

# **NEW JERSEY BOARD OF PUBLIC UTILITIES**

## **Proposed N.J.A.C. 14:4, Energy Competition; and Proposed N.J.A.C. 14:8, Renewable Energy and Energy Efficiency**

Proposed April 16, 2007

PUBLIC UTILITIES	4
Summary	5
Following is a section-by-section summary of the proposal:	6
CHAPTER 4 ENERGY COMPETITION	6
SUBCHAPTER 2 Energy Anti-Slamming	6
SUBCHAPTER 3 Affiliate Relations	8
SUBCHAPTER 4. (Reserved)	10
SUBCHAPTER 5. Energy Licensing And Registration	10
SUBCHAPTER 6. Government Energy Aggregation Programs	13
SUBCHAPTER 7. Retail Choice Consumer Protection	15
CHAPTER 8 RENEWABLE ENERGY AND ENERGY EFFICIENCY	15
SUBCHAPTER 3. Environmental Information Disclosure	15
SUBCHAPTER 4. Net Metering And Interconnection Standards For Class I Renewable Energy Systems	17
Summary Of Public Comments On The 2005 Proposed Readoption, And Agency Responses:	18
General comments:	19
SUBCHAPTER 2 ENERGY ANTI-SLAMMING	21
14:4-2.1 Scope	21
14:4-2.3 Change order required for switch	21
14:4-2.4 Signing up or switching customers electronically	23
14:4-2.5 Record keeping	24
14:4-2.7 LDC notice to customer of a change order	25
14:4-2.8 Slamming complaints and investigation	26
14:4-2.9 Enforcement	27
SUBCHAPTER 3. AFFILIATE RELATIONS	27
14:4-3.1 Scope	28
SUBCHAPTER 5. ENERGY LICENSING AND REGISTRATION	29
14:4-5.1 Scope, general provisions	30
14:4-5.2 Basic requirements for an electric power supplier, gas supplier or clean power marketer license	31
14:4-5.3 Application contents - initial electric power supplier, gas supplier or clean power marketer license	32
14:4-5.4 Processing of an application for an electric power supplier, gas supplier or clean power marketer initial license or renewal	33
14:4-5.6 Term and expiration of an electric power supplier, gas supplier, or clean power marketer license	35
14:4-5.7 Application for renewal of an electric power supplier, gas supplier or clean	

*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on April 16, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

power marketer license	36
14:4-5.10 LDC responsibilities	36
14:4-5.12 Fees	38
<b>SUBCHAPTER 6. GOVERNMENT ENERGY AGGREGATION PROGRAMS</b>	<b>39</b>
14:4-6.5 Establishing an option 1 government-private energy aggregation program	39
14:4-6.8 Advertising for bids, contract award	39
14:4-6.9 Price requirements for government-private programs	40
<b>SUBCHAPTER 7. RETAIL CHOICE CONSUMER PROTECTION</b>	<b>40</b>
14:4-7.3 Advertising standards	41
14:4-7.4 Marketing standards	42
14:4-7.5 Credit	42
14:4-7.6 Contracts	43
14:4-7.7 Customer Bills	45
14:4-7.10 Termination	46
<b>SUBCHAPTER 4. NET METERING AND INTERCONNECTION STANDARDS FOR CLASS I RENEWABLE ENERGY SYSTEMS</b>	<b>46</b>
Social Impact	47
Economic Impact	48
Federal Standards Statement	50
Jobs Impact <sup>51</sup>	
Agriculture Industry Impact	51
Regulatory Flexibility Analysis	51
Smart Growth Impact	54
Full text of the subchapter being repealed can be found in the New Jersey Administrative Code at: N.J.A.C. 14:4-1A.	54
<b>N.J.A.C. 14:4 ENERGY COMPETITION</b>	<b>55</b>
<b>SUBCHAPTER 2 ENERGY ANTI-SLAMMING</b>	<b>55</b>
14:4-2.1 Scope	55
14:4-2.2 Definitions	55
14:4-2.3 Change order required for switch	55
14:4-2.4 Signing up or switching customers electronically	57
14:4-2.5 Record keeping	58
14:4-2.6 LDC notice to customer of a change order	59
14:4-2.7 Slamming complaints and investigation	59
14:4-2.8 Enforcement	60
<b>SUBCHAPTER 3. AFFILIATE RELATIONS</b>	<b>60</b>
14:4-3.1 Scope	60
14:4-3.2 Definitions	61
14:4-3.3 Nondiscrimination	64
14:4-3.4 Information disclosure	67
14:4-3.5 Separation	69
14:4-3.6 Competitive products and/or services offered by a utility or related competitive business segments of a utility	74
14:4-3.7 Regulatory oversight	81

*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on April 16, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

14:4-3.8 Dispute resolution	81
14:4-3.9 Violations and penalties	82
APPENDIX A	83
SUBCHAPTER 4. (Reserved )	85
SUBCHAPTER 5. ENERGY LICENSING AND REGISTRATION	85
14:4-5.1 Scope, general provisions	85
14:4-5.2 Basic requirements for an electric power supplier, gas supplier or clean power marketer license	87
14:4-5.3 Application contents - initial electric power supplier, gas supplier or clean power marketer license	88
14:4-5.4 Processing of an application for an electric power supplier, gas supplier or clean power marketer initial license or renewal	90
14:4-5.5 Requirements that apply after a license is issued	91
14:4-5.6 Term and expiration of an electric power supplier, gas supplier, or clean power marketer license	92
14:4-5.7 Application for renewal of an electric power supplier, gas supplier or clean power marketer license	93
14:4-5.8 Registration procedure - energy agent or private aggregator	94
14:4-5.9 Registration renewal - energy agent or private aggregator	95
14:4-5.10 LDC responsibilities	96
14:4-5.11 Registration procedure - energy consultant	96
14:4-5.12 Fees	98
14:4-5.13 Enforcement	98
SUBCHAPTER 6. GOVERNMENT ENERGY AGGREGATION PROGRAMS	99
14:4-6.1 Scope	99
14:4-6.2 Definitions	99
14:4-6.3 General provisions	101
14:4-6.4 Municipal and/or county energy aggregation programs	102
14:4-6.5 Establishing an Option 1 government-private energy aggregation program	104
14:4-6.6 Establishing an Option 2 energy aggregation program	106
14:4-6.7 LDC aggregation agreement for government-private energy aggregation programs	109
14:4-6.8 Advertising for bids, contract award	110
14:4-6.9 Price requirements for government-private programs	111
14:4-6.10 Contents of a contract between a government aggregator and the selected TPS	113
SUBCHAPTER 7. RETAIL CHOICE CONSUMER PROTECTION	113
14:4-7.1 Scope	113
14:4-7.2 Definitions	114
14:4-7.3 Advertising standards	114
14:4-7.4 Marketing standards	114
14:4-7.5 Credit	117
14:4-7.6 Contracts	117
14:4-7.7 Customer bills	119
14:4-7.8 Customer information	119

*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on April 16, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

14:4-7.9 Complaints	120
14:4-7.10 Termination of a residential contract by a TPS	120
<b>CHAPTER 8 RENEWABLE ENERGY AND ENERGY EFFICIENCY</b>	<b>120</b>
<b>SUBCHAPTER 3 ENVIRONMENTAL INFORMATION DISCLOSURE</b>	<b>120</b>
14:8-3.1 Scope	120
14:8-3.2 (Reserved)	121
14:8-3.3 Definitions	121
14:8-3.4 Environmental information required	125
14:8-3.5 Determining the fuel and emissions characteristics	126
14:8-3.6 Methodology for developing a disclosure label	128
14:8-3.7 Disclosure information updating and reporting requirements	132
14:8-3.8 Environmental disclosure distribution	133
14:8-3.9 Certification by an independent entity	134
14:8-3.10 Verification and penalties	135
APPENDIX A Label Based On Actual Generation Data	136
APPENDIX B Label For New Product Based On An Environmental Claim	136
APPENDIX C Label For New Product Based On Default Information	136
APPENDIX D (Reserved)	136
APPENDIX E	136
APPENDIX F	138
APPENDIX G (Reserved)	138
APPENDIX H	138
<b>SUBCHAPTER 4. NET METERING AND INTERCONNECTION STANDARDS FOR CLASS I RENEWABLE ENERGY SYSTEMS</b>	<b>139</b>
14:8-4.1 Scope	139
14:8-4.2 Definitions	139
14:8-4.3 Net metering general provisions	141
14:8-4.4 Meters and metering	143
14:8-4.5 General interconnection provisions	143
14:8-4.6 Certification of customer-generator facilities	145
14:8-4.7 Level 1 interconnection review	145
14:8-4.8 Level 2 interconnection review	147
14:8-4.9 Level 3 interconnection review	151
14:8-4.10 Interconnection fees	153
14:8-4.11 Requirements after approval of an interconnection	154

## **PUBLIC UTILITIES**

### **BOARD OF PUBLIC UTILITIES**

Energy Competition Standards

Renewable Energy And Energy Efficiency

Proposed New Rules:

N.J.A.C. 14:4-2, 3, 5, 6, and 7, N.J.A.C. 14:8 -

Proposed Repeal:

N.J.A.C. 14:4-1A

*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on April 16, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

Authorized By: Board of Public Utilities, Jeanne M. Fox, President; Frederick F. Butler, Connie O. Hughes and Joseph L. Fiordaliso, Commissioners.

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

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

BPU Docket Number: EX05080733

Proposal Number: PRN 2007-

Comments may be submitted through June 15, 2007 by e-mail to [rule.comments@bpu.state.nj.us](mailto:rule.comments@bpu.state.nj.us), or on paper to:

Kristi Izzo, Secretary  
New Jersey Board of Public Utilities  
**ATTN: BPU Docket Number: EX05080733**  
Two Gateway Center  
Newark, New Jersey 07102

The agency proposal follows:

### **Summary**

The New Jersey Board of Public Utilities is herein proposing new rules to replace portions of its previously effective Energy Competition Standards at N.J.A.C. 14:4 (also called chapter 4). These rules will 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 will apply to electric power suppliers, gas suppliers, basic generation service (BGS) providers and basic gas supply service (BGSS) providers, electric public utilities, gas public utilities, aggregators, energy agents, energy public utilities and public utility holding companies. The proposal also repeals existing N.J.A.C. 14:4-1A, which contains anti-slamming provisions, and replaces it with a new anti-slamming subchapter at N.J.A.C. 14:4-2.

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

In developing the 2005 readoption proposal, the Board conducted informal, internet-based stakeholder outreach. The feedback received was carefully considered and many suggestions were incorporated into the rules. Input received on subchapters that

were proposed for readoption without amendment will be saved for possible use in future amendments to those subchapters.

Portions of the 2005 readoption proposal have already been adopted. The RPS rules and related subchapters were adopted in the May 15, 2006 New Jersey Register. That adoption included the consolidated definitions sections for both subchapter 4 and subchapter 8, found at N.J.A.C. 14:4-1.2 and 14:8-1.2, respectively. The remainder of the proposed readoption was not adopted. However, standards for public utility holding companies were adopted at N.J.A.C. 14:4-4A in the October 2, 2006 issue of the New Jersey Register. No changes are proposed to currently effective N.J.A.C. 14:4-1 and 4A, or to currently effective N.J.A.C. 14:8-1 and 2. The previous rules and the readoption proposal have now expired, and the Board is proposing new rules.

This proposal is very similar to the original proposed readoption. However, some changes have been made as a result of the Board's consideration of the comments received on the readoption proposal. The Board has included summaries of the comments received on the readoption proposal, and responses to these comments. The changes between the readoption proposal and these proposed new rules are discussed in the responses to comments below.

As the Board has provided a 60-day comment period on these proposed rules, they are exempt 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 proposal:**

## **CHAPTER 4 ENERGY COMPETITION**

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

Proposed 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 TPSs and LDCs must abide by when switching customers. The proposed rules also set forth third party supplier billing and change order procedures. These rules require the TPS to verify a 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. These requirements are taken from, and supersede, an order signed by the Board on September 12, 2000, I/M/O The Electric Discount and Energy Competition Act of 1999- Internet Enrollment Program; Docket Nos. EX94120585Y et al. and GX99030121 et al.

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 or natural gas supplier, as

required by EDECA. This section enumerates the situations where the switching of a customer would trigger these rules. In addition, a cross reference to the Board's consumer protection standards at N.J.A.C. 14:4-7 is provided.

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 proposed here rather than in the consolidated definitions section that was adopted on May 15, 2006 at N.J.A.C 14:4-1.2. Definitions are proposed herein for the terms "authorized TPS," "change order" and "subject customer."

Proposed 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. Proposed verification requirements enumerate the verification methods that may be used.

Proposed N.J.A.C. 14:4-2.4 contains several new requirements that apply to TPSs that utilize electronic methods to sign up customers. These requirements are taken from Board Order Docket Nos. EX94120585Y et al. and GX99030121 et al. Once these rules are adopted, they will supersede the Board orders. The section provides that TPSs that utilize electronic methods to sign up customers must:

- 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.

Proposed new N.J.A.C. 14:4-2.5 requires that every TPS retain all change orders, and records of the customer's authorization for switches, 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 they have received.

Proposed new 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.

Proposed 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 the

documentation required under N.J.A.C. 14:4-2.3(c) within ten days after a request from the customer or the Board.

Proposed N.J.A.C. 14:4-2.8 stipulates 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 proposed 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.

### **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.

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 proposed 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.

Proposed 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.

Proposed 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 proposed here rather than in the consolidated definitions for chapter 4, which are found at existing N.J.A.C 14:4-1.2, adopted May 15, 2006. The definitions proposed herein are "affiliate", "affiliated", "category," "competitive service," "cross-subsidization," "Dth," "EBB," "existing products and/or services," "fully allocated cost," "functional separation," "individual proprietary information," "joint purchases," "joint purchases allowed," "joint purchases not allowed," "merchant functions," "products," "public posting," "public utility holding company," "regulatory asset," "related competitive business segment of an electric public utility or gas public utility," "related competitive business segment of a public utility holding company," "services that may not be shared," "shared services," "short term" and "structural separation."



