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*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on May 2, 2011. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

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## **BOARD OF PUBLIC UTILITIES**

### **Energy Competition Standards**

#### **Proposed Readoption with Amendments: N.J.A.C. 14:4**

Authorized By: Board of Public Utilities, Lee A. Solomon, President; Jeanne M. Fox, Joseph L. Fiordaliso, and Nicholas Asselta, Commissioners.

Authority: N.J.S.A. 48:2-1 et seq., in particular 48:2-13, 48:2-16 through 19, 48:2-23, 48:2-29.1 and 21.2, 48:2-37, 48:2-51.1, 48:3-7 et seq., and 48:3-51 et seq.

Calendar Reference: See Summary below for an explanation of exception to calendar requirement.

BPU Docket Number: EX11020089.

Proposal Number: PRN 2011-114.

Comments may be submitted through July 1, 2011 through either of the following methods:

- Electronically, **in Microsoft WORD format**, or in a format that can be **easily converted to WORD**, by e-mailing them to the following e-mail address: [rule.comments@bpu.state.nj.us](mailto:rule.comments@bpu.state.nj.us); or
- On paper to:  
Kristi Izzo, Board Secretary  
New Jersey Board of Public Utilities  
**Attention Docket Number: EX11020089**  
Two Gateway Center  
Suite 801  
Newark, New Jersey 07102

The agency proposal follows:

### **Summary**

The New Jersey Board of Public Utilities is proposing to readopt its Energy Competition rules at N.J.A.C. 14:4 (also called Chapter 4). These rules implement provisions of the Electric Discount Energy Competition Act (EDECA), N.J.S.A. 48:3-49 et seq., and other statutory authority. The rules apply to electric power suppliers, gas suppliers, electric public utilities, gas public utilities, energy aggregators, energy agents, energy public

utilities, public utility holding companies and entities that provide basic generation service (BGS) and/or basic gas supply service (BGSS).

In developing the rulemaking, the Board conducted informal stakeholder outreach through public meetings and soliciting comments through the internet. The feedback received was carefully considered and many suggestions were incorporated into the rules.

By filing this notice of proposed readoption with the Office of Administrative Law prior to April 18, 2011, that date is extended 180 days to October 15, 2011, pursuant to N.J.S.A. 52:14B-5.1.c. As the Board has provided a 60-day comment period on this notice of proposal, it is excepted from the rulemaking calendar requirements set forth at N.J.A.C. 1:30-3.1 and 3.2, pursuant to N.J.A.C. 1:30-3.3(a)5.

Following is a section-by-section summary of the rules proposed for readoption and the proposed amendments and new rule:

### **SUBCHAPTER 1. General Provisions and Definitions**

N.J.A.C. 14:4-1.1 describes the regulated entities to which Chapter 4 applies, and refers the reader to other Board rules that may also apply to some of the entities regulated by Chapter 4. In addition, the section provides that the Board shall consider the actions of a contractor or other representative of any regulated entity to be the actions of the regulated entity. Minor clarifying amendments are proposed at subsection (e).

N.J.A.C. 14:4-1.2 includes definitions of terms that are used in more than one subchapter of Chapter 4, to ensure consistency and avoid redundancy. Since many terms are used in both Chapter 4 and the renewable energy rules, N.J.A.C. 14:8, the definitions in N.J.A.C. 14:4-1.2 also apply to N.J.A.C. 14:8. The rules also include a cross reference to the definitions section for all utilities at N.J.A.C. 14:3-1.1, which also applies to Chapter 4. Minor amendments are proposed to this section, including the deletion of the unused term "Act," correction of the erroneous omission of gas suppliers from the definition of "private aggregator," a new definition of "Rate Counsel" to reflect changes in that agency and the addition of a definition for "energy aggregator." In the definition of "electric power supplier," a sentence is deleted to clarify that a third-party supplier is not permitted to provide basic generation service.

### **SUBCHAPTER 2. Energy Anti-Slamming**

N.J.A.C. 14:4-2 contains anti-slamming rules for electric power suppliers and natural gas suppliers. Anti-slamming rules protect consumers from unauthorized switches away from their chosen electric power or natural gas suppliers. These rules set forth the requirements that third-party suppliers (TPSs) and local distribution companies (LDCs) must meet when switching customers. The rules also set forth billing and change order procedures. These rules require the TPS to verify each change order by obtaining proof of a customer's desire to switch their electric power or natural gas suppliers. Finally, this subchapter requires every TPS that wishes to sign up or switch customers electronically to abide by certain requirements governing the practice of

electronic signing up or switching of customers. Subchapter 2 is proposed for readoption with clarifying amendments and some minor substantive changes, as described below.

N.J.A.C. 14:4-2.1 sets forth the scope of Subchapter 2, which is to protect consumers from unauthorized switches of their electric power supplier or natural gas supplier, as required by the EDECA. This section is proposed for readoption without change.

N.J.A.C. 14:4-2.2 includes definitions of terms that are used in Subchapter 2. A number of terms defined in this section are unique to this subchapter and therefore are located here rather than in the definitions section for all of Chapter 4, found at N.J.A.C. 14:4-1.2. No changes are proposed to this section.

N.J.A.C. 14:4-2.3 requires the submittal of a change order before a TPS or LDC may switch a customer's electric power or natural gas supplier, details the required contents of a change order and cross-references provisions for enforcement in cases of noncompliance. In addition, this section requires that the change order be from an electronic data interchange (EDI) transaction, and must demonstrate that the customer authorized the switch through one of the listed verification methods. Amendments are proposed at N.J.A.C. 14:4-2.3(c), which will require more explicit and detailed responses from a person authorizing a switch, which will allow TPSs to conduct their own telephone verifications within the limits in the rules and will require that the recording of a verification must now also include a recording of the marketing portion of the telephone call. Currently, most TPSs do not record the portion of a call during which the TPS staff explains the energy supply offer to the customer (also known as the "marketing portion" of the call). Board staff has found that recordings of the verification portion of these calls often do not provide sufficient information to enable staff to address complaints alleging deceptive marketing practices. A recording of the entire call, both inbound and outbound, will ensure that the TPS accurately explains the energy supply offer, and thus will enable staff to resolve complaints more quickly and fairly. Minor clarifying amendments and cross-reference corrections are also proposed, and internet-related provisions are moved to the internet rule at N.J.A.C. 14:4-2.4.

N.J.A.C. 14:4-2.4 contains requirements that apply to TPSs that utilize electronic methods to sign up customers. The section requires that such TPSs:

1. Abide by the Federal Electronic Signatures in Global and National Commerce Act, which is incorporated by reference, and which provides conditions for recognition of documents that are executed electronically;
2. Maintain a website that adequately informs the customer of the terms and conditions of service;
3. Submit a separate change order for each switch, if a customer is switching both electric and gas service; and
4. Provide separate negative verification for any switches requested through the internet.

Minor clarifying amendments are proposed throughout the section. In addition, a requirement for submittal of environmental information, at paragraph (d)4, is deleted

and recordkeeping provisions, at subsection (e), are deleted because they are redundant with N.J.A.C. 14:4-2.5. An outdated requirement to submit information on customer hardware requirements is proposed for deletion, as is a phrase at paragraph (d)2 that is redundant with subparagraph (d)3ii. Proposed new subsection (e) contains the substance of existing N.J.A.C. 14:4-2.3(f), but is made more clear and is amended to include a cross-reference.

Existing N.J.A.C. 14:4-2.5 requires that every TPS retain all change orders, and records of a customer's authorization for a switch, for at least three years. In addition, this section requires each LDC to submit a quarterly report to the Board's Division of Customer Assistance, listing any slamming complaints received. Slamming complaints have declined drastically since the initial adoption of these rules, such that often there are no slamming complaints for an LDC to report. Therefore, the Board is proposing to delete the currently required reporting and instead to require only that the information be made available on request. N.J.A.C. 14:4-2.5(b)3 is deleted as it is redundant with paragraph (b)2.

