

NEW JERSEY BOARD OF PUBLIC UTILITIES

Adopted New Rules - N.J.A.C. 14:4-5

N.J.A.C. 14:4 ENERGY COMPETITION

SUBCHAPTER 5. ENERGY LICENSING AND REGISTRATION

Adopted November 5, 2007

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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Energy Competition Standards

Energy Licensing and Registration

Adopted New Rules: N.J.A.C. 14:4-5

Proposed April 16, 2007, at 39 NJR 1405(a)

Adopted: October 3, 2007, by the New Jersey Board of Public Utilities, Jeanne M. Fox, President; Frederick F. Butler, Joseph L. Fiordaliso and Christine V. Bator, Commissioners.

Filed: October 5, 2007, as R. 2007 d. , with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3.).

Authority: N.J.S.A. 48:2-13, 48:3-78 et seq., N.J.S.A. 48:3-49 et seq.

BPU Docket Number: EX05080733

Effective date: November 5, 2007

Expiration date: April 18, 2011

In the April 16, 2007 New Jersey Register at 39 N.J.R. 1405(a), the New Jersey Board of Public Utilities proposed for adoption new rules to replace portions of its previously effective Energy Competition Standards at N.J.A.C. 14:4 (also called chapter 4). Chapter 4 will implement provisions of the Electric Discount Energy Competition Act (EDECA), N.J.S.A. 48:3-49 et seq., and other statutory authority. Chapter 4 will apply to electric power suppliers, gas suppliers, clean power marketers, basic generation service (BGS) providers and basic gas supply service (BGSS) providers, electric public utilities, gas public utilities, aggregators, energy agents, energy consultants, energy public utilities and public utility holding companies.

The previous rules governing these matters, N.J.A.C 14:4, were proposed for readoption with amendments in the New Jersey Register on October 17, 2005. A public hearing was held on December 6, 2005 and written comments were accepted until the close of business on December 16, 2005.

In developing the 2005 readoption proposal, the Board conducted informal, internet-based stakeholder outreach. The feedback received was carefully considered and many suggestions were incorporated into the proposed rules. Input received on subchapters that were proposed for readoption without amendment will be saved for possible use in future amendments to those subchapters.

At this time, the Board is acting to adopt only N.J.A.C. 14:4-5, Energy Licensing and Registration. The Board will subsequently act separately on the remainder of the proposed rulemaking and an appropriate notice of that action will appear in a future volume of the New Jersey Register. This adoption, as well as any rule rendered effective by said subsequent publication, will assume the expiration date presently assigned to N.J.A.C. 14:4, Energy Competition.

Summary of Public Comments and Agency Responses:

The following persons submitted timely comments on the proposal:

1. Michael D'Angelo, Intelligent Energy (IE)
2. Craig G. Goodman, National Energy Marketers Association (NEM)
3. Jodi L. Moskowitz, Esq., Public Service Electric and Gas Company (PSE&G)
4. Angela Schorr, Econnergy Energy Company (EEC)
5. Felicia Thomas-Friel, Esq., Department of the Public Advocate, Division of Rate Counsel (RC)
6. John L. Carley, Esq., Assistant General Counsel, Rockland Electric Company (RECO)

- 1. COMMENT:** Since proposed Subchapter 5 would, in fact, be applicable to Clean Power Marketers, N.J.A.C. 14:4-5.1(h) and (k) should be amended to make clear that Clean Power Marketers must abide by these licensing requirements. (PSE&G and RECO)

RESPONSE: The Board agrees that some clarification is warranted. For example, N.J.A.C. 14:4-5.1(e) makes it clear that participation in the Board's Clean Power Choice program requires that a clean power marketer license be first obtained. In addition, N.J.A.C. 14:4-5.2 and N.J.A.C. 14:4-5.3 speak to clean power marketer licenses. Accordingly, the Board will clarify N.J.A.C. 14:4-5.1 (h) and (k) to reflect that, as intended, they apply to clean power marketers.