Proposed 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 record keeping to document compliance.

Proposed 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 record keeping to document compliance with its requirements for information sharing.

Proposed 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.

Proposed 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 which the Board will apply in approving the offering of competitive products or services, and requirements for separate record keeping, 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.

Proposed 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.

Proposed 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 record keeping and reporting regarding the resolution of complaints.

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

Proposed Appendix A 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 4. (Reserved)**

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

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

Proposed new N.J.A.C. 14:4-5.1 sets forth the entities regulated under the subchapter. Three entities not previously regulated are proposed to be added. Energy consultants are added as a new subset of energy agents (see the summary of proposed new N.J.A.C. 14:4-5.11 for details on energy consultants). In addition, the proposed rules contain new requirements, described below in the summary of N.J.A.C. 14:4-5.10, that apply specifically to LDCs. LDCs were not previously governed by this subchapter but by others. Finally, clean power marketers are proposed as a new type of licensee.

The New Jersey Voluntary Clean Power Choice Program empowers ratepayers to make choices about their energy use and to participate in a renewable energy program, without having to switch from Basic Generation Service (BGS) to a third party supplier (TPS). The program is authorized by Board order Docket No. EO05010001. The Board order calls the program the Green Power Choice Program but the Board has renamed it as the Clean Power Choice Program, to more clearly indicate its aims. Clean Power Choice is offered as a subscription that is added on to the customer's existing BGS electric service. Under the program, a Clean Power Marketer (CPM) purchases Renewable Energy Certificates (RECs) on behalf of a subscribing customer, for an agreed-upon price. The CPM then retires the RECs. The program provides electric customers who wish to encourage the development and expansion of renewable energy sources to do so through a convenient extra payment on each utility bill. The customers can select from among multiple Clean Power Marketers (CPMs) and the RECs purchased will be additional to those required of the supplier under the RPS rules. The program is a collaborative effort hosted by the four incumbent electric utilities in New Jersey.

Proposed new N.J.A.C. 14:4-5.1 also 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.

Proposed new N.J.A.C. 14:4-5.2 contains the basic requirements for an electric power supplier, gas supplier, or clean power marketer license. Proposed 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.

Proposed new N.J.A.C. 14:4-5.3 sets forth the required contents of an application for a license. The proposed new 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. A new application requirement is proposed, that the applicant submit documentation that the applicant has sent a notice of the application to all LDCs in whose territory the licensee will do business.

Proposed new N.J.A.C. 14:4-5.4 addresses Board application processing procedures for licenses. 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. A new provision is proposed to clarify that, if the Board discovers after license issuance that any aspect of the license application was inaccurate or noncompliant, the Board may pursue enforcement action.

Proposed new N.J.A.C. 14:4-5.5 contains conditions that apply after a license is issued. The proposed provisions require that a licensed gas supplier comply with existing gas heating value and purity requirements that apply to gas public utilities. Proposed new N.J.A.C. 14:4-5.5 also contains record keeping requirements, and a requirement that a licensee provide a list of residential customers sorted by zip + 4 codes.

Proposed new N.J.A.C. 14:4-5.6, which explains what happens if a license or its surety bond expires, provides for a licensee whose license has expired to continue serving customers for 45 days while they seek a new license. The proposal also provides the option of requesting a hardship extension of the 45-day period. Finally, a new provision prohibits an LDC from doing business with an electric power supplier, gas

supplier, or clean power marketer without a valid license and surety bond. This is intended to provide additional incentive to licensees to keep their licenses and surety bonds up to date.

Proposed new N.J.A.C. 14:4-5.7, which addresses renewal of a license, sets forth the required contents of an application for renewal. As with the proposed new section regarding application for an initial license, the proposal provides 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. The proposed new section provides that the application for a renewal will be processed using the same procedures as for an application for an initial license. Finally, a new provision requires that the licensee provide a copy of the renewal to LDCs within ten days after its issuance. This will enable the LDCs to comply with the proposed new requirement that they do no business with an unlicensed TPS, including one whose license has expired.

Proposed new N.J.A.C. 14:4-5.8, which 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 proposed (i) 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.

Proposed new 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.

Proposed N.J.A.C. 14:4-5.10 prohibits an LDC from doing business with unlicensed electric power suppliers, gas suppliers, and clean power marketers; and that require 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.

Proposed new 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). This is currently authorized by Board Order Docket Number EX94120585Y. Once these rules are adopted, they will supersede the Board order.

Proposed new N.J.A.C. 14:5-12 contains all of the fee provisions for the subchapter, and displays them in table form for easy understanding. The proposed 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, a provision is proposed to explain the fee and surety bond requirements for a single application for more than one license.

Proposed new N.J.A.C. 14:4-5.13 addresses enforcement. The proposed new 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.

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

The government energy aggregation rules provide 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.

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 the Division of the Ratepayer Advocate (RPA) for comment.

The Option 2 program:

- Places the responsibility of notifying residential customers of their opportunity to opt-out on the lead agency;

*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on April 16, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

- 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 the RPA 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 sets forth the scope of this subchapter related to government energy aggregation program standards.

N.J.A.C. 14:4-6.2 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.

N.J.A.C. 14:4-6.4 sets forth general provisions for municipalities and/or counties as members of energy aggregation programs.

N.J.A.C. 14:4-6.5 sets forth the requirements for establishing an option 1 government-private energy aggregation program.

N.J.A.C. 14:4-6.6 sets forth the requirements for establishing an option 2 energy aggregation program.

N.J.A.C. 14:4-6.7 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 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.

N.J.A.C. 14:4-6.10 sets forth the requirements for a contract between a government aggregator and a TPS.

N.J.A.C. 14:4-6.11 sets forth the requirements if there are changes to the energy aggregation program after it has begun operating.

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

Proposed 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 sets forth the scope of the subchapter and the parties regulated.

N.J.A.C. 14:4-7.2 sets forth definitions that are unique to this subchapter. These are "FTC" and "redlining."

N.J.A.C. 14:4-7.3 contains standards that apply to any advertising issued by a TPS. These 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 contains standards that apply to all marketing materials issued by a TPS. Again, the rules require all relevant 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 sets forth requirements each TPS must follow regarding its income, security deposit, and credit requirements.

N.J.A.C. 14:4-7.6 contains the minimum requirements for the content and execution of a customer contract.

N.J.A.C. 14:4-7.7 sets forth requirements for the content and clarity of customer bills.

N.J.A.C. 14:4-7.8 prohibits disclosure of customer information except under certain conditions.

N.J.A.C. 14:4-7.9 sets forth requirements for TPS complaint handling.

N.J.A.C. 14:4-7.10 provides for termination of a customer contract under certain conditions.

## **CHAPTER 8 RENEWABLE ENERGY AND ENERGY EFFICIENCY**

### **SUBCHAPTER 3. Environmental Information Disclosure**

Proposed N.J.A.C. 14:8-3 contains environmental information disclosure requirements for electric power suppliers and BGS providers. The environmental information disclosure rules require that each electric supplier or basic generation service provider serving retail customers in New Jersey disclose to those customers information regarding the environmental characteristics of the energy provided. These rules implement N.J.S.A. 48:3-87.

The landscape of the energy market has changed since the Board began the environmental information disclosure program, and the Board has gained experience with the program. Accordingly, the Board is planning to make substantial changes to this program in the future. However, there are also regional developments underway that will affect this program, in particular the imminent completion of PJM's GATS system. Therefore, the Board is currently proposing the environmental information disclosure rules as they originally existed, with the exception of the definitions section which, as described above, was consolidated with N.J.A.C. 14:4-1.2, and some of the appendices. Specifically, Appendices D, E and I have not been included in this proposal as they are outdated, redundant, and/or not regulatory in nature.

Following is a section-by-section summary of the proposed subchapter:

Proposed N.J.A.C. 14:8-3.1 sets forth the scope of the subchapter, including the parties regulated and the basic requirements.

N.J.A.C. 14:8-3.2 is reserved.

Proposed N.J.A.C. 14:8-3.3 sets forth definitions of terms used only in this subchapter. Terms defined are "benchmark," "bilateral contract" or "bilateral wholesale contract," "contract for specified resources," "default values," "electric generating unit," "electricity supplier," "energy information administration," "environmental characteristics," "generating company," "fuel," "generator," "incumbent utility," "imported power," "load-serving entity," or "LSE," "on-site generation facility," "owned generation" "program administrator," "retail load," "schedule," "spot market," "system contract," "system power," "unit contract," and "wholesale electricity." The section also includes a glossary of abbreviations and acronyms.

Proposed N.J.A.C. 14:8-3.4 contains the basic mandate that each electric power supplier provide consumers with three types of environmental information: fuel mix used in generating electricity, air emissions resulting from the generation, and energy efficiency programs.

Proposed N.J.A.C. 14:8-3.5 sets forth procedures for calculating the values that must be reported. There are different methods of calculation depending on the length of time a supplier has participated in the New Jersey energy market, and on whether the supplier is making an environmental claim for the energy product.

Proposed N.J.A.C. 14:8-3.6 sets forth requirements for disclosure based on the source from which the supplier obtained the energy, e.g., owned generation, electricity purchased through various types of contracts, electricity purchased through the spot market, etc.

Proposed N.J.A.C. 14:8-3.7 contains requirements for the timing of environmental disclosures, and the period of time which each disclosure must cover.



Proposed N.J.A.C. 14:8-3.8 addresses to whom the environmental information must be disclosed, requires annual reporting, and requires that the electric power supplier maintain an internet website.

Proposed N.J.A.C. 14:8-3.9 requires that the environmental information be certified prior to distribution to customers, by an independent CPA.

Proposed N.J.A.C. 14:8-3.10 provides for compliance audits to be presented to the Board, and for penalties in the case of a violation of the subchapter.

Proposed Appendices A through C provide diagrams of the required format for the environmental information disclosure labels. These diagrams are the same as in the previous rules.

Proposed Appendix E contains definitions of the fuel type categories that must be used on the disclosure labels. Proposed Appendix F contains the benchmark and default values for use on the disclosure labels. Footnotes describing the derivations of each default value have been deleted, as they do not have regulatory effect. However, the Board will make these available upon request of the Office of Clean Energy. Proposed Appendix H includes requirements for periodic distribution of updated labels.

#### **SUBCHAPTER 4. Net Metering And Interconnection Standards For Class I Renewable Energy Systems**

Proposed N.J.A.C. 14:8-4 contains net metering and interconnection rules for class I renewable energy systems. The net metering and interconnection rules require each electric power supplier, basic generation service provider, and electric distribution company to offer net metering to customers who install certain renewable energy generators on the customer's side of the electric meter. The rules also set forth requirements for the processing of customer applications to interconnect to the electric distribution system, and requirements for how the interconnection is accomplished.

The following is a section-by-section summary of the proposed subchapter.

N.J.A.C. 14:8-4.1 sets forth the scope of the net metering and interconnection rules.

N.J.A.C. 14:8-4.2 contains definitions of terms used in the subchapter. The terms defined are "annualized period," "applicant," "area network," "avoided cost of wholesale power," "customer-generator," "customer-generator facility," "equipment package," "fault current," "good utility practice," "IEEE standards," "interconnection agreement," "point of common coupling," "small commercial customer," and "spot network." In order to clarify technical terminology, three proposed definitions ("area network," "point of common coupling" and "spot network") either incorporate standards for distributed resource interconnection published by the Institute of Electrical and Electronic Engineers (IEEE) or cross-reference a definition in these standards. These three definitions all

incorporate various sections of IEEE standard 1547, which addresses interconnection of distributed resources with electric distribution systems. The term “good utility practice” is defined by cross-reference to the PJM Operating agreement, which governs the operations of PJM LLC.

N.J.A.C. 14:8-4.3 sets forth general provisions including the electric distribution company requirement to offer net metering and to develop a tariff for net metering; the requirement to offer a net metering credit and to carry over that credit until the end of the annualized period; standards if a customer-generator switches electric suppliers, and the requirement for an electric distribution company to submit an annual report to the Board; among other things.

N.J.A.C. 14:8-4.4 sets forth the requirements for meters and metering.

N.J.A.C. 14:8-4.5 sets forth the application procedures and requirements for interconnection.

N.J.A.C. 14:8-4.6 sets forth the standards for the certification of customer-generator facilities. In order to be eligible for level 1 and 2 interconnection review, the facility must comply with two standards that are incorporated by reference, IEEE 1547 (which addresses interconnection of distributed resources with electric distribution systems) and UL 1741 (which specifically addresses converters and other interconnection components).

N.J.A.C. 14:8-4.7 sets forth the standards and procedure to be used in a level 1 interconnection review, which is the simplest review, reserved for the smallest and simplest customer-generator facilities.

N.J.A.C. 14:8-4.8 sets forth the standards and procedure to be used in a level 2 interconnection review.

N.J.A.C. 14:8-4.9 sets forth the standards and procedure to be used in a level 3 interconnection review, which is the most extensive review, used for the largest and/or most complex customer-generator facilities.

N.J.A.C. 14:8-4.10 sets forth the interconnection fees.

N.J.A.C. 14:8-4.11 sets forth the requirements to be followed after the approval of an interconnection.