In addition, since a new requirement to record the marketing portion of calls to customers is proposed at N.J.A.C. 14:4-2.3(c)2i, a requirement is added that recordings of marketing calls be retained for six months.

N.J.A.C. 14:4-2.6 requires the LDC to notify a customer of any change order that the LDC receives from a TPS, which pertains to that customer. The section is proposed for readoption without change.

N.J.A.C. 14:4-2.7 requires the TPS to produce the customer switch authorization in the event of a dispute. In addition, this section stipulates that once a customer makes an allegation of slamming, that customer's charges for actual energy used shall be considered in dispute. This section also requires the TPS to produce documentation of verifications under N.J.A.C. 14:4-2.3 within 10 days after a request from the customer or the Board. This section is proposed for readoption with minor clarifying changes and added cross-references; and deletion of a three-day deadline at subsection (d) that conflicts with the 10-day deadline in subsection (f).

N.J.A.C. 14:4-2.8 re-emphasizes that the TPS shall be responsible for the acts of any third persons acting on behalf of the TPS. Further, this section stipulates that any party who violates this subchapter shall have their authority to conduct business in the State suspended or revoked and may be subject to financial penalties as well. This section makes TPSs that violate this subchapter potentially liable for direct costs incurred by the authorized TPS and/or LDC as a result of the violation. The section is proposed for readoption without change.

### **SUBCHAPTER 3. Affiliate Relations**

This subchapter implements statutory provisions at N.J.S.A. 48:3-55 regarding affiliate relations and fair competition rules for electric power suppliers and gas suppliers and sets forth standards of conduct that apply to transactions, interactions and relations among public utilities, related entities, ratepayers, competitors and the public. The

subchapter provides for regulatory oversight, dispute resolution and violations and penalties that apply to an electric or gas public utility that does not comply with the rules. The subchapter is proposed for readoption without change.

With the partial deregulation of the energy industry, it is now possible for a related competitive business segment of an electric or gas public utility, or of its holding company, to offer or provide competitive services to retail customers in New Jersey. The affiliate relations rules are intended to help ensure that New Jersey consumers receive the benefits that flow from a competitive market place and that all entities engaged in the marketing of electric and gas services are afforded equal treatment. Therefore, the rules aim to ensure that a business entity that is engaged in competition neither unfairly benefits from an affiliation with a public utility, nor takes advantage of the public utility in ways detrimental to the public utility and its ratepayers.

N.J.A.C. 14:4-3.1 sets forth the scope of the subchapter, including the parties regulated, the types of interactions regulated and an exemption for certain multi-state public utilities.

N.J.A.C. 14:4-3.2 sets forth definitions of terms used only in this subchapter. A number of terms are unique to this subchapter and therefore definitions for these are located here rather than in the consolidated definitions for Chapter 4, which are found at existing N.J.A.C 14:4-1.2.

N.J.A.C. 14:4-3.3 prohibits an electric or gas public utility from favoring its affiliates to the detriment of competitors through discounts, rebates or other waivers of charges. The section strictly limits transactions between a public utility and an affiliate of the public utility's holding company, and requires recordkeeping to document compliance.

N.J.A.C. 14:4-3.4 sets limits on a public utility's sharing of individual proprietary information (customer information), acquired as a result of the operation of the utility's distribution system, with other related and unrelated entities. In addition, the section includes requirements that ensure that non-proprietary information that the public utility shares is not shared in a manner that discriminates against competitors in favor of the public utility's affiliates. Finally, the section requires recordkeeping to document compliance with its requirements for information sharing.

N.J.A.C. 14:4-3.5 sets forth requirements to ensure adequate separation of a public utility and its affiliates. The section requires that a public utility be a separate corporate entity from its affiliates and must keep separate books and records. This section also sets limits on a public utility engaging in joint projects with its affiliates; and on the sharing or transferring of goods, personnel or other items of value between the public utility and its affiliates. For those things that may be shared, transferred or undertaken jointly, the section sets forth requirements to ensure that the contributions of each entity to each joint project or transaction are carefully documented, and that the joint project or transaction is not performed in such a way as to circumvent the limits in this subchapter. All of the books and records must comport with the applicable standards of the Uniform

System of Accounts, which is incorporated by reference. This System sets forth generally accepted accounting practices for business and industry.

N.J.A.C. 14:4-3.6 sets forth requirements governing the offering of competitive products or services by a public utility and its affiliates. The section limits the types of competitive products or services that may be offered, and requires prior Board approval of such products or services, through tariffs or other mechanisms. The section waives the prior approval requirement for certain products or services offered prior to the original adoption of this subchapter, but still requires that a tariff for the product or service be filed with the Board. The section also sets forth the standards that the Board will apply in approving the offering of competitive products or services, and requirements for separate recordkeeping, reporting and prior Board approval for each competitive product or service. Finally, the section sets forth actions the Board will take in case of a violation of the section.

N.J.A.C. 14:4-3.7 requires each electric or gas public utility to file an annual compliance plan demonstrating how the public utility will comply with the subchapter. In addition, N.J.A.C. 14:4-3.7 provides for audits of the public utility by an independent auditor to ensure compliance. Audits are required at least every two years.

N.J.A.C. 14:4-3.8 requires each electric or gas public utility to file a dispute resolution procedure with the Board as part of its annual compliance plan filing. The section provides minimum standards for the dispute resolution procedure, and requires recordkeeping and reporting regarding the resolution of complaints.

N.J.A.C. 14:4-3.9 sets forth penalties for violations of the subchapter.

N.J.A.C. 14:4-3 Appendix contains requirements for filing a petition for approval of a tariff governing the offering of a competitive product or service, as required by N.J.A.C. 14:4-3.6.

#### **SUBCHAPTER 4A. Public Utility Holding Company (PUHC) Standards**

Existing Subchapter 4A, provides for Board oversight of public utilities and public utility holding companies. Electric and gas public utilities and their public utility holding company systems present unique problems that require regulatory oversight. The utility industry is highly dependent on capital markets. If a utility's credit ratings decline because of actions by a utility's parent company or an unregulated subsidiary, providers of capital can increase the cost of capital, putting ratepayers at risk. In addition, unregulated subsidiaries may distract utility managers from giving priority to local utility service, and/or utility policy decisions may be delegated to those without the State-specific experience necessary to ensure reliable service at reasonable rates. Finally, a public utility holding company with unregulated subsidiaries may lead to ratepayer subsidies of nonutility services.

From the 1930s to 2005, strong Federal requirements guarded against the problems described above. The Federal Public Utility Holding Company Act of 1935 (PUHCA)

was enacted during the Great Depression in response to the failure of a number of public utility holding companies and a number of unethical practices. Public utility holding companies were highly leveraged and supported by the stable revenues of the public utilities at the bottom of the corporate pyramid. The crash of 1929 quickly led to bankruptcies in these public utility holding companies, with severe economic consequences for the country. The PUHCA was enacted to address these problems. The Energy Policy Act of 2005 (EPA), signed by President Bush in August 2005, repealed the PUHCA.

