d) Written comments on the Plan may be submitted to the Board within 60 days of the public notice announcing the filing, or as otherwise extended by the Board.

(e) The Public Advocate, Division of Rate Counsel, shall be a statutory intervenor pursuant to N.J.S.A. 52:27E–18.

(f) Persons, other than the Public Advocate, Division of Rate Counsel, interested in intervening in the DSM Plan review process must notify the Board within 30 days of public notice of the DSM Plan filing of their intent to intervene.

(g) The Board shall establish a schedule under which each utility and any other party shall be required to respond to information requests including all relevant dates and provide notification of same to the parties, which schedule shall terminate no sooner than 45 days from the date of the filing.

(h) Utilities shall use their best efforts to respond to all discovery requests within 15 days of the date of the request.

(i) Approximately 60 days after the filing date, Board staff will convene a settlement conference of the parties in each case. Additional conferences may be convened. In the event the parties determine that settlement is unlikely, the Board will determine whether it will retain the matter and establish an evidentiary hearing schedule for resolving all contested issues, or whether it will transmit the matter to the Office of Administrative Law for hearing.

Repeal and New Rule: R.1993 d.96, effective March 1, 1993.
See: 24 N.J.R. 2804(a), 25 N.J.R. 1000(a).
Administrative Correction.
See: 26 N.J.R. 4786(a).

**14:12–5.4 Board approval**

The DSM Plan shall be implemented as soon as practicable following Board approval.