## **Summary Of Public Comments On The 2005 Proposed Readoption, And Agency Responses:**

**The following persons submitted timely comments on the portions of the 2005 readoption proposal that have not already been adopted:**

*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on April 16, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

1. Kevin F. Connelly, Jersey Central Power & Light Company (JCP&L)
2. Michael D'Angelo, Intelligent Energy (IE)
3. Craig G. Goodman, National Energy Marketers Association (NEM)
4. Angela Schorr, Econnergy Energy Company (EEC)
5. Marc B. Lasky, Thelen Reid & Priest, on behalf of Jersey Central Power & Light Company (MBL-JCP&L)
6. Susan LeGros, Mid-Atlantic Solar Energy Industries Association (MSEIA)
7. Thomas Leyden, PowerLight Corporation (PowerLight)
8. Samuel A. Pignatelli, South Jersey Gas (SJG)
9. Cliff Reisser, International Brotherhood of Electrical Workers, Local 269 (IBEW)
10. Seema M. Singh, Office Of The Ratepayer Advocate (*Note: now renamed the Division of Rate Counsel in the Department of the Public Advocate*) (RPA)
11. Stephen L. Sunderhauf, Atlantic City Electric Company (ACE)
12. Robert Task, SUEZ Energy Resources NA (Suez)
13. Thomas P. Thackston, Public Service Electric & Gas Company (PSE&G)

Note: if no comments appear below for a particular subchapter or section of the rules, this indicates that no comments were received on that portion of the proposed readoption

#### **General comments:**

1. **COMMENT:** Given the abbreviated timeframe for commenting on these important regulations, the Commission should convene a workgroup or technical conference for examination of these issues in further detail. Many third party suppliers ("TPSs") were made aware of this filing only yesterday. (NEM) (IE)  
**RESPONSE:** The timeframe for comment on the proposed readoption was not abbreviated. The Board provided all legally required notice to the public, and in fact exceeded the legally required notice by posting the proposal on the Board's website approximately 90 days prior to the closing of the comment period.
2. **COMMENT:** While we appreciate the opportunity to comment on this proposal we request that in the future such filings be sent out via the NJBPU list server. Most TPSs work with upwards of twenty different utilities and half a dozen states. It is impossible to review every website on a constant basis and not miss something. The rules contained in this filing are extremely important to all TPSs. A slight change to a rule could significantly impact our business and therefore, it is necessary to be involved in rulemaking discussions and efforts. Further, BPU staff could benefit from the knowledge and experience of TPSs in other markets. (EEC) (NEM) (IE)  
**RESPONSE:** The Board agrees that the knowledge and experience of stakeholders is invaluable in the development of effective rules. In fact, as described above, the Board conducted extensive stakeholder outreach on these rules prior to proposal. However, the Board publishes many rulemaking actions each year, including new rules, repeals, readoptions and amendments. It would be an inefficient use of the Board's resources for the Board to individually notify every business group or citizens' group that may possibly be affected by each of its rules. The New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., sets forth public notice

requirements designed to ensure that those affected by State agency rulemakings can stay informed about upcoming rules. These requirements include publication of the proposal, including the time and date of the public hearing, in the New Jersey Register, posting on the agency's website, and notice to the Statehouse press corps. The Board met these notice requirements. In addition, the Board made the rule proposal available for 90 days (on the BPU website) and 60 days (in the New Jersey Register) before the close of the comment period. Finally, the Board held a public hearing on the rule proposal during the comment period. While Board staff will continue to make every effort to inform stakeholders in as many ways as possible about upcoming Board rulemakings, the commenters should not rely on informal stakeholder outreach to keep apprised of rulemaking at the Board. If rules are crucial to a business, that business should regularly monitor the official outlets for public notices regarding New Jersey rules.

- 3. COMMENT:** We request that there be additional working groups and collaborative efforts in discussing the proposed rules. We would welcome the opportunity to meet with BPU staff in person to go over proposed rules and regulations. (EEC) (NEM) (IE)  
**RESPONSE:** Any person may request a meeting regarding any Board issue, including the content of rules. The commenter should directly contact the BPU offices or divisions that administer the rules. If the commenter's concern involves a provision in N.J.A.C. 14:4, Energy Competition, the commenter should contact BPU's Energy Division. If the commenter's concern relates to a provision in N.J.A.C. 14:8, Renewable Energy and Energy Efficiency, the commenter should contact BPU's Office of Clean Energy. Particular concerns regarding the anti-slamming rules should be directed to staff in the Board's Division of Customer Assistance, and regarding the licensing and registration rules should be directed to the Board's Division of Audits, care of the Board Secretary, Two Gateway Center, Newark, New Jersey 07102.
- 4. COMMENT:** The regulation has been effective and we support its readoption. (SJG)  
**RESPONSE:** The Board appreciates this comment in support of the rules.
- 5. COMMENT:** The adoption of these standards is of monumental importance that requires more than 60 days notice for comment. (IE)  
**RESPONSE:** The standard comment period on New Jersey rule proposals is set by statute (see New Jersey Administrative Procedure Act, N.J.S.A. 14:5214B-1 et seq., and implementing rules at N.J.A.C. 1:30-5.4). In addition, the Board provided extra opportunities for comment on this proposal prior to its publication, through an informal e-mail stakeholder process, and through posting of the proposal on the Board's website approximately one month before the proposal was published in the New Jersey Register.
- 6. COMMENT:** There is a discrepancy in the document regarding the requirement of sending a customer list sorted by Zip+4. In the summary portion on page 16 it states that "A requirement in existing N.J.A.C. 14:4-2.6(g) that a licensee provide a list of residential customers sorted by Zip+4 codes is not proposed for readoption as the Board has found that is unnecessary, and stakeholder input indicates that it is

burdensome." However, the requirement appears in the rules on page 70. Therefore, the comment period should be extended so that the documents can be gone through more diligently to ensure no other errors exist. (EEC) (NEM) (IE)

RESPONSE: The commenter is correct that the summary of the 2005 proposed readoption did not match the rule text. The summary of the proposal herein does not include this error.

**7. COMMENT:** It should be made clear in the readoption that all of the Energy Competition Standards apply **ONLY** to residential customers. Savvy commercial customers have more than enough protections and actually hope to avoid requirements. Commercial entities often have ample legal staffs which are very protective of the commercial customer's interests. Residential type protections for these commercial entities only result in a higher energy cost for them. (IE)

RESPONSE: The rules proposed herein implement the Electric Discount and Energy Competition Act (EDECA), N.J.A.C. 48:3-49 et seq. EDECA does not limit the Board's authority to only those entities that serve residential customers. On the contrary, there are numerous references in EDECA to commercial customers, not the least of which is the following, from the Legislative findings at N.J.S.A. 48:50: "...it is the policy of this State to... [L]ower the current high cost of energy, and improve the quality and choices of service, for all of this State's residential, business and institutional consumers..." Furthermore, the Board believes that commercial customers often have bargaining power unequal to the utilities and suppliers with whom the customers must negotiate. Therefore, the commenter's suggested change has not been made.

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

### **14:4-2.1 Scope**

**8. COMMENT:** The term "soliciting" in N.J.A.C. 14:4-2.1(d) should be changed to the defined term of "advertising and marketing." Subsection (d) is intended to highlight the TPS's obligation to comply with Subchapter 7, consumer protection standards, but uses the term "soliciting" instead of the defined terms, "advertising" and "marketing." If the final rule retains those two defined terms, they should be also used in this subsection. (RPA)

RESPONSE: The commenter's suggested change has been made in this proposal.

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

**9. COMMENT:** N.J.A.C. 14:4-2.3(c): Duplicative third party verification requirements should be eliminated. Record retention of the audio recording of the actual contract should be sufficient to protect the public interest. (NEM) (IE)

RESPONSE: The commenter appears to have misunderstood the requirements at N.J.A.C. 14:4-2.3(c). This provision provides the TPS with several options for verifying a change order. As stated in the introductory language of this subsection, the TPS may choose to utilize any one of these options and is not required to utilize

all of them. An audio recording of a telephone call is sufficient, provided the customer initiated the call. See N.J.A.C. 14:4-2.3(c)5. However, when the TPS seeks to utilize an audio recording of a call that the customer has not initiated, then third party verification is required in order to ensure that customers are protected from slamming. Third party verification is preferable because the third party that is responsible for obtaining the verification is an independent party without any incentive to induce customers to switch to the TPS. In addition, third party verification is required by N.J.S.A. 48:3-85a(1).

**10. COMMENT:** We oppose the requirement for a third-party verification for a switch request and instead suggest the use of a voice verification. Voice verification is required in other states and it provides adequate proof of a customer's intent to switch. The third party verification requirement increases the cost to do business in New Jersey, thereby increasing the price customers will pay for energy. Allowing voice verification will enable us to produce the requested verification more quickly, and to ensure quality control as we grade our verifications internally and do not leave that to an outside party who may be unfamiliar with the nuances which would cause us to fail a verification. In tandem with a voice verification, a requirement could be added to require a full set of terms to be mailed to the customer. (NEM) (IE)

**RESPONSE:** Although the third party verification requirements in the rules may be more costly than the voice verification system mentioned by the commenter, the Board believes, based on its experience, that the requirements are necessary to provide customers with access to a live person from an independent company that will be able to impartially answer any questions they may have and guide them through the process. An automated system may cause confusion for customers, which may result in an increase in switches or change orders that fail to comply with the requirements in the Board's rules. In addition, third party verification is required by N.J.S.A. 48:3-85a(1).

**11. COMMENT:** The proposal requires that switches from a TPS to an LDC have the same verification as a TPS-to-TPS or LDC-to-TPS switch. The existing standards have been successful in minimizing slamming. The proposed requirement would add time, complexity and significant cost. We cannot and should not deny a customer timely access to Basic Generation Service ("BGS") and/or Basic Gas Supply Service ("BGSS"), as it is the default service for customers that do not want to be served by a TPS or are dropped by their TPS. The Board considered this issue in 1999, and concluded that BGS/BGSS should be accessible to customers in as convenient a manner as possible and should not require the same "wet signature" as a switch to competitive service. See Board Order May 5, 1999, *Docket Nos. EX94120585Y et al.* In addition, the existing regulations provide adequate protections. First, if a TPS drops a customer, the TPS must give the customer prior notice. Second, upon a customer's switching to BGS/BGSS, the LDC sends each customer a letter advising them of the change, and in the case of a customer-initiated switch back to BGS/BGSS, the customer has 14 days to return to a TPS. These practices mitigate any risk of a customer unwillingly or unknowingly being returned to default service, while enabling customers to return to BGS in a prompt fashion. The

additional time required to comply with the proposed verification requirements could cause a customer to remain on TPS service longer than desired, possibly without a contract and at unregulated rates. There seems to be little reason to alter the process at this time in light of both the limited number of retail electric shoppers and the rarity of any documented problems. (PSE&G) (JCP&L) (ACE)

RESPONSE: The requirements at N.J.A.C. 14:4-2.7 are not intended to apply to a customer's switch from a TPS to an LDC. The Board agrees that the change order requirements cannot apply to such a switch, and this has been corrected in this proposal, through changes to several provisions throughout the rules.

**12. COMMENT:** N.J.A.C. 14:4-2.3(c) fails to state what "customer information" must be provided in the change order to constitute a valid order. Nor does it state the "customer information" that the old provider will give to the new provider after the switch order is processed. Typically, the TPS (the most likely transaction) must provide certain customer-identifying information to make the change order valid (i.e., customer name, address, account number or other information the LDC can use to locate the customer's records). Once the change order has been implemented, the LDC then sends the new provider more detailed meter and usage history information. The regulation should identify the "customer information" that is required to be sent by the TPS and that is then allowed to be sent by the LDC to the TPS. (RPA)

RESPONSE: The rule has been clarified through this proposal at N.J.A.C. 14:4-2.3(g) to specify the customer information that a TPS must include in a change order, and to prohibit the exchange of other customer information. In addition, a cross-reference to that provision has been added at N.J.A.C. 14:4-7.8.

**13. COMMENT:** Although we have an EDI system available to any TPS, TPSs have preferred to use alternative electronic data transfer methods to exchange customer data with utilities. We believe this is because EDI service providers assess transaction charges to EDI users, so that EDI costs more for TPSs than the alternative electronic data transfer methods. With this in mind, we request that proposed N.J.A.C. 14:4-5.11 and 2.3 be modified to add the following phrase after the term "EDI", in order to provide flexibility and cost reduction opportunities: *or through such other means as mutually agreed upon by the parties...* (SJG)

RESPONSE: The Board's practice has been to allow the use of other electronic info transfer systems, if they are equivalent in speed and security to EDI. Therefore, proposed N.J.A.C. 14:4-2.3 reflects this. The term "EDI" was not used in the 2005 proposed readoption of N.J.A.C. 14:4-5.11.

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

**14. COMMENT:** Under N.J.A.C. 14:4-2.4(e) "retrievable format" needs to be defined. IP address can't be captured since the customer may be through an Internet Service Provider which would have a unique IP address each time the customer logged on. A business record can be kept, but there is not much else we can do to determine who's on the other end of the computer. (EEC) (NEM) (IE)

RESPONSE: Proposed N.J.A.C. 14:4-2.5(b) indicates that the TPS must maintain an exact copy of the screen image that shows the customer's acceptance of the terms of service that were offered to the customer on the TPS website, in the same form as those terms of service were presented to the customer.

**15. COMMENT:** N.J.A.C. 14:4-2.4(j) should be amended to require TPS or LDCs to automatically provide new customers with a copy of the terms and conditions of their contracts. N.J.A.C. 14:4-2.4(j) as proposed requires the LDC or the TPS to "[u]pon request of the customer, ...make available to the customer a copy of the terms and conditions, including the environmental disclosure label, of the contract version number, which the customer has signed." This provision should require the LDC or the TPS to provide such information to each new customer automatically, instead of placing the burden on customers to ask for this information. (RPA)

RESPONSE: The Board believes that it is sufficient for the TPS to provide the terms and conditions of the contract to their customers upon request. The contract would be between the TPS and the customer not the LDC and the customer. Proposed N.J.A.C. 14:4-2.3 provides customers that switch their service provider by telephone with safeguards to ensure that they do not have their service switched improperly. Customers who call a TPS to switch their service are able to speak directly with a customer service representative who can answer their questions. This is an effective way to ensure that customers obtain needed information about the terms and conditions of their contract. Proposed N.J.A.C. 14:4-2.4(j) is intended to provide customers who switch service providers electronically with an additional safeguard, due to the fact that they are not able to speak directly with a service representative while switching their service provider. Therefore, customers who utilize electronic means to switch their service provider are more likely to want a copy of the terms and conditions of the contract in order to ensure that they did indeed sign up for the correct service.

**16. COMMENT:** Customers should be allowed to renew their terms with the TPS via electronic authorization as well as written signature. If customers are allowed to enroll via electronic authorization, electronic renewal should be provided as well. This is especially true of commercial contracts. (IE)

RESPONSE: The Board agrees and proposed N.J.A.C. 14:4-2.4 reflects this.