- 2. COMMENT:** In numerous sections of N.J.A.C. 14:4-5, the proposed rule requires the TPS to notify the LDC of its license application and renewal process as well as the approval. We respectfully submit that LDC license notification/approval is solely within the jurisdiction of the BPU. Even suggesting that an LDC could exercise "police powers" while requiring the TPS to submit confidential information to the LDC is very concerning. The requirements for a license and license renewal mandate very sensitive, confidential and even protected information to be submitted to the Board. However, requiring that the same information also be given to the utility may result in the information falling into the hands of direct competitors. We respectfully request that TPSs only be required to submit information to the Board concerning licensing and renewal. If the Board finds that an entity is not properly licensed then the Board can require the utility to prevent further enrollments. However, divulging sensitive information to the utility and the administrative burden of keeping each LDC fully informed of the status of a license renewal seems out of the LDC's jurisdiction and solely with the Board's. (IE)

RESPONSE: The Board believes that each LDC must be made aware of which marketers are offering services within the LDC's service territory and that the best way of achieving that goal is to require the marketer to provide a copy of its license or renewal license to each LDC within whose service area the marketer does business. The only information that would be required to be submitted to the LDC would be the license or renewal license and not any underlying information that would have been submitted by the marketer to the Board as part of the application process. Therefore,

the commenter's concerns about the sharing of confidential or sensitive information are misplaced. Accordingly, the Board will not make the proposed modification.

- 3. COMMENT:** The New Jersey office requirement should be satisfied by the timely and expeditious production of documents when requested. We urge the Commission to modify the rule requiring marketers to maintain a New Jersey office. Proposed N.J.A.C. 14:4-5.2(b) would require marketers to "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." The requirement is satisfied by leasing or owning space in a New Jersey building that is "sufficient to house all records required to be kept under this subchapter." (N.J.A.C. 14:4-5.2(b)(1)). However, customer service and regulatory affairs representatives would not be required to be located in the State. (N.J.A.C. 14:4-5.2(d)). We appreciate the Board's reconsideration of this requirement in view of previous marketer comments and its attempt to modify the rule to make it less burdensome. However, as currently proposed the requirement continues to be unnecessarily restrictive and costly and therefore may limit marketer participation in the New Jersey market. Ironically, rules intended to drive revenues into the State can have the unintended consequence of raising overheads to the point that businesses are actually discouraged from entering. The concern that all consumers be able to get in touch with their marketers is more than satisfied by the requirement that marketers make available a toll-free phone number, email address and website for inquiries. If the purpose of the rule is to ensure availability of documentary records, this should be satisfied by requiring marketers to provide relevant documents to the Board and its Staff within forty-eight hours of a request. (N.J.A.C. 14:4-5.5(d)). Additionally, jurisdictional concerns related to out-of-state marketers can be adequately addressed by requiring marketers to designate an in-state representative as its proxy in New Jersey to accept service on its behalf. (NEM)
- RESPONSE:** The Board does not have the authority to remove the requirement for a New Jersey office because it is specifically mandated by the Electric Discount and Energy Competition Act (EDECA), N.J.S.A. 48:3-49, et seq. Through the proposed rule, the Board has attempted to minimize the burden imposed by the statutory requirement while remaining faithful to the intent of EDECA. Accordingly, the Board views this comment as statutorily impermissible.
- 4. COMMENT:** Proposed N.J.A.C. 14:4-5.2(e) requires an electric power supplier to be a member of PJM Interconnection (PJM) in order to be eligible for an electric power supplier license in New Jersey. It also requires that the supplier be in compliance with the reliability requirements of the NYISO. The only portions of New Jersey that are located in the New York Independent System Operator (NYISO), rather than PJM, comprise a miniscule portion of New Jersey. Accordingly, only those TPSs that offer to serve customers located in this small area would need to comply with the NYISO's reliability requirements. Similarly, it is unclear why a TPS who wishes to serve only this small area and no other portions of New Jersey would need to comply with N.J.A.C. 14:4-5.2 (e)1 and 2. (RECO)

RESPONSE: The Board would note that an applicant for an electric power supplier license must demonstrate that it meets the reliability criteria set out in N.J.A.C. 14:4-5.2(e) as applicable. Accordingly, an applicant that provides service within the PJM and NYISO territories would need to comply with all criteria, while an applicant serving only the NYISO would not have to satisfy N.J.A.C. 14:4-5.2(e)1 and 2.