The Board's rules are intended to ensure that certain protections still deemed relevant will continue at the State level. The Board's rules are predicated partially upon actual experiences both nationally, where holding company abuses in the utility sector caused the Enron and WorldCom corporate scandals; and in New Jersey, where the Board adopted a stipulation in 2004 providing, among other things, for the return of \$28 million plus interest to Elizabethtown Gas ratepayers because of the business practices of a holding company and affiliated unregulated subsidiaries of a New Jersey public utility. *In the Matter of the Focused Audit of Elizabethtown Gas Company, NUI Utilities, Inc. and NUI Corporation*, BPU Docket Nos. GA03030213, GA02020099, GR03050423, GR02120945, GR02040245 and GR01110771, Board Order dated April 26, 2004. The rules also provide a necessary and appropriate level of standardization and clarity to the Board, Board staff and the regulated community.

Consequently, the rules address utility corporate structure, utility relationships with its public utility holding company system, dividends, access to books and records and diversification. The rules apply only to New Jersey electric and gas public utilities that are owned by a public utility holding company.

The rules preserve the Board's access to public utility and public utility holding company system books and records; establish ring-fencing protections to protect ratepayers, as well as the State of New Jersey, from public utility capital impairment; ensure that the Board retains appropriate supervision over service agreements entered into between an electric or gas public utility and its public utility holding company system; and establish protections against cross-subsidization by potentially separating the corporate boards of directors of the public utility and the public utility holding company system by requiring the independence of certain utility directors.

Subchapter 4A is proposed for recodification as Subchapter 4. In addition, proposed amendments are described below, using references to the rules as recodified as Subchapter 4.

N.J.A.C. 14:4-4.1 sets forth the basic purpose and scope of the rules.

N.J.A.C. 14:4-4.2 contains definitions for terms used only in the PUHC rules. Minor corrections are made in subsection (a) to correct inaccurate wording of terms defined at N.J.A.C. 14:4-1.2 and to delete three terms ("existing products and/or services," "public utility holding company" and "shared services") that are not defined at N.J.A.C. 14:4-1.2,



but at N.J.A.C. 14:4-3.2. Definitions for these three terms are proposed, with cross-references to their definitions in N.J.A.C. 14:4-3.2.

N.J.A.C. 14:4-4.3 applies a diversification limit to investments. Harm could befall a utility's operations by reason of non-utility investment, depending on the amount the holding company had "at risk," that is, the amount of its investment.

N.J.A.C. 14:4-4.4 sets forth the scope of the Board's authority to have full and timely access to the books and records of an electric or gas public utility relating to its interactions with its public utility holding company system. It also includes requirements for certain information that must be filed with the Board.

Proposed amendments to N.J.A.C. 14:4-4.4(c) and (d) address concerns raised by utilities that the existing rules may cause reporting of multiple insignificant events. The existing provisions require notice to the Board of any investigation or audit by FERC or another Federal or state agency. Under the existing rules, a public utility or its public utility holding company system must notify the Board within 10 days of being notified of an investigation or audit of the public utility, any part of the public utility holding company system or any party with a material transactional relationship to the public utility. The proposed amendments will narrow the provision to apply only to a notice of an investigation or audit by a Federal or state agency that is received by the public utility itself or its holding company, but the amended provision would not apply to a notice received by other members of the public utility holding company system. This will reduce the reporting burden while ensuring notice to the Board of investigations or audits that are sufficiently important to be reported to the public utility or holding company by a member of the public utility holding company system, as well as notice of investigations or audits of the public utility itself or its parent holding company. Notice to Board staff is also added in order to speed receipt and processing of these notices.

The public utilities also raised concerns regarding confidentiality of information reported to the Board. However, the Board believes that its existing Open Public Records Act (OPRA) rules at N.J.A.C. 14:1-12 are sufficiently protective and has not proposed the suggested amendments.

N.J.A.C. 14:4-4.5 contains substantive requirements concerning the Board's review and ratemaking treatment of service agreements between an electric or gas public utility and its public utility holding company system. This section does not create rights for third parties in any way. Rather, the intent of this section is to ensure that service agreements between an electric or gas public utility and an affiliate in its public utility holding company system fairly allocate costs to ratepayers.

N.J.A.C. 14:4-4.6 contains structural separation requirements. These requirements protect ratepayers and the State from abuses that could result when the interests of the electric or gas public utility are not entirely aligned with the interests of its public utility holding company system. This section also requires that each public utility maintain a distinct corporate identity, imposes independence requirements on certain utility directors and requires various information from an electric or gas public utility in order to

facilitate effective Board oversight.

N.J.A.C. 14:4-4.7 contains operational separation requirements. These requirements are intended to protect ratepayers and the State from cross-subsidization between an electric or gas public utility and its public utility holding company system. The section allows the Board to implement restrictions if it finds that the capital of an electric or gas public utility may be impaired. This includes the authority to limit or stop payment of a dividend or a distribution to shareholders or the public utility holding company system. Additionally, it requires notice before either the transfer of more than five percent of the electric or gas public utility's retained earnings to its public utility holding company, or the declaration of a special or un-regular cash dividend. Finally, the provision restricts utility involvement in intra-holding company money pools.

### **SUBCHAPTER 5. Energy Licensing and Registration**

N.J.A.C. 14:4-5 contains licensing and registration rules for electric power suppliers, gas suppliers and clean power marketers.

N.J.A.C. 14:4-5.1 sets forth the entities regulated under the subchapter, which include electric and gas suppliers, energy agents, energy consultants and clean power marketers. N.J.A.C. 14:4-5.1 details the types of activities prohibited without a license or registration, providing that licenses and registrations are non-transferable and providing a brief preview of the licensing or registration process. In addition, the section includes confidentiality provisions. Minor amendments are proposed, which clarify who is and is not subject to the subchapter, correct an internal inconsistency in subsection (d) and address information for which a claim of confidentiality has been filed but not approved. Amendments at subsections (f) and (g) use shorter defined terms and clarify the existing provisions with no change in meaning.

N.J.A.C. 14:4-5.2 is proposed for readoption without change, except for the deletion of an obsolete example. The section contains the basic requirements for an electric power supplier, gas supplier or clean power marketer license. N.J.A.C. 14:4-5.2 also includes a requirement for a New Jersey office, for certain types of customer access to the licensee, and for compliance with requirements of Federal energy agencies and accepted national energy industry standards. These standards, which are incorporated by reference, include the Federal Liquefied Natural Gas Facilities: Federal Safety Standards, which sets forth safety requirements for facilities used for transport and treatment of natural gas; and the ANSI (American National Standards Institute) National Fuel Gas Code, which sets forth general criteria for the installation and operation of gas piping and gas equipment on consumers' premises.

N.J.A.C. 14:4-5.3, which is proposed for readoption with minor clarifying changes, sets forth the required contents of an application for a license. The section, rather than spelling out the application requirements in detail, provides broad categories of the types of information that will be required on the application. The application form and instructions will then provide detailed requirements within each category listed in the rules. This provides the public with notice of the types of information that will be

needed, and restrictions to ensure that the Board asks only for relevant information, but it does not burden the rule with excessive detail. In addition, subsection (b) is amended to indicate that Board staff will act on behalf of the Board in determining additional information needed to evaluate an application.

N.J.A.C. 14:4-5.4 is a procedural section, which addresses how the Board processes applications for licenses and license renewals. It includes provisions requiring that the applicant notify the Board of a material change during the pendency of the application, a requirement for a surety bond in the amount of \$25,000 for a clean power marketer license or \$250,000 for an energy supplier license and provisions for modification of the bond for cause. If the Board discovers after license issuance that any aspect of the license application was inaccurate or noncompliant, the Board may pursue enforcement action. The section is proposed for readoption without change, except for a clarification to the section heading.