#### **14:4-2.5 Record keeping**

**17. COMMENT:** The three year requirement in N.J.A.C. 14:4-2.5 is longer than necessary. Two years has become standard and we would like that to be the same in New Jersey. (EEC) (NEM) (IE)

RESPONSE: The Board believes that a three year standard for retention of change orders is necessary in order to provide all parties with ample time to investigate any slamming complaints. The Board has instituted a three year standard in the area of Telecommunications slamming (see N.J.A.C. 14:10-11.3(b)3iv), and is satisfied that the three year standard has worked well in that industry. Many customers may not become aware of the fact that their service provider has been switched until well after



the switch has taken place, and the three year change order retention standard will ensure that customers have sufficient time to file a complaint against any company that engages in slamming. Although a three year change order retention standard may prove slightly more burdensome to the industry, the Board believes that the potential harm to customers that slamming presents justifies a slightly longer change order retention standard. Moreover, the three year retention requirement is consistent with the direction that the FERC is moving with regard to its Notice of Proposed Rulemaking in Docket No. RM06-14-000, 18 CFR Parts 35 and 284, Revisions to record Retention Requirements for Unbundled Sales Service Persons Holding Blanket Marketing Certificates, and Public Utility Market Based Rate Authorization Holder (Issued February 16, 2006)

#### **14:4-2.6 Information Required on Customer Bills**

**18. COMMENT:** The proposed revision requiring that billing meet all applicable requirements of N.J.A.C. 14:4-6.7 and 14:3-7.9 should be rejected. The existing requirement adequately describes what should be contained on a customer bill. Requiring TPS compliance with utility rules for customer billing is unclear and would require further clarification beyond what is already proposed. (IE)

**RESPONSE:** The Board agrees that N.J.A.C. 14:4-2.6 is redundant and confusing. The only time that a TPS is required to comply with N.J.A.C. 14:3-7.9 is when the TPS is providing billing for the LDC's charges. This provision has been corrected in this proposal, and has been relocated to N.J.A.C. 14:4-7.7(f), in order to consolidate all billing requirements in one section.

#### **14:4-2.7 LDC notice to customer of a change order**

**19. COMMENT:** N.J.A.C. 14:4-2.7 retains the obligation of the LDC to inform the customer in writing of any pending switch request submitted by a TPS within one business day. We support this requirement. (RPA)

**RESPONSE:** The Board appreciates this comment in support of the rules.

**20. COMMENT:** The proposed revision to N.J.A.C. 14:4-2.7(c) requiring the EDC to provide a customer with a printout of the TPS change order is not practical. The notification from the TPS is received electronically via EDI and there is no paper copy or format which would be easily understood by the customer. The "change order" is an EDI file, which will not be useful to a single customer for review purposes, and could contain many customer change orders. If an LDC receives an inquiry from a customer about a pending change order, the LDC should halt the pending change order and refer the customer to the TPS for dispute resolution or the BPU for a customer complaint. If the change order has already been completed, the customer should be referred to the TPS, and/or the Board, for complaint investigation. The EDC and the TPS can review the audit trail of the electronic transactions which prompted the EDC to effectuate the change order if necessary. The current electronic rules were developed through a collaborative process to ensure that a reasonable and cost-effective process was implemented. Requiring a change to the type of information the TPS and EDC are required to exchange will add unnecessary costs.

The TPS must be held accountable for demonstrating compliance with the customer authorization provisions. (RPA) (ACE)

RESPONSE: The Board agrees that the provision in the 2005 readoption proposal is not feasible in practical terms and has replaced the previously proposed N.J.A.C. 14:4-2.7(c) with proposed new N.J.A.C. 14:4-2.6(c). The proposed provision does not require a printout, and includes the commenters' suggestion that an LDC shall, in response to a complaint, refer the customer to the TPS or the Board.

**21. COMMENT:** If the EDC processes a change order from a TPS, which it received via the approved electronic method, the TPS should have responsibility for the customer notification identified in N.J.A.C. 14:4-2.7(c). (ACE)

RESPONSE: The Board has replaced the previously proposed N.J.A.C. 14:4-2.7(c) with proposed new N.J.A.C. 14:4-2.6(c), based upon comment number 20 above. Therefore, the rules no longer require that the customer be given a printout of the change order.

#### **14:4-2.8 Slamming complaints and investigation**

**22. COMMENT:** Slamming itself is an issue that does not need to be addressed, as there are very few cases of slamming, any of which would be prevented by a recording of the full telephone call, whether inbound or outbound. (IE)

RESPONSE: The Board agrees that there are currently very few cases of slamming. This, however, is not an argument for repealing the Board's slamming rules, but on the contrary, it is a demonstration of their effectiveness. Furthermore, FCC rules at 47 CFR §64.1120(c)(3) require the use of a third party verifier, and the Board's rule may not be less stringent than those of the FCC.

**23. COMMENT:** The proposal is that any customer who claimed slamming would immediately cast into dispute all charges from the date the switch took place. We suggest that the customer be required to pay the price she would have paid to the LDC and any delta be the amount of the dispute. Such rules will deter customers from falsely claiming slamming to avoid payment of an invoice. (EEC) (NEM) (IE)

RESPONSE: The Board believes that this provision is necessary to protect customers. When there is a dispute over charges between a customer and an LDC, it is much harder for the customer to be without the money pending resolution of the problem. The LDC can more easily continue to operate without the amount in dispute. Furthermore, if the LDC is found to be owed the money, it is relatively easy for the LDC to collect from the customer. Conversely, if the customer is found to be owed the money, it is much harder for the customer to navigate the process of obtaining reimbursement from the LDC. This provision is also consistent with the Board's rules for all utilities at N.J.A.C. 14:3-7.13(a), which provide that "a utility shall not discontinue service because of nonpayment of bills in cases where a charge is in dispute."

**24. COMMENT:** N.J.A.C. 14:4-2.8 requires the TPS to provide a copy of the customer's switch authorization to the customer or the Board within 10 business

days. This time period is far too long, particularly since the licensing rule requires the TPS to maintain its records in New Jersey in electronic form and to provide its "records" to the Board or Board staff within 48 hours after a request [see proposed N.J.A.C. 14:4-5.5(c)]. For purposes of consistency and in the interest of expediting resolution of customer disputes, the time period in this subsection should be 48 hours. (RPA)

RESPONSE: The Board believes that the ten day provision is necessary to ensure that the TPS has sufficient time to obtain the switch authorization, because the TPS may hire an outside vendor to handle these matters and may face a lag in obtaining the change order from the outside vendor. The commenter's reference to the licensing rules is not analogous because a TPS maintains its own licensing records, while the TPS cannot retain its own change order records because they are required to utilize a third party to conduct verifications. Accordingly, the ten day provision is necessary to provide the TPS with sufficient time to obtain records which may be held by a third party.

#### **14:4-2.9 Enforcement**

**25. COMMENT:** N.J.A.C. 14:4-2.9(a) discusses who is authorized to act on behalf of a TPS and references a person "acting on behalf of a TPS, shall be deemed to be the act of the TPS or EDC which that person represents." The reference to EDC should be removed as an EDC would not be acting on behalf of a TPS. (ACE)

RESPONSE: The provision has been clarified in this proposal to address the commenter's concern.

#### **SUBCHAPTER 3. AFFILIATE RELATIONS**

**26. COMMENT:** In readopting the affiliate standards in 2002, the Board indicated that there would be a "complete review" of the affiliate standards "at a later date", as part of which concerns regarding the scope of the standards "should be addressed" (34 N.J.R. 3232 (September 16, 2002)). We suggest that now is the time to address this ambiguity in the affiliate standards. The Affiliate Standards are convoluted, too detailed and overly complex, particularly when compared to corresponding rules adopted by the Federal Energy Regulatory Commission ("FERC") and in many other states, such as Pennsylvania, and when compared to the corresponding rules adopted in 1996 for the gas industry in New Jersey. (TRP-JCP&L)

RESPONSE: The Board agrees that these rules should be reviewed, and that amendments should be considered. The Board does not at present expect that major changes will be needed, but has been unable to accomplish the review and amendment process due to workload constraints. However, the Board anticipates conducting stakeholder outreach with utilities, competitors and the public, in order to determine what changes may be needed.

**27. COMMENT:** This subchapter should contain a prohibition against the exchange of "customer information" between affiliates without customer consent. (RPA)

RESPONSE: There is no need for the commenter's suggested provision. If the affiliate is a TPS, it will be governed by proposed N.J.A.C. 14:4-7.8 in the consumer

protection rules, which limits sharing of customer information. If the TPS is an affiliate of a public utility, it will be governed by N.J.S.A. 48:3-85b(1), which also strictly limits a utility's ability to share customer information.

**28. COMMENT:** The "regulatory oversight" section should require that the audit prepared by independent auditors be reviewed by interested parties through an evidentiary hearing to ensure that affiliate relation standards are properly met by the electric and gas public utilities. In addition, all discovery responses that the independent auditors and the Board Staff compiled through the audit should be submitted to the Ratepayer Advocate at the beginning of the proceeding. (RPA) **RESPONSE:** The Board does not believe that routinely requiring an evidentiary hearing for compliance audits is necessary or appropriate. The commenter states that the purpose of such a hearing would be to "ensure that affiliate relation standards are properly met." The Board is tasked with monitoring compliance with its rules, and has sufficient authority to do so. The Board does not require input from the public to determine whether an entity has complied with its rules. The Board may, at its discretion, release the audit for public comment. However, when the Board does this, it is not done to invite second guessing on whether the Board has properly assessed an entity's compliance with the rules. Rather, it is done to solicit additional suggestions as to how to address and resolve instances of noncompliance once the Board has determined it has occurred. It also provides the parties with information that may be helpful in facilitating settlements or party positions in other pending matters.

#### **14:4-3.1 Scope**

**29. COMMENT:** Proposed N.J.A.C. 14:4-3.3 through 3.5, which apply the rules to any holding company affiliate that is "providing or offering competitive services to retail customers in New Jersey", could be interpreted too broadly, so as to exceed the bounds of legitimate regulatory concern. The premise of the Electric Discount and Energy Competition Act was to open up the electric generation and residential gas supply businesses to competition. The affiliate standards should put some limits on interactions between the utility and unregulated affiliates, but it is not necessary to cover affiliates engaged in totally unregulated businesses. Restrictions on these other affiliates would handicap their competitiveness to the detriment of consumers. It would not assure open access to retail electric and gas markets, or foster competition in those markets. Other than the continuing concern about cross subsidization, which the Board has always monitored through its pre-existing authority, the restructuring of the electric and gas industries does not provide any basis to modify the Board's historical "hands off" approach to affiliates in businesses unrelated to the retail sale of electricity and gas. Revising the affiliate standards as we suggest would also reduce disagreements that have arisen in various audits of the utilities' competitive services offerings, regarding which affiliates are subject to the affiliate standards. We also note that the FERC code of conduct, the 1996 New Jersey gas code of conduct and codes in other states, such as Pennsylvania, clearly relate only to sales of gas and electricity, but not to other unregulated businesses. (TRP-JCP&L)

**RESPONSE:** These provisions are necessary and appropriate to clearly state important limits on the relations of public utilities and their holding company affiliates. The provisions are carefully crafted to ensure that they do not exceed the Board's authority.

**30. COMMENT:** TPSs are not public utilities, yet the plethora of rules, regulations, reports and financial disclosures make it seem like we are. In this age of deregulation we do not need burdensome and costly rules. Even under a worse case scenario, the worst that could happen is that a customer is returned to the LDC's services, there is never any safety or health concerns at issue. (IE)

**RESPONSE:** TPSs are regulated entities under EDECA, which makes the Board's responsibility for regulating and licensing these entities clear. These rules flow directly from the statutory requirements of EDECA, and while the Board makes every effort to minimize any negative impact on TPSs, the statute does not allow the Board to waive all regulation over TPSs. In addition, the Board does not believe that such a waiver would be appropriate or consistent with the Board's mandate to ensure safe and adequate service at a reasonable price. The Board will, of course, continue to consider specific comments about specific provisions.

## **SUBCHAPTER 5. ENERGY LICENSING AND REGISTRATION**

**31. COMMENT:** We oppose the addition of a separate license for Clean Power Suppliers. If a TPS is already licensed and wants to offer some renewable energy credits to customers it should be able to do so without going through an additional licensing process. In addition to the license process yet another surety bond would have to be posted. This is an unnecessary burden for a supplier who is already licensed in the State. (EEC) (NEM) (IE)

**RESPONSE:** The meaning of this comment is unclear, because there is no such entity as a "clean power supplier". If the commenter is referring to Clean Power Marketers, these are providing a different service than third party marketers. Clean Power Marketers provide RECs as opposed to gas and electric power. This poses different risks to different customers. Therefore, the Board has proposed a bond amount for CPMs of \$25,000 rather than the \$250,000 required for a TPS. The Board does not believe it to be either fair or necessary to charge a \$250,000 bond to a company that provides gas and electric power and that same bond amount to a third party supplier who is only providing RECs. Nevertheless, the \$250,000 bond for a gas or electric power supplier is a minimum for that type of service, and the addition of the sale of RECs does not fit within the underlying bond amount. As such, the Board believes that separate and distinct bonds are necessary and appropriate for the separate and distinct business actions.

**32. COMMENT:** We support the addition of Clean Power Marketers to the scope of the rule, and the Board's addition of language protecting against double-counting of RECs. (JCP&L)

**RESPONSE:** The Board appreciates this comment in support of the rules.

**33. COMMENT:** We suggest adding language to N.J.A.C. 14:8-2.3 and 2.8, clarifying the Clean Power Marketers' obligation to retire 100% of the RECs they sell. (JCP&L)

**RESPONSE:** Neither the rules that were proposed for readoption in 2005, nor this proposal, address the details of how a Clean Power Marketer does business on a routine, daily basis. That is addressed in the Clean Power Choice Program (CPC) program, set forth in a Board order in In the matter of a voluntary Green Power Choice Program, BPU Docket No. EO05010001, dated January 24, 2005. The Board plans to codify that program in rules and will consider the commenter's concerns at that time.