5. **COMMENT:** Some states require more information in the application for license demonstrating the supplier's technical competency than does proposed N.J.A.C. 14:4-5.3. For example, Pennsylvania requires specific evidence of competency and experience in providing the proposed services, including prior experience, staffing levels, business plans, and contracts for relevant services and further requires evidence demonstrating ability to comply with the commission's regulatory requirements.(PA Code B, Section 54.33). Maine requires evidence of technical capability as well as disclosure of customer complaints in other jurisdictions within the past 12 months. (65-407 Maine PUC Ch. 305, § 2(b)). (RC)

RESPONSE: While this information has been removed from the rule for streamlining purposes, it is still required to be provided in the formal application which can be found on the Board's website. In addition, Board Staff prepares a fact sheet which includes such information for the Board's consideration as part of the license approval process.

6. **COMMENT:** Proposed N.J.A.C. 14:4-5.3(b)(8) requires disclosure of existing, pending or past adverse investigations, judgments, litigation, criminal charges or convictions. Consumer complaints in other jurisdictions can be another important indicator of an applicant's technical or financial capability as well as its ability to adequately serve customers. Accordingly, N.J.A.C. 14:4-5.3(b)8 should also require the disclosure of the number and type of complaints made against the supplier or marketer in other jurisdictions. (RC)

RESPONSE: As part of the licensing review process, applicants are required to disclose details of any investigation conducted in other states where they are doing business. This information includes the number and type of complaints received as well as the resolutions. In addition, Board Staff prepares a fact sheet which includes such information for the Board's consideration as part of the license approval process. Accordingly, the Board will clarify N.J.A.C. 14:4-5.3(b)8 to indicate that the required information pertains to incidents occurring in New Jersey or in any other jurisdiction.

7. **COMMENT:** Surety bond requirements should be tailored to the circumstance of the marketer. The proposed rules require marketers to post a \$250,000 surety bond. (N.J.A.C. 14:4-5.4(f)). The rules provide that the Board can grant a modification of the bond amount upon "substantial evidence" and "commensurate with the amount of anticipated business to be conducted" in the State. (N.J.A.C. 14:4-5.4(h)). The rules also explicitly provide that when a marketer's "sales volume has increased by 33 percent from its previously reported amount," the Board can increase the surety bond commensurately. (Section 2 State of New York Public Service Commission, Uniform Business Practices, Case 98-M-1343, November 2006, Section 5.2. 14:4-5.5(e)). As

noted in its previous comments, we recommend that marketers have the ability to petition for a reduction in the amount of the security bond posted. This is particularly appropriate for marketers that maintain their license even when they are not currently serving New Jersey customers or when the number of customers they serve has diminished. Because the rules provide specific guidelines as to sales volumes that trigger an increase in the surety bond, we request that the rules also provide specific guidelines for sales volumes that trigger a reduction in the surety bond. Given the trend in costs of credit, we recommend that the Commission review carefully the wisdom of tying up capital that could be used to offset commodity risks on behalf of consumers. (NEM)