N.J.A.C. 14:4-5.5 contains conditions that apply after a license is issued. The provisions require that a licensed gas supplier comply with existing gas heating value and purity requirements that apply to gas public utilities. N.J.A.C. 14:4-5.5 also contains recordkeeping requirements and a requirement that a licensee provide a summary of residential customers sorted by zip + 4 codes, within five days of a request by Board staff. This zip code requirement was previously included in the contents of a renewal application under N.J.A.C. 14:4-5.7, with a three-day deadline, but is proposed to be relocated here with a five-day deadline. Amendments are also proposed to expand and strengthen requirements at subsection (h) for notice to Board staff when a licensee or registrant makes certain important changes to its business, and to clarify that Board staff will act on behalf of the Board in accepting such notice and notifying a licensee whether it must continue to serve customers. Proposed new subsection (i) applies the consequences of noncompliance with renewal requirements to noncompliance with N.J.A.C. 14:4-5.6.

N.J.A.C. 14:4-5.6 addresses the term of a license and what happens if a license or its surety bond expires, is proposed for readoption with minor amendments. A licensee whose license has expired must stop marketing and enrolling new customers and must submit a new license application. A redundant provision at subsection (c), which is redundant with subsection (b) is deleted, as is subsection (e), which contains a quarterly report requirement on LDCs that has not proved useful. The rule also provides the option of requesting a hardship extension of the 45-day period. Finally, an LDC may not do business with an electric power supplier, gas supplier or clean power marketer without a valid license and surety bond. This provides additional incentive to licensees to keep their licenses and surety bonds up to date. A cross-reference is added and subsection (f) is amended to indicate that Board staff will act on behalf of the Board in notifying an LDC of licensee noncompliance and specific actions the LDC must take.

N.J.A.C. 14:4-5.7 addresses the contents of a license renewal application. As with N.J.A.C. 14:4-5.3, regarding the contents of an application for an initial license, the rules

provide broad categories of the types of information that will be required on a renewal application, rather than spelling out each application requirement in detail. The application form and instructions will then include detailed requirements within each broad category listed in the rules. This provides the public with notice of the types of information that will be required and restrictions to ensure that the Board asks only for relevant information, but it does not burden the rule with excessive detail. At paragraph (d)3, a zip + 4 requirement is deleted, and documentation of the existing requirement that the TPS has notified LDCs of the application is added to existing paragraph (d)10. The section provides that the application for a renewal will be processed using the same procedures as for an application for an initial license, which are found at N.J.A.C. 14:4-5.4. Finally, the licensee must provide a copy of the renewal to the LDCs within 10 days after its issuance. This enables LDCs to comply with the requirement that they do no business with an unlicensed TPS, including one whose license has expired.

N.J.A.C. 14:4-5.8, which is proposed for readoption without change, provides for registration of energy agents and private aggregators, provides broad categories of the types of information that will be required for a registration, rather than spelling out each requirement in detail. The registration form and instructions will then include detailed requirements within each broad category listed in the rules. This provides the public with notice of the types of information that will be required and restrictions to ensure that the Board asks only for relevant information, but it does not burden the rule with excessive detail. The section includes a requirement that a registrant notify the Board of any material change in the structure or operation of the business and clarifies that the Board is not foreclosed from taking enforcement action for an inaccuracy or noncompliance in the registration materials submitted, even if it is discovered after the registration is approved.

N.J.A.C. 14:4-5.9 provides for registration renewals for energy agents and private aggregators. It details the consequences of failing to renew a registration and sets forth the one-year term of a registration. The section is proposed for readoption without change.

N.J.A.C. 14:4-5.10, which is proposed for readoption without change, prohibits an LDC from doing business with unlicensed electric power suppliers, gas suppliers and clean power marketers; and requires LDCs to notify the Board of alleged violations. This will help ensure compliance with this subchapter and will help ensure that licenses are obtained and renewed promptly.

N.J.A.C. 14:4-5.11 provides for a person to register as an energy consultant. An energy consultant is a type of energy agent that meets additional conditions (a surety bond and a New Jersey office) in order to be eligible for increased access to customer information provided by LDCs through electronic data interchange (EDI). The section is proposed for readoption without change except for an updated web address of a Board order.

N.J.A.C. 14:4-5.12 contains all of the fee provisions for the subchapter and displays them in table form for easy understanding. The section requires that both an initial

application fee and the final license issuance fee be submitted with the submittal of the application, but provides that the final license fee is refundable if the license is denied. In addition, subsection (b) explains the fee and surety bond requirements for a single application for more than one license. Amendments are proposed to state that the renewal fee is nonrefundable.

N.J.A.C. 14:4-5.13 addresses enforcement. The section details the types of enforcement actions the Board can take and the factors the Board will consider in determining the appropriate enforcement action for a particular violation. The section is proposed for readoption without change.

### **SUBCHAPTER 6. Government Energy Aggregation Programs**

The government energy aggregation subchapter provides for the creation and operation of energy aggregation programs by a municipality or a county. A government-operated energy aggregation program is the cooperative purchase of energy and/or energy-related services by a municipality or a county for itself and/or its citizens. A government-operated energy program could reduce the cost of energy and/or energy-related services for the municipality or county and other residents and non-residents enrolled in the program. The subchapter is proposed for readoption with clarifying changes, and amendments, as described below.

When a municipality or county establishes an energy aggregation program, its residents are automatically enrolled in the program but have the option to "opt-out" of the program if they wish. Non-residential customers are automatically left out of the program but have the option to "opt-in" if they wish. The rules provide two options that a municipality or county may follow in establishing an energy aggregation program.

The Option 1 program:

- Places the responsibility of notifying residential customers of their opportunity to opt-out on the local distribution company (LDC);
- Requires customer notification of the energy aggregation program and customer options prior to the lead agency's advertisement for bids to supply energy for the program;
- Places the responsibility of notifying non-residential customers of their opportunity to opt-in on the LDC; and
- Makes it an option to submit a draft contract between the lead agency and the chosen energy supplier to the Board and Rate Counsel for comment.

The Option 2 program:

- Places the responsibility of notifying residential customers of their opportunity to opt-out on the lead agency;
- Places the responsibility of notifying non-residential customers of their opportunity to opt-in on the lead agency and requires this notice to be provided by public notice;
- Requires that the lead agency advertise for bids prior to customer notification; and

- Requires a draft contract between the lead agency and the chosen energy supplier to be submitted to the Board and Rate Counsel for comment.

The opportunity to opt-out provides residential customers the option to meet their energy needs and/or supplies elsewhere. Additionally, the opportunity to opt-in allows non-residential customers an opportunity to be part of the government aggregation program.

N.J.A.C. 14:4-6.1, proposed for readoption without change, sets forth the scope of this subchapter related to government energy aggregation program standards.

N.J.A.C. 14:4-6.2, proposed for readoption without change, defines certain words and terms that are used only in this subchapter.

N.J.A.C. 14:4-6.3 sets forth general provisions and the authority of governmental aggregators. Since the only type of default provider possible is a TPS, this is clarified at subsection (j). New subsection (k) states a residential customer's ability to opt-out of a government aggregation program at any time.

N.J.A.C. 14:4-6.4 sets forth general provisions for municipalities and/or counties as members of energy aggregation programs. An amendment is proposed to subsection (i) to specify additional methods to allow potential participants to opt out of a program.

N.J.A.C. 14:4-6.5, which sets forth the requirements for establishing an option 1 government-private energy aggregation program, is proposed for readoption without change.

N.J.A.C. 14:4-6.6, proposed for readoption without change, sets forth the requirements for establishing an option 2 energy aggregation program.

N.J.A.C. 14:4-6.7, proposed for readoption without change, requires an aggregation agreement for government-private energy aggregation programs and sets forth the requirements of that agreement.

N.J.A.C. 14:4-6.8, proposed for readoption without change, sets forth requirements for advertising, bid specifications and the evaluation and selection of bids.