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

**34. COMMENT:** N.J.A.C. 14:4-5.1(d) and (e) should explicitly require a license for offering to contract, contracting and enrolling customers. While the proposed new definitions include "advertising" and "marketing", those terms are not used here to trigger the need for a license. Rather, subsection 5.1(d) and (e) state that a license is required to "offer to provide, or assume the contractual and legal responsibility to provide..." electric or gas service. As a result of this vague language, it is not clear what conduct is prohibited without a license. These regulations should explicitly prohibit advertising, soliciting, and enrolling customers without having obtained an electric power or gas supplier license. The rules could say: "No person or entity shall contract, offer to contract, enroll, provide electric generation service or gas supply service, or arrange for a contract for the provision of these services without having obtained a license from or having registered with the Board, as appropriate." See current N.J.A.C. 14:4-2.1(d). (RPA)

**RESPONSE:** The provision in question has been clarified in this proposal to address the commenter's concerns. See proposed N.J.A.C. 14:4-5.1(d) and (e).

**35. COMMENT:** N.J.A.C. 14:4-5.1(j): Although the license is not transferable, provisions should be made to allow for an entity merging or purchasing an existing TPS to continue to operate despite new ownership. A letter, or an update to the application, would be required but it should not require a new application. (EEC) (NEM) (IE)

**RESPONSE:** The Board agrees that this situation should be clearly addressed in the rules, and has proposed N.J.A.C. 14:4-5.5(g) to clarify the requirements for a TPS that is involved in an acquisition or merger. If the entity resulting after the acquisition or merger retains the name of the original licensee, an update to Board staff shall be sufficient to continue the license in effect. However, if the entity resulting after the acquisition or merger has a new name, it must obtain a completely new license. A cross-reference to the new provision is found at proposed N.J.A.C. 14:4-5.1(i).

**36. COMMENT:** N.J.A.C. 14:4-5.1(l) states that all information provided to the Board as part of the process for obtaining or renewing an electric power or gas supplier license shall be deemed public information. At the same time, N.J.A.C. 14:4-5.3(b)7 requires the disclosure of sensitive financial information as evidence of financial

integrity, which, for companies that are not publicly traded, is privileged and confidential information. This rule should be eliminated as it may convey highly confidential information to a competitor and a significant business advantage. (IE)  
RESPONSE: Under the previous rules, sample contracts and sales revenues sorted by customer class were not deemed public information. However, Board staff carefully reviewed that provision in light of this comment and the New Jersey Open Public Records Act (OPRA). Based on this review, the Board has concluded that sales volumes and revenues sorted by customer class clearly fit within the trade secrets exception to OPRA, but that sample contracts do not, in their entirety, fall within an exception to OPRA. Thus, the proposed provision providing blanket confidentiality for sample contracts would violate OPRA, and has therefore not been included in this proposal. The result is that, should there be a portion of a sample contract that an applicant believes qualifies for confidentiality under OPRA, the applicant must follow the procedure that it would for any other portion of a submittal for which it claims confidentiality, and submit a request for confidentiality under the Board's OPRA rules. If the contract or a portion of it meets the OPRA rule requirements, the Board will determine it to be confidential.

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

**37. COMMENT:** N.J.A.C. 14:4-5.2(b): The Board should remove the New Jersey office requirement, something unnecessary in this age of digital information and e-mail. Most customers contact a TPS via telephone and do not make a trip to the offices of a TPS. All customer service that can be done in person can be done via phone or e-mail. It is outdated, burdensome, and should be removed. (EEC) (NEM) (IE)

RESPONSE: The Board does not have the authority to omit the requirement for a New Jersey office from the rules, because it is required by EDECA. However, the proposed provisions herein are intended to minimize the burden of the requirement, while still being faithful to the intent of EDECA.

**38. COMMENT:** N.J.A.C. 14:4-5.2(c): It is unnecessary to have a 24-hour toll-free telephone answering service which allows customers to contact the applicant and leave a message. Customers may email us 24-hours a day. Leaving a message on an answering machine would only require a customer service rep to contact them back during normal business hours anyway. Instead, we recommend having a number they could call 24-hours a day which would provide instructions on what to do in case of an outage or emergency. For all other issues. the customer would be instructed to call back during normal business hours to speak to a representative. In the past, we have tried to have such message taking service but it merely results in administrative burden and frustration for customers if we call them back at a time they did not wish to be disturbed (such as the fellow who worked a night shift and was angry that we woke him to return his wife's call.) (EEC) (NEM) (IE)

RESPONSE: The Board agrees that this requirement is redundant and it does not appear in this proposal.

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

**39. COMMENT:** N.J.A.C. 14:4-5.3(b) should more clearly define the persons or entities that must submit information concerning prior judgments, etc. adverse investigations, litigation, criminal charges, etc. This obligation should specifically refer to the corporate applicant, affiliate to applicant, corporate officers, and any person with a 10% or greater ownership interest. (RPA)

**RESPONSE:** This proposal includes details regarding who is subject to the cited provisions.

**40. COMMENT:** The requirement at N.J.A.C. 14:4-5.7(d)9 to submit documentation for review and written certifications that marketing materials comply with Consumer Protection rules is also outdated. The market is sufficiently mature so that TPSs know what to beware of, and we have proven ourselves to be responsible. Of course, should BPU staff wish to review documentation at any time, that would be fine with us. Such rules smack of regulation, which is not the situation of TPSs. Were we to get a guaranteed return and no risk, we would gladly submit to closer manipulation of our messaging. (EEC) (NEM) (IE)

**RESPONSE:** The commenter is correct that the 2005 readoption proposal at N.J.A.C. 14:4-5.7(d)9 required submittal of a certification of compliance with the Board's consumer protection rules. That requirement also appears in this proposal. However, there is no requirement that TPSs submit the marketing materials themselves, or any additional documentation of compliance beyond the certification. There was in the past a requirement that licensees submit marketing materials, but this proposal supersedes the previous Board order that established that requirement. The requirement for certification of compliance with the Board's consumer protection rules is intended to ensure that officers of the license applicant's corporation are aware of the consumer protection rules, and of their obligation to comply with them. The Board believes that this is an important goal and therefore has included the certification requirement in this proposal, and has added this to the requirements for an initial license at proposed N.J.A.C. 14:4-5.3(b)14, for consistency. Finally, it should be noted that, unlike TPSs, applicants for a Clean Power Marketer license are still required to submit marketing materials as required under the Clean Power Choice Program set forth in a Board order in In the matter of a voluntary Green Power Choice Program, BPU Docket No. EO05010001, dated January 24, 2005. The CPC program is a new program with a regulated community that does not have long-term experience with the Board and its marketing policies. Also, the Board has recently had significant problems with the misuse of Board-copyrighted logos and other items.

**41. COMMENT:** In its notice of proposed rules, the Board stated "[c]hanges are proposed that would remove the requirement for the submittal of marketing materials." 37 N.J.R. 3911(a) (Oct. 17, 2005). We find no follow-up language in the proposed rules. In order to clarify this confusion, we recommend that the Board



positively state that it is removing the requirements to submit marketing materials to the Board established by Board Orders in Docket No. EXOO030161 and Docket No. EX01010059. (Suez)

RESPONSE: Please see the response to comment 40 above.

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

**42. COMMENT:** This section provides for the modification of the amount of the surety bond required for a license. TPSs should have the right to request modifications in the amount of the surety bond that is required by the Board. The Board should remove the surety bond requirement altogether. TPSs already have security arrangements directly with the utilities, which protect consumers and ensure uninterrupted service. Additionally, under consolidated billing, the LDC is collecting the payments, which include sales tax. Therefore, such monies may be remitted to the State even if a TPS were to cease existence. This requirement is onerous and unnecessary and creates an increased cost to do business in the state. (EEC) (NEM) (IE)

RESPONSE: Please see the response to comment 47 below.

**43. COMMENT:** The proposed rule would eliminate the existing provision allowing the Board to modify the amount of the surety bond required for a license based on Board review of kWh sales and subsequent assessment of the risk to which the LDC (and its customers) would be exposed in the event of a contract default. We consider this an important provision of the licensing rule that affords a necessary level of consumer protection. By eliminating this provision, the State cannot be sure that it holds the proper level of collateral to protect customers in the event of default. The fact that "these provisions have virtually never been used" is not a sufficient reason to eliminate this safeguard. (JCP&L)

RESPONSE: Please see the response to comment 47 below.

**44. COMMENT:** Marketers should retain the ability to petition for a reduction in the amount of the security bond posted. Given the trend in costs of credit, the Commission should not tie up capital that could be used to offset commodity risks on behalf of consumers. (NEM) (IE)

RESPONSE: Please see the response to comment 47 below.

**45. COMMENT:** Since New Jersey law requires that an electric power supplier must "[m]aintain a surety bond under terms and conditions as determined by the Board" the Board has the latitude to determine terms and conditions that would be less burdensome and supportive of the development of the competitive retail electricity market. (Suez)

RESPONSE: Please see the response to comment 47 below.

**46. COMMENT:** With regard to Board rules for the financial integrity of third party suppliers, credit and collateral requirements should be uniform and centralized for all

of PJM Interconnection LLC. As the manager of electricity markets, PJM is best suited to determine financial integrity rules and default payment procedures for market participants. Since substantive credit and collateral requirements currently exist for all PJM market participants, the Board should eliminate its surety bond requirements. The State of Maryland Public Service Commission has set a precedent by adopting new financial integrity regulations in its Code of Regulations, waiving the Maryland financial assurance requirement if PJM grants the electricity supplier an unsecured credit allowance in an amount greater than \$2,000,000.

(Suez)

RESPONSE: Please see the response to comment 47 below.

**47. COMMENT:** The proposed licensing standards should not eliminate the Board's ability to adjust bond requirements up or down, commensurate with the amount of business conducted in the state. The Board has considerably lowered the credit requirements that electric LDCs may impose on TPSs. In support of lowering credit standards the Board has held that the risk of TPS default has now been largely shifted to the winning suppliers in the BGS Auction. Board Order, December 23, 2004, In the matter of the approval of amendments to the creditworthiness requirements in the third party supplier agreement - Decision and Order, Docket No. EX03030185) The Board has also recognized that residential customers will assume that some entity will have provided safeguards to protect them from TPSs that lack financial viability. For these retail customers, the provision allowing the Board to adjust a TPS's bond based on the amount of customers that a supplier(s) may obtain will enable the Board to ensure such a "safeguard." Accordingly, we urge the Board to retain this existing flexibility. (PSE&G)

RESPONSE: First, EDECA requires a surety bond, so the Board does not have the authority to completely waive the surety bond requirement, regardless of how few New Jersey customers a licensee serves. See N.J.S.A. 48:3-78 and 79. Furthermore, the bond for PJM and the LDCs is designed to protect PJM's and the LDCs' interests, not those of the Board or the State. Instead, it is the bond provided to the BPU that insures against a failure to pay taxes or assessments, or to meet contractual commitments to deliver supply to customers. In addition, even if a licensee is not currently serving New Jersey customers, the Board is unable to monitor whether or when the licensee begins serving customers, and thus when a surety bond would become necessary. Accordingly, the Board continues to believe that the \$250,000 bond is necessary and appropriate for any entity seeking a TPS license. However, in light of the concerns raised in the comments, and especially in light of the danger that a \$250,000 bond might not be adequately protective if a TPS increased its business dramatically, the Board has included bond modification provisions in today's proposal at N.J.A.C. 14:4-5.4(h), 5.5(e), and 5.7(e).

**48. COMMENT:** The comments [in the proposal summary] relating to removing this section mentioned that it has never been invoked. In fact, we attempted to get a reduction in our surety bond for electricity since we have not served electric customers in New Jersey in several years. However, we were informed by BPU staff that we would have to give up our license if we wanted our surety bond returned,

then begin the entire licensing process again if we wished to serve electric customers in the future. We intend to invoke this right in the very near future. (EEC) (IE)

RESPONSE: At the time the Board proposed to remove the cited provision, the provision had never been used to modify an existing surety bond, but had only been used (twice) to adjust the bond amount for an initial license. However, after the Board proposed to remove the provision, the commenter did in fact request a modification in its existing surety bond. The commenter requested that the surety bond be waived in its case, on the grounds that the commenter was not at present serving New Jersey customers. The request for the waiver of the surety bond requirement was denied, and the commenter was informed that without a surety bond, the license would be revoked. See I/M/O the Application for a Modification of Econnergy's Surety Bond Amounts, BPU Docket Nos. EE04050378L & GE04050377L (February 24, 2006). Regarding the remainder of the comment, please see the response to comment 47 above.

**49. COMMENT:** The proposed new section requires a licensee whose license has expired to continue to serve customers for 45 days, while it seeks a new license. Proposed N.J.A.C. 14:4-5.6(b). Yet the LDC would be prohibited from doing business with the licensee under proposed N.J.A.C. 14:4-5.6(e). Such a conflict leaves both the LDC and the licensee in an untenable position. Accordingly, the Board should not adopt this provision. (JCP&L)

RESPONSE: This contradiction has been eliminated at proposed N.J.A.C. 14:4-5.6(e), which allows an LDC to do business with a TPS with a lapsed license within the limits of N.J.A.C. 14:4-5.6(b)3.

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

**50. COMMENT:** The license period of one year is too short. Very little changes in a TPS from year to year and licenses should expire at the most, every two years. Fiver years would be best. The time and effort it takes to prepare a renewal and for Staff to review it is rather involved and an annual renewal with strict deadlines is unnecessarily burdensome. The Board can always revoke a license in the event of a problem with a licensee. (EEC) (NEM) (IE)

RESPONSE: Please see the response to comment 51 below.