RESPONSE: As EDECA requires that a surety bond be maintained, the Board does not have the authority to waive it regardless of how few New Jersey customers a licensee serves. See N.J.S.A. 48:3-78 and 79. Even if a licensee is not currently serving New Jersey customers, the Board is unable to determine when the licensee specifically begins to serve New Jersey customers, and thus when a surety bond would become necessary. The bond maintained by the licensee insures against its failure to pay taxes or assessments, or to meet its contractual commitments to deliver supply to customers. The Board has previously determined that, subsequent to the initial application process, the minimum amount for a surety bond should be \$250,000 and continues to be of the opinion that said amount is not unnecessarily burdensome to third party suppliers. Notwithstanding this belief, the Board would note that pursuant to N.J.A.C. 14:4-5.4(h), the Board may grant a modification of the surety bond amount for an initial license if the applicant, who is in the start-up phase of the business, submits substantial evidence in support of the modification. The Board is of the further opinion that it does not presently have sufficient information by which to make a determination as to the need for a mechanism, in the license renewal process, by which surety bond levels may be reduced. Accordingly, the Board will direct its Staff to conduct an investigation into the issue of initiating a methodology for reducing surety bond levels and to report its findings to the Board within 6 months.

8. **COMMENT:** Regarding proposed N.J.A.C. 14:4-5.5 (Requirements that apply after a license is issued), if a licensed supplier merges with or is acquired by another entity, but retains the licensee's company name, the company can simply update information to the Board. However, if the new company changes the licensee's company name, then the new entity must seek a new license (see N.J.A.C. 14:4-5.5(g)). The key question is not only whether the name changed, but whether the financial or technical capability to provide the service changed as a result of the merger or acquisition. The Board should retain the authority to approve or disapprove the license transfer to the merged or acquired entity based on that company's technical, financial capability and past regulatory performance. Proposed N.J.A.C. 14:4-5.5(g) should be rewritten to read: "(g) If a licensee undergoes a merger or acquires, or is acquired by, another company, the licensee shall submit a licensing update, including all information about the other company. Board approval is required to transfer the license to the new entity and to determine whether a new surety bond should be submitted." Finally, a supplier or marketer should be required to notify the

Board of any enforcement actions pending against the supplier in other jurisdictions. This ongoing requirement should be added to N.J.A.C. 14:4-5.5. (RC)

RESPONSE: The Board always retains the authority to approve or disapprove of any change in a licensee's operation that affects the licensee's compliance with Board rules or orders. A basic principle of licensure is that the licensee must comply with the terms of a license. This has been clarified on adoption at N.J.A.C. 14:4-5.1(m). Therefore, any change in the licensee's operation, which does not fit within the terms and conditions of the license, must be subject to review and approval by the Board. This is implied at N.J.A.C. 14:4-5.5(f) as proposed, and an express statement of this principle has been added to that provision upon adoption. A merger or acquisition may result in operational changes that do not fit within the terms of a license. Therefore, the Board must be notified of the changes in order to determine whether any resulting operational changes are not covered by the terms of the license. N.J.A.C. 14:4-5.5(g)1 is modified slightly on adoption to clarify this. In addition, a deadline for submittal of the update or application has been added at N.J.A.C. 14:4-5.5(g)3, as well as a clarification at N.J.A.C. 14:4-5.5(g)4 that a licensee may continue serving customers pending the Board's final decision on the update or application. As for the comment: that "a supplier or marketer should be required to notify the Board of any enforcement actions pending against the supplier in other jurisdictions," please see the response to Comment #6.

9. COMMENT: Proposed N.J.A.C. 14:4-5.5(g) states, "If a licensee undergoes a merger, or acquires or is acquired by another company. . ." and "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 as if the entity had never held a license, including application fees and issuance of a new surety bond." Can the company operate under its existing license until the new license is approved? If not, what happens to the existing customers that are currently being served by this TPS? A customer should experience no lapse in then-current supplier contract due to this license requirement. The licensee should be able to continue to operate while the new license is processed. The section should clarify to what extent the TPS may continue to enroll new customers and/or serve existing customers during the new licensing process. (EEC and RECO)

RESPONSE: Please see the response to comment 8 above.

10. COMMENT: Proposed N.J.A.C. 14:4-5.5(g) provides that, if a licensee undergoes a merger, and the new company does not retain the name of the original licensee, that new entity shall submit a new license application and shall be required to satisfy all licensing requirements. Yet, there is confusion created by this language, since 14:4-5.5 requires that a utility only contract with a licensed TPS. In other words, what happens when the new entity is going through the licensing process and has not yet completed the process to actually become a licensed TPS? Language should be added to this section to make clear that the utility can in fact deal with this new TPS while it is going through the licensing process, so that there is no gap in the process. (PSE&G)

RESPONSE: Please see the response to comment 8 above.