N.J.A.C. 14:4-6.9 governs the price requirements for government-private energy aggregation programs. Amendments are proposed at subsection (e) regarding the calculation of the benchmark price and at subsection (d) to require each LDC to post that price on its website within a certain time after the price changes.

N.J.A.C. 14:4-6.10, proposed for readoption without change, sets forth the requirements for a contract between a government aggregator and a TPS.

## **SUBCHAPTER 7. Retail Choice Consumer Protection**

N.J.A.C. 14:4-7 contains consumer protection requirements that apply to electric power suppliers and gas suppliers. The subchapter focuses primarily on advertising and marketing, customer contracts and billing.

N.J.A.C. 14:4-7.1, proposed for readoption without change, sets forth the scope of the subchapter and the parties regulated.

N.J.A.C. 14:4-7.2, proposed for readoption without change, sets forth definitions that are unique to this subchapter.

N.J.A.C. 14:4-7.3, proposed for readoption without change, contains standards that apply to any advertising issued by a TPS. These standards ensure that potential customers have adequate information to make an informed decision about purchasing the TPS's services.

N.J.A.C. 14:4-7.4, proposed for readoption without change, contains standards that apply to all marketing materials issued by a TPS. Again, the rules require specific information to enable a potential customer to be fully informed regarding the services offered and the terms of the offer.

N.J.A.C. 14:4-7.5, proposed for readoption without change, sets forth requirements each TPS must follow regarding the requirements it imposes on applicants for service regarding income, security deposits and creditworthiness.

N.J.A.C. 14:4-7.6 contains the minimum requirements for the content and execution of a customer contract. These requirements are designed to ensure that customers are treated fairly and consistently when purchasing utility service and are aware of the terms and conditions of service. An amendment is proposed to decrease the amount of time provided to a residential customer to rescind its selection of a TPS, from the current 14 days to seven days. In addition, a cross-reference is added at subsection (i) and the option of using an electronic signature to continue an existing contract is added at subsection (j).

N.J.A.C. 14:4-7.7, proposed for readoption without change, sets forth requirements for the content and clarity of customer bills. Customers can easily be confused by utility bills, which include a great deal of information and several different types of charges, taxes and fees. This section is designed to ensure that customers can understand the basis for the amounts they must pay for utility service.

N.J.A.C. 14:4-7.8, proposed for readoption without change, prohibits disclosure of customer information except under certain conditions, in order to protect customer privacy.

N.J.A.C. 14:4-7.9, proposed for readoption without change, sets forth requirements for TPS complaint handling. Most complaints can be handled directly by a customer call to the utility. However, should a complaint remain unresolved after the customer contacts

the utility, the rules require that the utility inform the customer of its option to call the Board for assistance in resolving the complaint.

N.J.A.C. 14:4-7.10 provides for termination of a customer contract under certain conditions. The section sets limits on a TPS's ability to terminate a residential contract without proper notice and without meeting certain conditions to ensure fairness. Proposed new subsection (e) requires notice to customers if a TPS stops serving them.

Proposed new N.J.A.C. 14:4-7.11 requires that a TPS include New Jersey sales and use tax in all of its published rates, to ensure that customers have complete information.

### **Social Impact**

The readoption of Chapter 4 with amendments and a new rule will have a beneficial social impact because the rules provide a comprehensive scheme to maximize the efficiency and competitiveness of New Jersey's energy market. The readoption of Chapter 4 will continue programs that ensure that New Jersey citizens and businesses have access to adequate, reliable and affordable energy.

The readoption of the Board's anti-slamming rules will have a beneficial social impact because the rules will continue standards that protect consumers from having their energy supplier switched without their authorization. The readoption of the Board's affiliate relations rules will have a positive social impact by preventing cross-subsidization or other problems that could arise from the relationship between an electric and/or gas utility and a related competitive business segment, its public utility holding company or any of the holding company's related competitive business segments. The readoption of the rules will help ensure that New Jersey energy customers will continue to receive the benefits of a competitive marketplace and that all entities in the competitive electric and gas business are afforded equal treatment, including equal access to information.

The readoption of the PUHC rules will have a positive social impact. There is a potential for economic harm to an electric or gas public utility when it is acquired by a public utility holding company, as described below in the Economic Impact statement. These rules will protect the integrity of such electric or gas public utilities, and will thus ensure that investors and ratepayers can rely on and have continued confidence in New Jersey electric or gas public utilities. The proposed amendments also clarify the rules and make reporting requirements more specific, thus reducing the potential burden on the regulated community while preserving essential notice to the Board.

The readoption of the Board's licensing and registration rules for energy suppliers will have a positive social impact because it will continue important Board oversight of entities that supply vital energy services to New Jersey customers. The proposed amendments will better ensure compliance with the licensing and registration requirements. The readoption of the Board's government energy aggregation program rules will have a beneficial social impact because the rules will continue to provide an opportunity for local government entities to obtain affordable energy through economies



of scale. The readoption of the Board's retail choice consumer protection rules will have a positive social impact, because they will continue requirements that ensure responsible and fair treatment of consumers in the areas of advertising, marketing, contracts and billing.

### **Economic Impact**

The readoption of the Board's energy competition rules will have an overall positive economic impact by continuing to encourage competition in energy supply services. The energy anti-slamming rules impose some costs on TPSs, in that a TPS verify the enrollment of each customer. However, proposed amendments allowing TPSs to perform telephone verifications will likely reduce the cost of these verifications. The Board has also proposed to reduce slamming reporting requirements. Slamming itself results in costs – it can cause financial problems for customers, and results in TPS expenditures on discovering and correcting the unauthorized switches. Therefore, the Board believes that the cost of compliance with the anti-slamming provisions is justified to prevent the costs of slamming.

The readoption of the affiliate relations rules will have an overall positive economic benefit. The costs incurred by electric and gas utilities in complying with the affiliate relations rules should be minimal, and mainly will be related to recordkeeping and reporting. Furthermore, those costs that the Board determines are reasonable will be recoverable through utility rates. Most importantly, the rules help to prevent cross-subsidization or deterioration of the financial condition of public utilities, which might occur as a result of a public utility's affiliation with non-regulated entities. The financial soundness of public utilities is especially important in light of the current economic downturn.

The readoption of the PUHC rules will continue to help minimize operating costs for New Jersey electric and gas public utilities. The ownership of New Jersey electric or gas public utilities by public utility holding company systems creates unique problems that require specific regulatory oversight. First, public utility holding company system investments in non-utility businesses may lead to utility ratepayer subsidies of non-utility services. Second, the acquisition of a utility by a public utility holding company system can affect the incentives of utility managers, as new managers may have priorities other than local utility service and may lack the State-specific and utility experience necessary to ensure the provision of safe, adequate and proper service at just and reasonable rates. Third, if the electric or gas public utility's credit ratings decline as a result of activities by the public utility holding company system, the compensation demanded by providers of capital can increase. Consequently, to the extent that any New Jersey electric or gas public utility may be harmed by its public utility holding company system, the rules reduce the operating costs of the New Jersey gas or electric public utility. The amendments proposed to the PUHC rules are likely to reduce the reporting burden on public utilities and public utility holding companies, and to reduce the cost of complying with the reporting requirements of the rules. The amendments will also reduce Board administrative costs by minimizing the submittal of unnecessary notices.

The readoption of the licensing and registration rules at N.J.A.C. 14:4-5 will have a positive economic impact in that it will continue a program that ensures that all third-party suppliers and related entities are viable businesses and have adequate financial resources and stability to protect energy consumers. The largest cost resulting from the licensing and registration rules is the cost of the surety bond. However, this is a statutory requirement, instituted to ensure stability and financial viability of players in the energy supply market. Customers depend on energy for a multiplicity of crucial functions, ranging from residential medical devices to key manufacturing tasks. It is essential that entities that supply energy have the stability and financial viability to carry through on their obligations to their customers.