**51. COMMENT:** We support perpetual licensing for power suppliers that operate within the standards set by the Board. The Board has within its authority the ability to review the conduct of any licensed power supplier and punish any transgressions in a manner that it sees fit. The requirements for annual relicensing including the fees associated are burdensome and unnecessary. (Suez)

RESPONSE: EDECA does not authorize the Board to issue a license without a fee. In addition, EDECA sets the term of a license at one year. Thus, the Board lacks the authority to follow the commenter's suggestions.

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

**52. COMMENT:** N.J.A.C. 14:4-5.7(c): What purpose do the revenue numbers serve in the Board's decision to renew a license? (EEC) (NEM) (IE)

**RESPONSE:** The revenue numbers serve as a tool for the Board to make sure that the level of bonding is appropriate. While the Board has set a minimum bond value of \$250,000, the Board must ensure that the Board, the State, customers and the LDCs are being fully protected, and revenue numbers serve as a benchmark for the Board to ensure that the bonding process results in an effective protective scheme.

**53. COMMENT:** N.J.A.C. 14:4-5.7(d)3 clearly states that an application for renewal shall include "Information regarding the number, types, and locations (by zip + 4 code) of customers being served by the licensee as of the date the renewal application is submitted". This requirement should be removed. It is not necessary for TPSs to provide customer counts as such data may already be supplied to the BPU by the LDCs, who can more accurately and easily provide an overall snapshot and customer count by TPS for the BPU to review. The ZIP + 4 requirement was originally intended to avoid red-lining, or the avoidance of certain geographic locations based on poor credit, low-income and the like. It has been six years, and such practice has not been shown to exist. (EEC) (NEM) (IE)

**RESPONSE:** The commenter is correct that redlining has not been a problem. However, rather than indicating that the zip + 4 requirement is not needed, the Board believes that this indicates that the requirement has been successful and should not be deleted.

#### **14:4-5.10 LDC responsibilities**

**54. COMMENT:** The proposed standards require a TPS to notify its LDC that an initial or renewal application has been submitted to the Board, and require that the TPS provide the LDC with a copy of a license renewal. However, the proposed standards do not require the TPS to provide any form of notice to the LDC that an initial license has been approved. Such a requirement should be specified. (PSE&G)

**RESPONSE:** The Board agrees that the rule should be consistent in its treatment of renewals and initial licenses. Therefore, proposed N.J.A.C. 14:4-5.5(b) parallels proposed N.J.A.C. 14:4-5.7(f).

**55. COMMENT:** The prohibition on LDCs from accepting commodity supply from unlicensed TPS in proposed N.J.A.C. 14:4-5.10 appears to conflict with other proposed rules. Proposed N.J.A.C. 14:4-5.6 should be listed as an exception in N.J.A.C. 14:4-5.10. (PSE&G)

**RESPONSE:** The commenter is correct and the proposal reflects this correction.

**56. COMMENT:** N.J.A.C. 14:4-5.10(b)3: The proposed rules state an EDC should not accept renewable energy certificates unless a clean power marketer has a valid license. Under the design of the New Jersey Voluntary Clean Power Choice Program, we are not responsible for accepting renewable energy certificates. Our

role is that of billing agent on behalf of the program. The administration of any renewable energy certificates is between the clean power marketer and the Board. Our responsibility should be limited to the processing of enrollments and other related transactions in support of the Voluntary Clean Power Choice Program. (ACE)  
(JCP&L)

RESPONSE: The commenter is correct and the provision to which the commenter objected does not appear in this proposal.

**57. COMMENT:** The proposed rules require an EDC to know the status of a supplier/provider. This is onerous and impractical. If an unlicensed party sends an enrollment transaction, any liability should fall solely on the unlicensed party. The EDC should not have to verify the status of the electric power supplier or clean power marketer each time an electronic transaction is processed. This rule will jeopardize the ability of the EDC to process electronic transactions in an automated and timely manner. It would be more reasonable to require an EDC to prevent new enrollments if the Board Staff notify the EDC that an electric power supplier or clean power marketer no longer has a valid license. This is the current practice. An electric power supplier or clean power marketer whose license has expired has no incentive to notify the EDC of this fact, and the EDC has no other means to know this information. (ACE)

RESPONSE: Please see the response to comment 59 below.

**58. COMMENT:** Penalties for a licensing violation should not apply to LDCs. The responsibility and incentives for complying with the Board's licensing requirements should rest solely on the market participants seeking to benefit financially from the retail market, TPS. The prohibition at N.J.A.C. 14:4-5.6 on an LDC doing business with a TPS or Clean Power Marketer that doesn't have a valid license, or does not have the required surety bond, should be deleted. The proposed standards unfairly threaten LDCs with "financial penalties" for failure to comply with the licensing standards. As the TPS is the party that should be required to provide notice to the LDC regarding its license status, the referenced "financial penalties" should solely apply to the TPS when such notice was not provided. (PSE&G)

RESPONSE: Please see the response to comment 59 below.

**59. COMMENT:** Requiring the TPS to notice the LDC of a renewal application is misplaced. There is already a requirement to notice LDCs if TPS plans to cease serving customers in a territory. Proposed N.J.A.C. 14:4-5.7(d) does not add any incentive for suppliers to maintain licenses. A TPS whose license has lapsed has no incentive to provide this information to the LDC, thereby interrupting or eliminating a revenue stream. The Board, however, knows the licensing status of all suppliers and can provide information on authorized suppliers via the Board's website. Simply by moving license renewals from the consent agenda to the regular agenda at each Board meeting, parties would have the most current information by which to address the status of a TPS. LDCs could provide notice to the Board of potential violation without relying on a TPS to provide updates on the status of their license. There is no incentive for a TPS to continue to operate in an unlicensed state, so we cannot

imagine why these rules were intended to be more rigid. Under the Board-approved Third Party Supplier Agreement, the licensees already are adequately incentivized to maintain their licenses and surety bonds, because not maintaining proper licenses (and the associated surety bond) would lead to a default under the agreement. The proposed rule provision inappropriately and over broadly restricts the conduct of the LDC. (JCP&L) (EEC) (NEM) (IE) (JCP&L) (Suez)

RESPONSE to comments 57 through 59: The provisions cited by the commenters appear in this proposal, precisely because of the Board's experience that TPSs routinely allow their licenses and surety bonds to lapse. The Board disagrees that the Third Party Supplier Agreement provides an adequate incentive for licensees to keep their licenses and surety bonds up to date. The TPS agreement merely gives the LDC the option to terminate the agreement in the event that a TPS's license expires without renewal. In the Board's experience, no LDC has exercised that option, despite the fact that many TPSs have been so late in applying for renewals that their licenses have lapsed. Similarly, TPSs routinely allow surety bonds to lapse. This despite the fact that insurance companies have advised Board Staff that they have sent reminders to the TPSs, advising them of the expiration date of the surety bond. As mentioned above, the proposed provision is intended to solve these problems. However, the Board acknowledges that it has a responsibility to assist LDCs in tracking the license status of each TPS and Clean Energy Marketer (CPM). Therefore, the proposed rules also require the LDC to stop doing business with a TPS or CPM with a lapsed license only after the Board notifies the LDC of the TPS's or marketer's unlicensed status. In order to facilitate the Board's ability to provide timely notice to LDCs, a requirement that LDCs submit a quarterly report listing TPSs and CPMs operating in the LDC's territory is proposed at N.J.A.C. 14:4-5.6(f). In addition, a TPS must submit any issued license or renewal to the LDC.

#### **14:4-5.12 Fees**

**60. COMMENT:** The licensing fees are extremely high. Our experience in other jurisdictions is that there is either no renewal fee, or a nominal one of perhaps \$100. Perhaps if the renewal process were less strict, the work of review by Staff would be less and such costs could be reduced. (EEC) (NEM) (IE)

RESPONSE: Board Staff has contacted utility commissions in other states and, although there are states, such as New York, which do not license third party suppliers, there are also states like Pennsylvania that grant initial licenses to TPSs without requiring them to renew on an annual basis. However, rather than a renewal fee, Pennsylvania charges TPSs a yearly assessment. The Board believes that the level of detail in a license application should not be based on the amount of the fee that will be required.

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

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

**61. COMMENT:** The Board should release the Benchmark Price Worksheet Forms, Model Change Notice to Customers, and the LDC Aggregation Agreement. These documents are necessary to implement a government aggregation program, and are required pursuant to the July 10, 2003 Rules. See *N.J.A.C. 14:4-6.9, 6.5(c) and 6.6(q)*. The Board should issue these documents now so that municipalities and customers will have the tools necessary to engage in government aggregation programs. (RPA)

**RESPONSE:** The Board is committed to providing these documents. However, the Board must determine the appropriate time to do this, with a view to fairly and efficiently achieving the purposes of the aggregation program. To maximize the effectiveness of these documents and the program, the Board plans to meet with stakeholders and develop documents that account for evolving market conditions.

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

**62. COMMENT:** The bid solicitation advertisement should include the number and description of the government facilities that are anticipated to be served under the energy aggregation program, and an estimate of the aggregate energy needs of the facilities. In addition, the advertisement should include an estimate of the number of households and businesses in the town or county. This will promote the concept and scope of the program to TPSs, and would allow the TPSs to learn the characteristics of the town and its energy consumers by reading the advertisement, rather than having to request this information. This may bring greater participation in the program, which ideally will lead to building the confidence that other jurisdictions may need to initiate aggregation programs. (RPA)

**RESPONSE:** While the suggestion to include certain estimated energy needs and estimated household and business information is well intended, it could lead to misleading assumptions and is not necessary as part of this rule. Advertising such information could mislead both TPSs and residents into believing that the estimated number of households and/or businesses in the advertisement is the actual number of households and/or businesses that are participating in the aggregation program. In any case, TPSs are provided with such information at the appropriate times according to whether the program is an Option 1 or Option 2 program. TPSs are not required to piece together such information as suggested in the comment. Furthermore the decision of customers to opt out or remain in such a program is unlikely to be affected by whether such information is placed in the advertisement or not. Finally, the lead agency is not prohibited from including the proposed information in the advertisement. Therefore, if the lead agency believes such information will provide it with a benefit, it is free to advertise this information.

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

**63. COMMENT:** The Rules require the supplier's bid and contract price to be lower than BGS and BGSS *only* at the time of contract award, not for the entire term of the contract. The legislation suggests that the supplier's bid and contract price should be lower than BGS and BGSS, both at the time of contract award *and* for the duration of the contract. A major objective of aggregation is to reduce the cost of energy to consumers. Rules that allow the price of energy to rise above BGS or BGSS prices at any time after a contract is awarded clearly put this objective in great jeopardy. Unless prices remain below BGS and BGSS rates throughout the term of the contract, the regulation defeats for consumers the underlying principle upon which aggregation for them is based – lower prices. The Amended Act states “The governing body shall only select a licensed electric power supplier or licensed gas supplier to be awarded a contract for service where the rate is the same as or lower than the price of basic generation service...” This clearly says that a supplier shall be selected to be awarded a contract where its rate is the same as or lower than BGS. It is the Boards' regulation that introduced the concept that rates are to be the same or lower *only* at the time of awarding the contract. The Board should require that the supplier's bid and contract price be lower than BGS and BGSS rates, not only at the time of contract award, but for the duration of the contract. (RPA)

**RESPONSE:** The Legislation is silent on the issue of whether the supplier's bid and contract price need to be the same or lower than the benchmark price *only* at the time of the contract or whether the bid and contract price must be the same or lower than the benchmark price for the entire duration of the contract. The Board believes the best policy is to require the supplier's bid and contract price to be lower than the benchmark price at the time of the award for the contract, and not for the entire term of the contract. This belief is based on the fact that the benchmark price is directly related to the BGS and BGSS prices and that BGS and BGSS prices change periodically, due to market conditions as well as regulatory action. Although aggregation is designed to obtain the most advantageous proposal, based on price and other factors, it is not practical or fair to expect a bidder to guarantee that the contract price will be lower than the BGS and the BGSS price under all circumstances. Aside from a price change each June 1, each BGS utility implements a Reconciliation Charge rate change, either an increase or decrease, which occurs monthly in some cases. Furthermore, FERC can and does make rate adjustments and market design modifications for BGS (which affect rates) as conditions warrant. For BGSS, the utilities have the ability to change rates throughout the year based on market conditions. It is therefore unrealistic to expect a competitive response to a bid specification that places the risk of all these unknowns on the bidder.

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

**64. COMMENT:** Unfortunately, the brave new world of energy competition has not materialized for residential and smaller commercial consumers. In the new environment with limited market participants and consumers with little, if any, experience to shop for energy, it is more important than ever for the Board to continue to have strict oversight over the market. We applaud the Board's efforts to



institute new tools and make innovative use of older ones in its previous consumer protection regulations. There are several reasons why the Board should not relax consumer protection regulations. (1) First, the public is not ready for drastic changes. (2) Second, electricity and natural gas are necessities. The fact that there are alternative providers of retail energy does not obviate the need for oversight of the conditions under which a household can be deprived of electricity or natural gas. A mistake here will cost lives. (3) Finally, electricity and natural gas markets are specialized industries that require supervision by an agency with expertise and extensive regulatory authority. The need for continued and stringent consumer protection regulation is an integral part of energy restructuring. If customers must be fearful of fraudulent practices and fly-by-night suppliers, competition itself will be stymied. (RPA)

RESPONSE: The Board appreciates this comment in support of the rules.

**65. COMMENT:** The State should minimize its impact on the dialogue between competitive suppliers and consumers. Marketing and advertising should be creative endeavors, not state mandates. Existing laws more than adequately protect the public interest. (NEM) (IE)

RESPONSE: The proposed advertising standards section provides rules for advertising that are intended to deal with specific issues that arise in the sale of kwh or therms, which are not addressed in existing laws. The advertising standards specify the information that must be included in natural gas or electricity sales, such as the average price per therm for gas supply and the average price per kWh for electricity over the contract's term, as well as the environmental characteristics of electric generation. If optional services are offered to customers, it is important for customers to have those costs separated from the advertised cost per kWh or therm. This allows customers to see the cost related specifically to the commodity of natural gas or energy, which is, most likely, the primary reason they chose that TPS.