11. COMMENT: Since, as noted above, we can only contract with a licensed TPS, we recommend that language be added to proposed N.J.A.C. 14:4-5.6 to require a gas or electric TPS, or a Clean Power Marketer, to notify the LDC within 10 days when that supplier's license is being renewed. Currently, the utility is only notified when a license is issued, but it is appropriate for the utility to also be notified when the license is renewed. (PSE&G)

RESPONSE: The concern raised in this comment is satisfied by N.J.A.C. 14:4-5.7(g) that requires that within 10 days of the renewal of a license, the licensee shall provide a copy of the renewal to all LDCs within whose territory the licensee provides service.

12. COMMENT: Proposed N.J.A.C. 14:4-5.6(f) and N.J.A.C. 14:4-5.10(b) specify that an LDC can only do business with a TPS that is licensed. However, N.J.A.C. 14:4-5.6 provides several scenarios in which a TPS may have to limit its activities (e.g. subsection (b)) or cease all activities (subsection (c)) – in these situations, the LDC will have no way of knowing that a TPS has had such restrictions placed upon it. Thus, we recommend that subsection (f) be amended as follows: "The Board shall notify an LDC if a supplier or marketer that is serving a customer in the LDC's territory either does not have a valid license under this subchapter, or has had its activities limited pursuant to N.J.A.C. 14:4-5.6(b). Upon receiving such notification from the Board, the LDC shall immediately stop doing business with the supplier or marketer, except under (b) 2 or (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." (PSE&G)

RESPONSE: The Board would note that the requirement proposed in N.J.A.C. 14:4-5.3(b)12 that an applicant submit documentation that it had sent notice of its license application to all LDCs in whose territory the applicant will do business was misplaced. As N.J.A.C. 14:4-5.5(b) proposes that a licensee would have to provide a copy of its license within 10 days of its issuance to all LDCs in whose service territory the licensee will provide service, there is no practical benefit in giving the affected LDCs notice of the filing of the licensee's initial application. Rather, the notice of the filing of an application should have been related to the renewal of a license and been contained in N.J.A.C. 14:4-5.7 as (d)10. The Board will, accordingly, make this modification on adoption. The Board would note that said modification places no additional burden or requirement on an applicant. In addition, by having notice that a licensee has, in fact, applied for a renewal of its license, the LDC will have assurance that the licensee may continue to provide full service as contemplated in N.J.A.C. 14:4-5.6(a) and N.J.A.C. 14:4-5.7(c).

13. COMMENT: Proposed N.J.A.C. 14:4-5.6 and N.J.A.C. 14:4-5.7 should clarify that the LDC is not responsible for tracking the licensing or renewal requirements of TPSs. Should a TPS's license expire or be suspended, revoked, or terminated, or should the TPS be found unfit to continue to serve electric and/ or gas customers, the LDC should not be required to take any affirmative action unless and until it has

received written notice from the Board with specific instructions on whether service by the TPS should be terminated for all new customers only, or for both new and existing customers. The LDC should be allowed at least one business day to comply with the Board's directive that the TPS no longer be allowed to enroll new customers. Discontinuance of service to existing customers should be pursuant to a schedule agreed upon by Board Staff and the LDC, depending on such factors as the reason for the discontinuance, the size of the load, and the season. (RECO)

RESPONSE: The Board agrees that N.J.A.C. 14:4-5.6(f) should be clarified to make it clear that the Board will give written notification to the LDC, including specific instructions if necessary regarding the cessation of service to a supplier or marketer that does not have a valid license or required surety bond. In addition, the Board further agrees that a period of one business day is an appropriate timeframe in which the LDC may act and will modify the rule accordingly. The Board further believes that the clarifying modifications to N.J.A.C. 14:4-5.6(f) discussed herein, cover all situations and render any changes to N.J.A.C. 14:4-5.7 unnecessary.