The government energy aggregation rules provide for a local government to obtain energy for itself and/or its residents and businesses at competitive prices, resulting in an economic advantage for participants. The exact degree of economic effect is still unclear because no municipality or county has yet passed an ordinance or resolution authorizing a government aggregation program. However, as energy costs have risen during the recent economic downturn, the Board has seen an increase in interest in government aggregation programs and anticipates that such programs are likely to be established in the future. The Board believes the costs that would be saved through these programs would be more than the costs necessary to set up these programs. Therefore, the Board believes the government aggregation programs have a potential for a positive economic impact on customers. Additionally, if a TPS were to successfully bid on an energy aggregation program, the TPS would receive a positive economic benefit through short-term profit margins and long-term name recognition.

The readoption of the retail choice consumer protection standards will have a positive economic impact on customers. The rules will continue requirements that ensure that all TPSs adhere to a uniform set of consumer protection practices. The requirements do come with some costs on TPSs. However, the fact that the rules govern all TPSs will prevent unfair competitive practices among TPSs that could have long-term negative economic impacts on the entire TPS community.

Proposed new N.J.A.C. 14:4-7.11, which requires that certain taxes be included in TPS's published rates, will ensure that price offers made to customers by different suppliers will be presented in a uniform manner. This will make it easier for customers to obtain an accurate picture of their likely energy costs before selecting a TPS, and will enable customers to more easily compare suppliers. This will not only prevent the costs to customers, utilities and TPSs of erroneous switches, but will also improve consumer confidence in the energy shopping process. The costs incurred by TPSs in complying with this section should be minimal, if any.

### **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.

The following subchapters are 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: energy anti-slamming, energy licensing and registration, government energy aggregation programs, public utility holding company standards and consumer protection. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis for these sections of the rules proposed for readoption with amendments and a new rule.

The affiliate relations rules are 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. The Energy Policy Act of 2005 governs affiliate transactions, service agreements and access to the books and records of public utility holding companies. While the Board's affiliate relations rules are more specific than the Federal provisions, neither is clearly more stringent than the other. The Federal law provides states with broad power to prevent cross-subsidization and to issue "such rules and regulations as are necessary or appropriate for the protection of utility consumers." To the extent that the specificity of the Board's rules may render them more stringent, the Board believes such stringency is justified by the potential for abuse of a public utility by a holding company or other affiliate, as amply demonstrated by recent events in the public utility industry.

#### **Jobs Impact**

The Board does not anticipate that the proposed readoption with amendments and a new rule of Chapter 4 will have a material impact on jobs in New Jersey. The rules will continue existing programs that require the use of workers to implement procedures to protect customers from slamming and consumer fraud and abuse, including recordkeeping and reporting. While a regulated entity may need staff to ensure compliance with the rules, the amount of staff time required is minimal and any staff needed will already be in place as the rules have been in effect for some time.

#### **Agriculture Industry Impact**

The readoption with amendments and a new rule of Chapter 4 is not likely to have an impact on the agriculture industry in New Jersey. The rules apply Statewide and they are not expected to affect agriculture any differently from other energy consumers.

#### **Regulatory Flexibility Analysis**

The proposed readoption with amendments and a new rule of N.J.A.C. 14:4 will impose minimal recordkeeping, reporting or other compliance requirements on small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 full-time employees.

Some of the TPSs affected by the readoption with amendments of the anti-slamming rules may qualify as small businesses. The rules will impose some recordkeeping, reporting and other compliance requirements on these small businesses, in that the

readoption will continue the requirement that TPSs use certain procedures for switching customers, and for verifying the accuracy of customer switches, as discussed in the Summary above. The proposed amendments will slightly decrease reporting requirements and slightly increase the level of detail required in third-party verifications. In addition, the option for TPSs to perform their own verifications will likely reduce the compliance burden. Therefore, the amendments taken together will not increase existing compliance requirements overall. The compliance requirements of these rules are justified by the magnitude of the slamming problem that occurred prior to the adoption of anti-slamming rules. Furthermore, unauthorized switching is no less of a problem when perpetrated by a small TPS than a large one. Therefore, the Board has not provided special provisions for small businesses.

The affiliate relations rules apply only to regulated electric and gas public utilities and their public utility holding companies, none of which qualify as a small business under the New Jersey Regulatory Flexibility Act, as they all employ more than 100 full-time employees.

The licensing and registration rules proposed for readoption require TPSs, energy agents and private aggregators to be licensed or registered. Some of these entities are small businesses. These entities are required to keep summary records in a form accessible to Board staff. Both electric power and gas suppliers must supply their previous year's New Jersey energy sales for an initial application and for a renewal. Any entity that wishes to market to residential customers must file a copy of its standard contract with Board staff. It is not anticipated that any entity would find it necessary to engage any professional services to comply with these rules. These rules are important to ensure that energy suppliers are responsible and financially sound, and the rules would have the same impact upon all entities that enter the New Jersey market. Accordingly, the Board has not provided special provisions applicable to small businesses.

The government energy aggregation rules will govern municipalities, counties and TPSs. Some of the TPSs who bid to supply energy or are selected to supply energy under an aggregation program may qualify as small businesses. In the event that a small business TPS is selected, that TPS will have to comply with the same rules as a larger TPS. This will include keeping records of the customers in the program and complying with all terms of the contract during formation and execution of the program. However, participation by the TPS is voluntary, and it is not anticipated that any TPS would find it necessary to engage any professional services to comply with these rules. Furthermore, the Board sees no reason to distinguish among TPSs based upon their size.

The consumer protection rules proposed for readoption at N.J.A.C. 14:4-7 require TPSs to adhere to minimum requirements regarding marketing, advertising, contracts and billing. It is not anticipated that any entity would find it necessary to engage any professional services to comply with these rules. These rules are important to ensure that energy suppliers provide consumers with complete and accurate information

regarding the energy they offer and provide. Accordingly, the Board has not provided special provisions for small businesses.

### **Smart Growth Impact**

The Board anticipates that the proposed readoption with amendments of Chapter 4 will have no impact on either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan (State Plan). The State Plan is intended to "provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions" and to "identify areas for growth, agriculture, open space conservation and other appropriate designations." N.J.S.A. 52:18A-199a. Smart growth is based on the concepts of "focusing new growth into redevelopment of older urban and suburban areas, protecting existing open space, conserving natural resources, increasing transportation options and transit availability, reducing automobile traffic and dependency, stabilizing property taxes, and providing affordable housing." These rules apply uniformly Statewide and the Board does not expect that they will affect the location of future development. Therefore, the rules proposed for readoption with amendments and a new rule will not impact smart growth or the State Plan.

### **Housing Affordability Impact**

The rules proposed for readoption with amendments and a new rule will have no impact on affordable housing in New Jersey because the scope of the rules is limited to addressing the regulation of the competitive energy market. While conditions in the energy market may slightly affect housing prices indirectly, these rules are designed to minimize energy prices through competition. Therefore, if there is any impact on housing affordability, it will be positive.

### **Smart Growth Development Impact**

The rules proposed for readoption with amendments and a new rule will have no impact on smart growth in New Jersey because the scope of the rules is limited to addressing the regulation of the competitive energy market. There is an extreme unlikelihood that the rules would evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, because the competitive energy market does not affect the location of housing construction, and has only a slight indirect impact on the housing market. Any such impact will be to minimize the cost of energy and will apply uniformly Statewide.

**Full text** of the rule proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14:4.

**Full text** of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## **SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS**

### **14:4-1.1 Applicability and scope**

(a) - (d) (No change.)

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

#### **14:4-1.2 Definitions**

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

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

...