#### **14:4-7.3 Advertising standards**

**66. COMMENT:** This section and N.J.A.C. 14:4-7.4 should be completely eliminated. They make it especially difficult for TPSs to engage in metropolitan and national advertising campaigns, since including the required language in advertising that will reach more than the New Jersey market is costly and ineffective. (IE)

RESPONSE: The proposed advertising standards are intended to ensure that ratepayers who decide to shop for alternative suppliers can comparatively evaluate each advertised cost per kwh or cost per therm offered by Third Party Suppliers. Thus, the advertised rates or savings should not include any additional costs for optional services. To do otherwise would make the pricing and savings information advertised to the customer misleading and confusing. However, this proposal does not require that the prices of optional services be included in the advertisement, but that the customer must be given a convenient way to obtain details on the prices. Regarding provisions requiring information comparing TPS prices with LDC prices, please see the response to comment 67 below.

#### **14:4-7.4 Marketing standards**

**67. COMMENT:** If this section is not eliminated, revisions must be made to protect the customer. N.J.A.C. 14:4-3.4(a)1 calls for the average price per therm for gas supply over the term of the contract being offered. We offer both a fixed and variable price. Determining the average for a variable price is nearly impossible when the price is subject to such radical variances. We offer up to a five year fixed price for our customers. Determining the LDC price over the span of five years is not possible. Any attempt at determining the LDC price over such an extended period would be unreliable and misleading to the customer. Such specific detail is unnecessary and should be eliminated. N.J.A.C. 14:4-3.4(b)1 requires disclosure of the estimated average savings which a customer will realize on the total bill relative to the customer taking basic service from the LDC. Again, the determination of the average savings a customer will realize is not reasonable and any attempt at doing so would be unreliable and misleading to the customer. (IE)

**RESPONSE:** The proposed marketing standards are intended to ensure that ratepayers who decide to shop for alternative suppliers can comparatively evaluate each advertised cost per kwh or cost per therm offered by Third Party Suppliers. The Board has not yet made a determination regarding whether the commenter is correct that the required comparison could be unreliable or misleading. However, the Board is actively exploring this issue with stakeholders and staff. The Board on April 27, 2006, directed staff to continue to discuss this issue and to bring it back to the Board. Pending a final Board decision on this issue, the requirement is included in the proposal. However, proposed N.J.A.C. 14:4-7.4(c) allows the Board to make a determination that additional or other information would more accurately allow the customer to compare costs.

**68. COMMENT:** Proposed N.J.A.C. 14:4-7.4(b)2 is onerous and almost meaningless since the whole idea behind a variable price is that it will vary monthly. Other states simply require us to explain what the current rate is, how often it can change and the reasons that it will change. Such specific details regarding an estimate of what the price will be for several different usage brackets for each month of the year is unnecessary and should be eliminated. It opens us up to claims of misinformation when the estimates do not match the actuals. (EEC) (NEM) (IE)

**RESPONSE:** Please see the response to comment 67 above.

#### **14:4-7.5 Credit**

**69. COMMENT:** N.J.A.C. 14:4-3.5(d) requires that if a TPS requires a security deposit from a customer, such deposit must be maintained in an interest bearing escrow account. This should be eliminated. Interest bearing escrow accounts are difficult to locate and the calculations required to maintain interest on customer deposits are time consuming and tedious. Customer deposits should be returned to the customer in the same amount as deposited. (IE)

**RESPONSE:** Holding deposited money in an interest bearing account is normal business practice and consistent with requirements placed on utilities when holding

customer deposits. To do otherwise is akin to the customer providing the TPS with a non-interest bearing loan, which is unreasonable.

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

**70. COMMENT:** This section contains the minimum requirements for the content and execution of a customer contract. N.J.A.C. 14:4-3.6(a) should be amended to require that all allowable alternative forms of verification be in accordance with the revised verification requirements in N.J.A.C. 14:4-2.3(c). (IE)

**RESPONSE:** In this proposal, the Board has added a cross reference to ensure that these two provisions are consistent.

**71. COMMENT:** The Board should incorporate language in N.J.A.C. 14:4 directing New Jersey's local distribution companies ("LDCs") to re-file tariffs regarding third party supplier responsibilities. Specifically, a reduction in the time required to notify customers for enrollment and switching. Reducing the notification period from the current 20 days prior to customer's next meter reading to 15 days would align New Jersey with its neighbors, the State of New York and the State of Pennsylvania. It would provide adequate time for the LDCs to process the transaction. Furthermore, it would allow more time for customers to evaluate third party supplier products and services. (Suez)

**RESPONSE:** Please see the response to comment 72 below.

**72. COMMENT:** The 14 calendar-day right of rescission that is offered to customers at proposed N.J.A.C. 14:4-7.6(b)4 is much longer than the industry standard. The standard in nearly every other state we operate in is 3 business days. It is based on the FTC's Federal 3-day rescission time for contracts. The 14 calendar days puts the TPSs at risk, especially when offering a fixed or cap rate product. The TPS is locking into the supply upon the customer's authorization. Fourteen days leaves TPSs unable to determine whether to purchase the gas for the customer. In these times of record breaking market volatility, the price can change dramatically in 2 weeks therefore increasing risk and making it more costly to do business in the state. Additionally, consumers have complained of the long delays in processing their enrollments because of such constraints. Were this to go away, we could send enrollments fifteen days prior to the end of a month instead of thirty, cutting the delay in half. (EEC) (NEM) (IE)

**RESPONSE:** Providing adequate time for the LDCs to process the transaction is not the reason for the twenty day lead time. The Board believes that customers should have the fourteen days built into the twenty day process to receive their confirmation letter, review their decision and respond to the LDC, if necessary.

**73. COMMENT:** The 30 day cure period (N.J.A.C. 14:4-7.6(b)5) that is offered to customers who are delinquent in paying is much longer than the industry standard. The number of days should be at least cut in half. If a customer is being terminated for non-payment, first we have to wait 30 days and then submit the drop which takes an additional 30-60 days depending on the processing time of each utility. By the

time the customer is actually terminated, as many as 90 days of uncollectible debt have accrued. This is unfair to TPSs and should be reduced. (EEC) (NEM) (IE)  
RESPONSE: Please see the response to comment 72 above. The TPS must provide a 30 day written notification of termination. Along with this notification, the customer should be given 30 days to remedy the situation. This is reasonable and fair. It does not preclude the TPS from terminating the service after the required waiting time, even if the customer remedies the situation, within the terms of the contract. It does, however, leave room for the customer and the TPS to resolve any condition that triggered the termination process and perhaps reverse the decision to terminate. The 30 day period to remedy the situation may commence at the same time the notice of termination commences. In addition the proposed rule ensures that the notice explains that, even if the customer remedies the situation within that period of time, the TPS still has the right to terminate in accordance with the contract.

**74. COMMENT:** N.J.A.C. 14:4-3.6(c) requires that a TPS contract include the LDC's emergency and toll-free customer service telephone numbers. With limited space available on our customer bills, it is difficult to include both the emergency and toll-free customer service number of each LDC. The customer has been with the LDC prior to enrolling with the TPS and has been provided their contact information through their delivery service. The repetition of this information is costly and unnecessary. The customer would be best served if we could provide one standard contract that included all pertinent information, not including multiple phone numbers with which to contact the LDC. (IE)

RESPONSE: Proposed N.J.A.C. 14:4-7.6(c) does not require the LDC's emergency and toll-free customer service telephone number on the bill but rather on the contract. Proposed N.J.A.C. 14:4-7.7(a) requires this information on the bill. The Board believes that a contract is the appropriate place for this type of detail and therefore that space should not be an issue. Proposed N.J.A.C. 14:4-7.7(a) refers to bills and requires that the Local Distribution Company's emergency phone number and toll free customer service numbers be included on the bill. Including the LDC's emergency number and toll-free customer service telephone number on the bill is necessary for safety and reliability.

**75. COMMENT:** N.J.A.C. 14:4-3.6(e) states that a TPS contract shall explicitly permit a residential customer to terminate the contract, with 48 hours notice without penalty, as a result of relocation within or outside the LDC's franchise area, disability and/or death. Compliance with this regulation will be overly burdensome on the TPS and costly to the customer. We offer customers a five year fixed price. This regulation gives customers the opportunity to relocate to a home within a one block radius, remain with the same LDC, and terminate their contract with us without penalty even though we have already purchased 5 years worth of gas for the customer. If the customer remains within any LDC franchise area served by us, there is no reason to provide termination without penalty. (IE)

RESPONSE: There are many situations in which it would not be fair for the TPS to penalize a customer for terminating service based on a change of residence. The rule provision is intended to provide flexibility for customers who move to a new home that

may be an all electric or oil home, or a two family home or apartment where the landlord is the utility's customer of record. Furthermore, the provision is unlikely to result in an incentive for a customer to change residences solely for the purpose of breaking a utility contract.

**76. COMMENT:** The statement of "disability and/or death" is unclear regarding what type of disability is allowable and whom the deceased can be in relation to the account holder. We also question the ability of the LDC to terminate the customer's service and turn the customer back to the LDC within 48 hours. Typically, it takes months to terminate a customer and switch them back to the LDC. Are the TPSs responsible for free gas during the entire time it takes to switch back to the LDC? If 48 hours is not feasible, the length should be extended to a more adequate length of time. (IE)

**RESPONSE:** Proposed N.J.A.C. 14:4-7.6(e) indicates that the customer's disability must render the customer unable to pay for the TPS's services, or the customer of record must have died, in order to qualify as a reason for termination of the contract under this provision. The provision allows the termination of the gas supply contract without penalty. The provision does not require the gas supplier to continue to supply gas service to the customer after the termination of the contract.

**77. COMMENT:** N.J.A.C. 14:4-3.6(b)5 states that an existing contract can continue on a month-to-month basis under the current terms, condition and pricing. This should be modified to include the allowance of evergreen contracts, which would allow customers that want to remain with us to remain without renewal. (IE)

**RESPONSE:** The Board does not support evergreen contracts because it is likely that most customers would not realize when the contract was coming to its end and would not realize that they had the option to switch to another TPS or to the LDC. Moreover, month to month contracts arise when the TPS does not obtain an affirmative written signature for renewal of a residential electric generation service or gas supply service contract. A customer that intends to commit to a TPS for a year or more would likely take action to make such a commitment through a contract.

#### **14:4-7.7 Customer Bills**

**78. COMMENT:** This section sets forth the requirements for customer bills. We request that N.J.A.C. 14:4-3.7(b) be amended to eliminate the placement of a customer's next estimated meter read date on the bill. The next estimated meter read date is largely unknown and cannot be provided to the customer with confidence. (IE)

**RESPONSE:** The next estimated date of meter reading is important because it triggers a statutory period of time that a bill can be estimated and certain notifications that must be provided by the LDC to the customer as a result of estimated bills. Therefore, this information must appear on the bill, especially if the TPS is providing a consolidated bill. The proposed rules indicate that, if the LDC is providing its own bill, the TPS does not need to put it on its bill.

#### **14:4-7.10 Termination**

**79. COMMENT:** N.J.A.C. 14:4-3.6(b)5 provides customers the right to 30 days to remedy a termination condition. We request that TPS termination be immediate. If we no longer wish to supply a customer, we should have the right within the terms of our contract to return the customer to the LDC with no opportunity to remedy the condition. There is no danger to the customer, there are no health concerns that must be considered as they will continue to receive gas regardless of their termination status with the TPS. (IE)

**RESPONSE:** The Board believes that the thirty day notice requirement, along with the opportunity for the customer to remedy the condition, is a fair and appropriate scheme. The provision strikes a reasonable balance between the interests of the TPS in prompt resolution of termination issues, and the needs of residential customers who may have encountered a termination condition through no fault of their own (e.g., errors of the postal service or a bank), or who may have inadvertently failed to pay a bill.

#### **SUBCHAPTER 4. NET METERING AND INTERCONNECTION STANDARDS FOR CLASS I RENEWABLE ENERGY SYSTEMS**

**80. COMMENT:** The Board's net-metering and interconnection rules are a model of simplicity and fairness. (MSEIA) (PowerLight)

**RESPONSE:** The Board appreciates this comment in support of the rules.

**81. COMMENT:** The application approval process needs to improve. The lag time for approvals has been lengthy in the past. (IBEW)

**RESPONSE:** It is not clear whether the commenter is referring to an application for interconnection under N.J.A.C. 14:8-4, or an application for a rebate under the Office of Clean Energy's (OCE's) CORE program. Regarding interconnection applications, the Board has received no complaints about EDC processing time on reviewing applications for interconnections, and therefore does not believe any action is required. Regarding applications for rebates under the CORE program, the comment is outside the scope of these rules, as the CORE program is not governed by these rules. However, the comment will be forwarded to the OCE, which administers the CORE program, for its consideration.

**82. COMMENT:** Final payment when the project is completed needs to be shorter. Many of the individuals and contractors are relatively small and cannot continue with any other projects until they are paid for what they completed. Funding for increased amount of personnel to expedite the process needs to be pursued in the proposed standards. (IBEW)

**RESPONSE:** This comment appears to apply to rebates under the CORE program, rather than to the net metering and interconnection rules, which is beyond the scope of these rules. Therefore, the comment will be forwarded to the Office of Clean Energy, which administers the CORE program, for its consideration.

**83. COMMENT:** Requirements for contractors installing photovoltaic systems need to be standardized, insuring that the customers or end-users receive a quality product. National certification is currently in place and adopted in other states and should be considered in New Jersey. (IBEW)

**RESPONSE:** While a certification program for contractors might be helpful to the renewable energy industry, the Board does not believe that such a program would be the best use of its limited resources at this time.

### **Social Impact**

The proposal of Chapter 4 will have a beneficial social impact because the rules provide a comprehensive scheme to maximize the efficiency and competitiveness of New Jersey's energy marketplace. Energy is a necessity. People without access to adequate and affordable energy often live uncomfortable and unhealthy lives because they cannot heat their homes or cook their food. Without adequate and affordable energy, businesses cannot thrive and our economy can be negatively affected. Chapter 4 will continue programs mandated by EDECA that ensure that New Jersey citizens and businesses have greater access to adequate and affordable energy.