14. COMMENT: Proposed N.J.A.C. 14:4-5.10 requires the LDC to inform the Board of alleged violations of this subchapter of which the LDC becomes aware or "reasonably should be aware. We are concerned with the ambit of the phrase "reasonably should be aware." Other than assessing the initial qualifications of a TPS to serve retail customers, i.e., determining that the TPS has a license, we do not monitor a TPS's on-going compliance with the Board's licensing and bonding requirements. There should be no underlying expectation, or reasonableness test, applied to whether an LDC should be aware of a TPS's compliance with these requirements. It is the Board's responsibility to inform the LDC whether the TPS has continued to meet the Board's licensing and bonding requirements. In addition, this section should be expanded to clarify that an LDC shall not do business with a Clean Power Marketer unless the Clean Power Marketer has a valid license, including required surety bond. (RECO)

RESPONSE: The Board agrees with the comment regarding the reporting of alleged violations. N.J.A.C. 14:4-5.10(a) will now read, "An LDC shall notify the Board of any alleged violations of this subchapter, of which it becomes aware." This modification will make the rule more consistent with EDECA. See N.J.S.A. 48:2-78d(3) and N.J.S.A. 48:2-79d(4). In addition, N.J.A.C. 14:4-5.4(g) as proposed and adopted provides that the term of the bond shall extend at least as long as the term of the license. This includes any extension approved by the Board. The proposed rules provide that the TPS submit copies of the initial and renewal licenses to all LDCs whose territories they are doing business in 10 days after the licenses have been issued. See N.J.A.C. 14:4-5.5(b) and N.J.A.C. 14:4-5.7(g). The Board Staff will notify the LDC of any lapses of license and/or bond by a TPS.

15. COMMENT: The License Renewal Process Should Be Made Less Burdensome. We urge the Board to consider modifying certain elements of the proposed marketer license renewal process that make it unnecessarily burdensome and expensive to comply with. For example, the rules require that marketer license renewal applications must include, "Information regarding the number, types, and locations (zip + 4 code) of residential customers being served by the licensee." (N.J.A.C. 14:4-

5.7(d)(3)). If the intended purpose of this information is to deter customer redlining, we suggest it can be accomplished with marketer certification of compliance with consumer protection rules with appropriate penalties for violations. Additionally, our members report that the license renewal fee (N.J.A.C. 14:4-5.12) is higher than that assessed in other jurisdictions. We request that the Board consider a cost-based reduction in the renewal fee. (NEM)

RESPONSE: In developing the license renewal process, the Board has attempted to eliminate the burden on and expense to license applicants to the greatest extent possible. The Board continues to believe that the information required is necessary to allow the Board to make appropriate findings. For instance, the purpose of the zip + 4 code report is, as stated by the commenter, is to deter residential customer redlining. As reliance on a marketer certification will not give the Board the same level of assurance as will the report, the Board deems the specific suggestion to be inadequate and inappropriate. The Board similarly considers the rest of the required information to be reasonable and necessary. As for the renewal license fees, the Board would note that the fees set out in N.J.A.C. 14:4-5.12 have been determined in accordance with the provisions of EDECA for the sole purpose of covering the costs of the licensing and renewal licensing procedures including a reasonable surcharge to fund a consumer education program.

16. COMMENT: Proposed N.J.A.C. 14:4-5.8 and N.J.A.C. 14:4-5.10 provide that LDCs cannot do business with an energy agent or aggregator unless that agent or aggregator has a valid registration. Thus, we suggest that the following language should also be added to N.J.A.C. 14:4-5.8: “Within 10 days after a registration is approved by the Board, the energy agent or aggregator shall provide a copy of such approved registration to all LDCs within whose service territory the energy agent or aggregator intends to do business.” Moreover N.J.A.C. 14:4-5.8(a) should be clarified or revised, as it states that the terms energy agent and private aggregator are defined in N.J.A.C. 14:4-1.2 This section, however, does not contain such definitions. (PSE&G)

RESPONSE: The Board would note that, pursuant to N.J.A.C. 14:4-5.5(b), within 10 days of the issuance or renewal of a license, the licensee would be required to provide a copy of that license to all LDCs within whose territory the licensee provides service. The Board would further note that the terms “aggregator” and “energy agent” are currently set out and defined in N.J.A.C. 14:4-1.2.