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

...

**"Energy aggregator" means a government aggregator and/or a private aggregator, as these terms are defined in this section.**

...

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

**"Rate Counsel" means the Division of Rate Counsel, which is located in, but not of, the New Jersey Department of the Treasury pursuant to N.J.S.A. 52:27EE-54, or any successor agency.**

...

## **SUBCHAPTER 2. ENERGY ANTI-SLAMMING**

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

(a)- (b) (No change.)

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

1. (No change.)
2. An audio recording of a [third-party verification, performed] **customer agreeing to the switch** verbally [over the] **on a telephone call made** by an independent third party **or by a TPS. The questions and statements of the independent third party or the TPS may be recorded or electronic. However, all customer responses shall be made verbally in real time.** The verification shall:
  - i. [Identify] **Include a statement by the customer of record, or person authorized to make the switch, of their first name, last name and the account service address;**
  - ii. Verify that the person speaking is the customer of record, or is authorized to make the [change] **switch;**
  - iii. (No change.)
  - iv. Confirm that the person speaking voluntarily wishes to make the [TPS change] **switch;**
  - v. Identify the name of the TPS **to which the customer is switching;** [and]
  - vi. Indicate the **customer's LDC** account number [of the LDC] and the type of service to be switched;
  - vii. **State the price per kwh or therm, whether the price is fixed for a period of time or variable, and if fixed, for what period of time;**
  - viii. **The amount of any cancellation fees and/or any other charges not included in the per unit price under (c)2vii above; and**
  - ix. **Include a recording of the entire duration of the call, from the first contact with the customer to the disconnection of the call. This requirement may be waived with the customer's consent;**
3. A signature in ink on a paper form, showing that the customer voluntarily authorized the switch. This form shall:
  - i. (No change.)
  - ii. Verify that the signatory is the customer of record[;
    - iii. Confirm that the signatory] **or is authorized to make the [change] switch;**
    - [iv.] **iii.** (No change in text.)
    - [v.] **iv.** Confirm that the signatory voluntarily wishes to make the TPS [change] **switch;**
    - [vi.] **v.** Identify the name of the TPS **to which the customer is switching;** [and]
    - [vii.] **vi.** Indicate the account number of the LDC and the type of service to be switched; **and**
    - vii. Include a statement that the customer acknowledges receipt of a copy of the terms and conditions of service;**
4. - 5. (No change.)

(d) (No change.)

(e) A TPS that switches a customer without complying with this subchapter shall be subject to enforcement in accordance with N.J.A.C. 14:4-[2.9]**2.8**.

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

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

1. - 3. (No change.)
4. [Utility] **Customer** account number **as shown on LDC bills**; and
5. (No change.)

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

(a) (No change.)

(b) If a TPS uses electronic methods to sign up, renew[,] or switch customers, the TPS shall comply with the Federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001 through 7006, which is incorporated herein by reference as amended and supplemented and is available at

[http://www.access.gpo.gov/uscode/title15/chapter96\\_subchapteri.html](http://www.access.gpo.gov/uscode/title15/chapter96_subchapteri.html)  
<http://uscode.house.gov/download/pls/15C96.txt>.

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

1. (No change.)
2. A separate statement as to [the hardware and] software requirements for a customer to access and retain electronic records of the transactions made on the website; and
3. (No change.)

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

1. Customer information including, at a minimum, **the customer's first and last** name, service address, e-mail address, utility account number and, where required by a utility to complete enrollment, meter number;
2. The full terms and conditions of the contract[. The customer shall be required to affirmatively indicate that the customer has read the terms and conditions];
3. A requirement that the customer assent to a statement indicating that:
  - i. The customer **is the customer of record or** has the authority to sign up, renew[,] and/or change [its] **the** TPS for the account listed;
  - ii. - iii. (No change.)



[4. The environmental disclosure information for the service being purchased or renew, as required under N.J.A.C. 14:8-3, or a prominently displayed link to this information;]

Recodify existing 5. and 6. as **4. and 5.** (No change in text.)

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

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

**(e) A switch requested by a customer through the internet is subject to the LDC notice requirements at N.J.A.C. 14:4-2.6, as well as all other applicable provisions of this subchapter.**

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

(g) (No change.)

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

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

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

#### **14:4-2.5 Recordkeeping**

(a) All change orders and records of customer authorization of switches shall be retained by the TPS for a minimum of three years, **except pursuant to (c) below, and shall be made available to Board staff upon request.**

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

1. The date and time of the customer's acceptance of service; **and**

2. The terms and conditions of service that the customer accepted, in the same form as the terms of service were presented to the customer[; and].  
[3. The product that the customer accepted.]

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

**(c) Notwithstanding (a) above, recordings of the marketing portion of calls may be disposed of six months after the call was recorded and need not be retained for three years.**

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

(a) - (c) (No change.)

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

(e) (No change.)

(f) If a customer disputes a [change order] **switch**, either before or after the LDC effectuates [a] **the** switch, the TPS shall produce [the] **all** documentation required under N.J.A.C. 14:4-2.3(c) **and/or (g) and/or 2.4**, within 10 business days after a request by the customer or the Board.

#### **[Subchapter 4. (RESERVED)]**

#### **SUBCHAPTER [4A.] 4. PUBLIC UTILITY HOLDING COMPANY (PUHC) STANDARDS**

##### **14:4-[4A.1]4.1 (No change in text.)**

##### **14:4-[4A.2]4.2 Definitions**

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

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

...

**"Existing products and/or services," has the meaning assigned to this term at**

**N.J.A.C. 14:4-3.2.**

...

**“Public utility holding company” has the meaning assigned to this term at N.J.A.C. 14:4-3.2.**

...

**“Shared services” has the meaning assigned to this term at N.J.A.C. 14:4-3.2.**

...

**14:4-[4A.3]4.3 (No change in text.)**

**14:4-[4A]4.4 Access to information**

(a) - (b) (No change.)

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

1. - 3. (No change.)

(d) An electric or gas public utility or its public utility holding company [system] shall provide copies to the Board **and Board staff** of any report and/or document that [results]:

1. **Results** from the investigation or audit described at (c) above[, that could]; **and**
2. **Could** reasonably be expected to have a material impact on the financial condition or operations of the electric or gas public utility or its public utility holding company system.

(e) - (l) (No change.)

Recodify existing 14:4-4A.5 through 4A.7 as **14:4-4.5 through 4.7** (No change in text.)

**SUBCHAPTER 5. ENERGY LICENSING AND REGISTRATION**

**14:4-5.1 Scope[.]; general provisions**

(a) - (c) (No change.)

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

1. - 2. (No change.)
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[.]; **or**

[(e)] **5.** [A person shall not be eligible to participate] **Participate** in the Board's Clean Power Choice program, as set forth in *In The Matter Of A Voluntary Green Power Choice Program*, BPU Docket No. E005010001, dated January 24, 2005[, without first obtaining a clean power marketer license under this subchapter].

**(e) (Reserved)**

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

(g) [A non-government] **An** 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] ; **except for a government entity that is combining** energy loads [of multiple end users through] **as part of** a government energy aggregation program in accordance with N.J.A.C. 14:4-6.

(h) (No change.)

(i) The licenses and registrations provided for under this subchapter are non-transferable. The merger or acquisition of a licensee **or registrant** 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  
**Suite 801**  
Newark, New Jersey 07102  
[www.bpu.state.nj.us](http://www.bpu.state.nj.us)  
(973) 648-4450

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

1. [A submittal] **Information** for which a [request for] confidentiality [is] **claim has been** filed [and approved] under the Board's Open Public Records Act (OPRA) rules at N.J.A.C. 14:1-12, **but for which the Board's Records Custodian has made no confidentiality determination under the OPRA rules;** [and]  
**2. Information for which a confidentiality claim has been filed under the Board's OPRA rules, which has been determined to be confidential;** and  
[2.] **3.** (No change in text.)