17. COMMENT: Proposed N.J.A.C. 14:4-5.8, N.J.A.C. 14:4-5.9, N.J.A.C. 14:4-5.11 With respect to registration, N.J.A.C. 14:4-5.10 (c) expressly provides that LDCs cannot do business with an energy agent, aggregator or energy consultant unless those entities have a valid registration. Thus, the above-listed sections should be revised to include language that requires those entities (energy agent, energy consultant, aggregator) to provide a copy of both the initial registration and any renewals of such registration to the applicable LDC within 10 days of Board issuance. (PSE&G)

RESPONSE: See response to Comment #16.

18. COMMENT: Proposed N.J.A.C. 14:4-5.10 should be revised to make it clear that the licensing requirement also applies to Clean Power Marketers. An LDC should not be required to do business with a Clean Power Marketer unless that entity has a valid license obtained from the Board. (PSE&G)

RESPONSE: The Board agrees. This issue has already been addressed. See response to Comment #1.

19. COMMENT: Proposed N.J.A.C. 14:4-5.10 (a) requires that “An LDC shall notify the Board of any alleged violations of this subchapter, of which it becomes aware, or of which it reasonably should be aware”. Since the Board manages the licensing process, we may not always be aware of a particular supplier’s licensing status. Thus, we recommend that the language “or of which it reasonably should be aware” be deleted from the section. Instead, the LDC should only be required to notify the Board when it actually becomes aware of a violation. (PSE&G)

RESPONSE: The Board agrees. N.J.A.C. 14:4-5.10(a) will now read, “An LDC shall notify the Board of any alleged violations of this subchapter, of which it becomes aware.” This modification will make the rule more consistent with EDECA. See N.J.S.A. 48:2-78d(3) and N.J.S.A. 48:2-79d(4).

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-22 through 24 require State agencies that adopt, readopt or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis.

This subchapter related to energy licensing and registration is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporate or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis for the adoption of this subchapter.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

N.J.A.C. 14:4 ENERGY COMPETITION

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 (LDCs).

(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 N.J.A.C. 14:3, 14:4, 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.
- 5.

(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. EO05010001, 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 *[or] * _ * 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
2 Gateway Center
Newark, New Jersey 07102
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 *[or]* 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 chapter 4 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.

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 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, 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: Part 193, Title 49 of the Code of Federal Regulations (CFR), 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 and which may be obtained at 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, 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 ten 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 ten percent or greater ownership interest in the applicant's business;
- *[12. 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;]*
- *[13.]* *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;
- *[14.]* *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
- *[15.]* *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 sixty 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 thirty 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 ten 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% from its previously reported amount, and the Board may increase its surety bond accordingly.

(f) A licensee shall notify Board staff in writing within thirty 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 with 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, *[and]* 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 a final Board decision on whether to approve the license update or application. . Board staff will review the update, notify the licensee of any changes necessary to retain the license, and shall update the bond amount as necessary to comply with this chapter

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 forty-five day deadline in (b) above, based on extraordinary hardship.

(e) An LDC shall provide Board staff with a quarterly report, within fifteen 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 *[immediately]*

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 which 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 N.J.A.C. 14:4-5.7(a), 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; *[and]*
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 ten 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. 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 thirty 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 thirty day deadline at (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*[, or of which it reasonably should be 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; *[or]*
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. 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:

	Electric Power Supplier License	Clean Power Marketer License	Gas Supplier License	Energy Agent Registration	Private Aggregator Registration
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 \$2,500.00; and the fee for both an electric power supplier license and a gas supplier license would be \$2,050.00. 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.