(l) - (m) (No change.)

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

(a) (No change.)

(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 **gas and electric public utilities**. To satisfy this requirement, an applicant shall:

1. (No change.)
  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) - (g) (No change.)

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

(a) An application for an electric power supplier, gas supplier or clean power marketer license shall include all of the information required by the instructions accompanying the application form for the appropriate license. The application form and instructions shall be available from the BPU through its website at [[www.bpu.state.nj.us](http://www.bpu.state.nj.us)] [www.nj.gov/bpu/](http://www.nj.gov/bpu/), 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. - 11. (No change.)
  12. Any other information that [the] Board **staff** requires for a particular applicant, in order to enable [the] Board **staff** to evaluate compliance with this subchapter, or to ensure compliance with State and/or Federal law;
  13. - 14. (No change.)
- (c) (No change.)

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

- (a) - (j) (No change.)

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

- (a) - (c) (No change.)

(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 **staff** within 48 hours after a request:

1. - 3. (No change.)

**(e) A licensee shall provide a summary of the number, types (gas or electricity) and locations (sorted by zip + 4 code) of all residential customers served by the licensee, to Board staff within five business days after a request.**

[(e)] **(f)** 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 **staff** at any time when its sales volume has increased by 33 percent from its previously reported amount, and the Board may increase its surety bond accordingly.

[(f)] **(g)** (No change in text.)

[(g)] **(h)** If a licensee [undergoes a merger] or **registrant reorganizes, restructures, merges with another entity**, acquires **another company**[,] or is acquired by[,], another company, the following requirements shall apply:

1. If the name of the resulting company remains the same, the licensee shall submit a licensing update **at least 30 calendar days prior to the change**, 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 **at least 30 calendar days before the name change**, 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; **and**  
[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.] **3.** The licensee [may] **shall** continue to serve its existing customers pending the Board's final decision on the license update or application, **unless otherwise directed by Board staff.**

**(i) If a licensee or registrant fails to comply with any applicable requirement in (f), (g) or (h) above, the licensee or registrant shall:**

- 1. Immediately stop all advertising and marketing activities;**
- 2. Immediately stop enrolling new customers; and**
- 3. Continue to serve all existing customers until directed otherwise by Board staff.**

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

(a) (No change.)

(b) If a license expires without being extended under (a) above, or if a surety bond expires, the **contract termination provisions at N.J.A.C. 14:4-7.10(e) shall apply, and the** licensee shall:

1. -4. (No change.)

(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.] **(Reserved)**

(d) (No change.)

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

(f) If [the] Board **staff** notifies an LDC in writing that a supplier or marketer that is serving customers in the LDC's service territory does not have a valid license under this subchapter, or does not have the required surety bond, the LDC shall, within one business day after said notice, stop doing business with the supplier or marketer, except pursuant to any specific instructions of [the] Board **staff** [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] Required contents of an application for renewal of an electric power supplier, gas supplier or clean power marketer license**

(a) - (c) (No change.)

(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. - 2. (No change.)

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;] **(Reserved)**

4. - 9. (No change.)

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, **a printed copy of an e-mail from the LDC stating that it received the notice from the TPS or by other means approved by Board staff in writing prior to sending the notice, which provides equivalent documentation of such notice.**

(e) - (h) (No change.)

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

(a) - (e) (No change.)

(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>] **<http://www.nj.gov/bpu/pdf/boardorders/6-23-04-2A.pdf>.**

**14:4-5.12 Fees**

(a) Fees for license applications and registrations shall [be] **include both refundable and nonrefundable components** as follows:

Electric Power Supplier <u>License</u>	Clean Power Marketer <u>License</u>	Gas Supplier <u>License</u>	Energy Agent <u>Registration</u>	Private Aggregator <u>Registration</u>
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*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on May 2, 2011. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

	<u>Electric Power Supplier License</u>	<u>Clean Power Marketer License</u>	<u>Gas Supplier License</u>	<u>Energy Agent Registration</u>	<u>Private Aggregator Registration</u>
Initial Fee-Nonrefundable	\$250.00	\$250.00	\$250.00	\$500.00	\$500.00
Initial Fee-refunded if license is denied	\$1,000.00	\$1,000.00	\$800.00	\$0	\$0
Renewal Fee - <b>Nonrefundable</b>	\$500.00	\$500.00	\$400.00	\$200.00	\$200.00
<b>e</b> (b) (No change.)					

## **SUBCHAPTER 6. GOVERNMENT ENERGY AGGREGATION PROGRAMS**

### **14:4-6.3 General provisions**

(a) - (i) (No change.)

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

1. (No change.)

2. Each contract specifies which is the [default provider for] **TPS that will serve** any customer that does not choose one of the providers **in the aggregation program**.

**(k) A residential customer may opt-out of an aggregation program at any time and switch to another energy supplier, upon 30 days notice to the lead agency and the appropriate LDC.**

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

(a) - (h) (No change.)

(i) An option administrator may choose to use the Internet as a means to accept opt-in or opt-out responses from potential participants in an energy aggregation program. Use of the Internet shall be accompanied [with other, more widely accessible, forms of communication] **by the option for potential participants to respond using either a toll-free telephone number or a postage-paid, pre-addressed response card.**

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

(a) - (c) (No change.)

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



**within 24 hours of any change. However, if the data underlying the benchmark price for a rate class changes daily, or more frequently, the LDC may calculate and post a monthly average benchmark price.**

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

1. The cost of basic generation service[, as defined at N.J.A.C. 14:4-1.2,] for the rate class; plus
2. The pro rata value of the cost of compliance with the renewable energy portfolio standards at N.J.A.C. 14:8-2, which value is derived from a non-utility generation contract with an electric public utility that provides for the transfer of certain environmental attributes from the electric public utility to a supplier of basic generation service. This pro rata value shall be [determined by the Board] **calculated using the average class I and class II price as determined by the EDC, multiplied by that reporting year's total kWh output from each EDC's committed supply and divided by the fixed price basic generation kWhs sold in the reporting year.**

(f) - (h) (No change.)

## **SUBCHAPTER 7. RETAIL CHOICE CONSUMER PROTECTION**

### **14:4-7.6 Contracts**

(a) (No change.)

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

1. - 3. (No change.)

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

5. - 6. (No change.)

(c) - (h) (No change.)

(i) In no event shall a TPS cease to deliver electric power supply or natural gas supply, subject to the terms and conditions of the contract and the LDC tariff, to the LDC on behalf of a residential customer, upon less than the minimum 30 days notice to the customer, **except pursuant to a directive from Board staff pursuant to N.J.A.C. 14:4-5.**

**14:4-5.**

(j) Where **neither** an affirmative written signature **nor an electronic signature** is [not] obtained for renewal of a residential electric generation service or gas supply service contract, the existing contract shall continue on a month-to-month basis under the current terms and condition and pricing.

(k) (No change.)

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

(a) - (d) (No change.)

**(e) If a TPS stops serving one or more customers without following the procedures at N.J.A.C. 14:4-2.3, the TPS shall promptly notify the customers and the customers' service shall be switched to BGS or BGSS, as appropriate.**

#### **14:4-7.11 Presentation of New Jersey Sales Tax**

**Whenever a TPS provides or publishes its rates and charges, or comparable LDC rates and charges, all of these rates and charges shall be presented inclusive of New Jersey Sales and Use Tax. This includes, but is not limited to, the presentation of rates and charges in advertisements, marketing materials, contracts, verbal and telephone solicitations, verifications and customer bills.**