The proposal of the anti-slamming rules will have a beneficial social impact because the rules continue and improve standards that protect consumers from having their energy supplier switched without their authorization.

The proposal of the Board's affiliate relations rules will have a positive social impact by regulating transactions between an electric and/or gas utility and any related competitive business segment, or with their public utility holding company or any of its related competitive business segments. The proposal will ensure that the rules will continue to help ensure that New Jersey customers 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 proposal of the Board's licensing and registration rules for energy suppliers will have a positive social impact because they will continue important Board oversight of entities that supply vital energy services to New Jersey customers.

The proposal of the Board's government energy aggregation program rules will have a beneficial social impact because the regulations will continue to provide an opportunity to increase the efficiency and competitiveness of New Jersey's overall energy marketplace through economies of scale. Municipalities and counties will be able to educate and protect their residents from excessive and inefficient energy costs.

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

The proposal of the environmental information disclosure rules will have a positive social impact in that it will ensure that New Jersey residential, commercial and industrial electricity customers will continue to receive a uniform set of information about the environmental characteristics of the energy that they purchase. While the Board anticipates amending these rules in the near future, it is important to retain them as they are until regional developments are complete, in order to maintain stability and predictability for regulated entities.

The proposed readoption of the net metering and interconnection rules will have a beneficial social impact. These rules are one component of New Jersey's initiative to increase development and use of renewable energy technologies in New Jersey. By focusing on renewable generation that is located at a customer's premises, not only is there a greater use of renewable energy, but grid reliability and energy diversity are improved by the decentralization of energy generation. This will contribute to local and national energy independence and all of its attendant social benefits. In addition, the net metering and interconnection rules provide standard application requirements and procedures for the approval of net metering interconnections, which helps ensure predictability for customer-generators, electric power suppliers, basic generation service providers, and the Board.

### **Economic Impact**

The proposal of the energy anti-slamming rules (at N.J.A.C. 14:4-2) will have an overall beneficial economic impact. The rules do impose some minor costs on TPSs, in that they require certain procedures for accomplishing and verifying switches. However, the rules help prevent financial problems for customers, and also prevent TPS expenditures on discovering and correcting unauthorized switches.

The proposal of the affiliate relations rules (at N.J.A.C. 14:4-3) 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 record keeping and reporting. Those costs that the Board determines are reasonable will be recoverable through utility rates. Most importantly, the rules help to prevent deterioration of the financial condition of public utilities, which might occur as a result of a public utility's affiliation with other entities.

The proposal 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 licensing and license renewal fees, and the requirement that licensees maintain surety bonds, will impose some costs on licensees and registrants. However, these costs are minimal in comparison to the overall costs and benefits of participating in the energy supply market. Furthermore, the fees are reasonable mechanisms that enable the State to recoup some of the cost of the licensing program, and the surety bond is a statutory requirement.



The government energy aggregation rules require that an energy supplier chosen for the program by the government or municipality charge the same or less than the amount customers would pay if they remained on utility service. Therefore, the rules provide for an economic advantage for residential customers who do not choose to opt out of the program and for non-residential customers who choose to opt in to the program. However, the exact degree of economic effect is still unclear because, due to recent market conditions and the competitive manner in which electric utilities procure their supplies, no municipality or county has yet passed an ordinance or resolution authorizing a government aggregation program. The Board believes the costs saved through the economic efficiencies obtained by these programs and the competition for supplying energy services to such a program will be larger than the costs necessary to set up these programs. Therefore, the Board believes the government aggregation programs will have a positive economic impact for the customers in the programs. Additionally, TPSs that successfully bid on these programs will receive a positive economic benefit through short-term profit margins and long-term name recognition.

The proposal of the consumer protection standards at N.J.A.C. 14:4-7 will have a positive economic impact. The rules will continue requirements that ensure that all TPSs adhere to a uniform set of consumer protection practices. The requirements will not impose new costs on TPSs. However, the rules will prevent negative economic impacts to consumers and will also help prevent economic damage to TPSs caused by unfair competitive practices.

The proposal of the environmental information disclosure rules at N.J.A.C. 14:8-3 will have a minor economic impact on electric public utilities and electric power suppliers. While much of the required data lies within the public domain, electric utilities and suppliers will incur some expenses in accumulating, compiling, drafting and distributing to retail customers the required information. However, the Board will allow public utilities to pass through to customers, through rates, any compliance expenses that are shown to be reasonable. For electric power suppliers that are not subject to the Board's ratemaking authority, the disclosure-related expenses may be considered to be costs of doing business and will be included in overall charges to customers. Finally, the Board anticipates reviewing these rules and amending them soon to simplify them, which is likely to make compliance less expensive.

The proposal of the net metering and interconnection rules (at N.J.A.C. 14:8-4) will have a positive economic impact. The amendments will result in a continued increase in customers for small businesses that design and install net metering equipment, and some cost savings stemming from the standardization of interconnection review consistent with national trends. The proposal of the net metering rules may have a slight negative economic impact on EDCs during periods when rates are frozen, or between rate cases. After the adjustment for lowered contribution to fixed costs is incorporated into a rate case, the net metering itself will have no impact on EDCs.

The interconnection rules have a beneficial economic impact in that they provide a clear and predictable system for obtaining authorization to interconnect renewable energy systems to the grid. Predictability benefits both the EDCs and potential net

metering customer-generators by saving time and reducing the need for hired assistance in obtaining authorization to interconnect. The rules set application fees based on the size of the customer-generator facility, which allows for fees to be tailored to the actual cost of the review procedure involved. The rules entail some compliance costs for EDCs, but these are likely to be minor, and any costs that are substantial can be considered by the Board during rate making proceedings for the EDC.

### **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, licensing and registration, government energy aggregation programs, consumer protection, and environmental information disclosure. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis for the proposal of these subchapters.

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. However, there is a Federal law that governs some of the same issues. "The Energy Policy Act of 2005," 42 U.S.C. §15801 et seq., governs affiliate transactions, service agreements, and access to the books and records of public utility holding companies. While the Board's proposed affiliate relations rules are more specific than the Federal provisions, neither is clearly more stringent than the other. The Federal law provides broad power to prevent cross-subsidization and to issue "such rules and regulations as are necessary or appropriate for the protection of utility consumers."

The net metering and interconnection rules at N.J.A.C. 14:8-4 apply to interconnections to electric distribution facilities but not to transmission facilities. The Federal Regulatory Energy Commission (FERC) recently amended 18 C.F.R. §35.28(f) to include regulations that apply to interconnections to transmission facilities. The FERC rules have not yet been fully explored and tested, but they primarily concern the reliability and safety of interconnections to the bulk power system, not to distribution systems. By contrast, the New Jersey rules apply only to interconnections of very small generation systems with electric distribution facilities. Therefore, there appears to be no overlap between the two sets of rules. However, should the Federal rules in future be interpreted in such a way as to govern any area also covered by the New Jersey rules, the Board has included proposed N.J.A.C. 14:8-4.3(l) to ensure that, should there be any inconsistency between the Board's net metering and

interconnection rules and FERC rules, the FERC rules will govern and there will thus be no difference in stringency between the two.

### **Jobs Impact**

The Board does not anticipate that proposed chapter 4 will have a material impact on jobs in New Jersey. The proposal will continue existing programs which require the use of workers to implement procedures to protect customers from slamming and consumer fraud and abuse, including record keeping 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.

The Board does not anticipate that proposed chapter 8 will have a material impact on jobs in New Jersey. While a regulated entity may need to assign some staff to ensure compliance with these rules, the amount of staff time required should be minimal, and any staff needed will already be in place as the Board has been administering these programs for some time. The new provisions for clean power marketers may require a minor amount of staff time on the part of electric utilities, but again this is not likely to be significant. To the extent that the net metering rule stimulates construction of more renewable energy generation in New Jersey, these rules will increase jobs for the designers, builders, and installers of renewable energy equipment.

### **Agriculture Industry Impact**

Neither the proposal of chapter 4 or chapter 8 will have an impact on the agriculture industry in New Jersey, with the possible exception of two indirect impacts. First, farmers are often in a good position to lease land for siting of wind generators, so to the extent that the rules stimulate installation of wind generating facilities, farmers may benefit financially. Second, since farms often require energy in more remote areas, small alternative energy technology is especially useful to those in the agriculture industry. For example, a farmer may need to power a well pump to supply drinking water for livestock located in a remote pasture away from existing electric lines. Thus, by encouraging the proliferation of small alternative energy systems, these rules could cause an overall improvement in the availability, efficiency and price of alternative energy equipment, which could ultimately benefit farmers who need remote sources of energy. The rules apply statewide and, other than this one possible impact, they are not expected to affect agriculture any differently than other energy consumers.

### **Regulatory Flexibility Analysis**

The proposal of subchapters 2 through 7, and 9 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 employees.

Some of the TPSs affected by the proposal 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 this proposal requires TPSs to use certain procedures for switching customers, and for verifying the accuracy of submitted customer switches. TPSs must keep records of all switches for three years and submit quarterly slamming complaint reports to the Board. The proposed rules will not add to the Board's previous compliance requirements and will in fact make the rules easier to comply with by allowing enrollments to be accomplished over the internet. However, complying with the rules will require some expenditures. For example, most TPSs use the professional services of third party verifiers to ensure compliance. On the other hand, the rules help TPSs by protecting them from unauthorized switches of their customers to another TPS. In addition, the compliance requirements of these rules are justified by the magnitude of the slamming problem that occurred prior to the Board's adoption of anti-slamming rules. Finally, unauthorized switching is no less of a problem when perpetrated by a small TPS than by 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.

The proposed licensing and registration rules require TPSs, energy agents, and private aggregators to be licensed or registered. Some of these entities may be 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 information for an initial application and for a renewal. Any entity that wishes to market to residential customers must file a copy of their contract with Board staff. This information is readily available and there is no cost to these entities to keep it or report it. It is not anticipated that any entity would find it necessary to engage any professional services to comply with these rules. However, these rules are important to ensure that energy suppliers are responsible and financially sound in order to protect New Jersey energy consumers. This goal is essential to the Board's mandate to ensure safe, adequate and proper service, regardless of the size of the entity involved. Accordingly, the Board has not provided special provisions for 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, 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 at N.J.A.C. 14:4-7 require TPSs to adhere to minimum requirements regarding marketing, advertising, contracts, and billing. Most of the requirements address the types of information that must be provided to customers and potential customers, and the form in which the information must be presented. The subchapter contains no reporting requirements, but does include minor record keeping requirements. It is not anticipated that any entity would find it necessary to engage any professional services to comply with these rules. The compliance requirements of this subchapter are not onerous, and 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.

The environmental information disclosure rules impose some compliance requirements. While there are approximately 40 electric power suppliers and BGS providers licensed by the Board, some of which may be small businesses, at present only a few actually supply electricity to retail customers. For those entities, complying with the rules will require recordkeeping, and reporting to both the Board and to energy consumers. Expenditures will be required in order to gather and present the required environmental information. It is possible that some electric power suppliers and BGS providers will hire professional service companies to accomplish some of the tasks required by these rules. However, the cost of complying with the rules is minimal when spread over the State's retail customer base, and is greatly outweighed by the societal benefits of educating consumers regarding the fuel used and pollutants emitted in the course of power generation. In addition, the Board has taken several measures to minimize any adverse impact on electricity suppliers. The most significant of these is the Board's work with PJM to develop a tracking system that will help suppliers develop disclosure labels. This tracking system is now complete, and the Board anticipates amending the environmental disclosure rules to accommodate the new tracking system as soon as its priorities allow. For the reasons discussed above, the Board has not included lesser standards for small businesses in the environmental information disclosure rules.

The proposed net metering and interconnection rules for class I renewable energy systems will impose minimal recordkeeping, reporting or other compliance requirements on small businesses. There are three types of businesses to which the net metering and interconnection rules apply – EDCs, small commercial customer-generators that wish to net meter; and the consultants, contractors, and manufacturers that design, build and install the equipment needed for net metering. None of the EDCs are small businesses. The Board estimates that approximately 25 to 50 small commercial customer-generators will apply for interconnection and net metering each year, and the majority of these are likely to be small businesses. In addition, there are approximately 100 consultants, contractors, and manufacturers in New Jersey that design, supply, and install net metering equipment, all of which are small businesses. The proposed readoption will not require that small businesses incur capital costs or retain professional help. In fact, the proposal provides for systematized and simplified

procedures for net metering and interconnection and thus minimize the compliance burden on small businesses as well as other regulated entities.

### **Smart Growth Impact**

The Board anticipates that the proposed rules will have no impact on either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan, with the possible exception of the net metering rules, discussed below. 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 proposal, with the possible exception of the net metering and interconnection rules, will not impact smart growth or the State Plan.

The Board anticipates that the proposed net metering and interconnection rules could have a slight indirect impact on smart growth. These rules are intended to stimulate increased use of distributed renewable energy generation. Such an increase will result in evolution of the renewable energy market and renewable energy technology, thus improving the efficiency of renewable energy equipment and lowering its price. This in turn will make it easier for people to build completely independent, non grid-connected homes in remote locations without existing electricity infrastructure. Generally, such locations are more likely to be in areas not designated for growth. Thus there is a chance that this readoption could result in a slight increase in development in areas not designated for growth. Although this result would be contrary to State smart growth goals, it is unlikely that many people will choose to build off-grid homes. Most people with onsite renewable energy generators prefer to be connected to the grid for net metering purposes and as a backup in case of a malfunction in the onsite generator. Therefore, the Board does not expect that this readoption will significantly affect the location of future development, and thus will not significantly impact smart growth or the State Plan. Furthermore, the Board has determined that the disadvantages of this possible smart growth effect are far outweighed by the demonstrable advantages and importance of promoting clean, renewable, distributed energy.

**Full text of the subchapter being repealed can be found in the New Jersey Administrative Code at: N.J.A.C. 14:4-1A.**

**Full text** of the proposal follows.

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

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

#### **14:4-2.1 Scope**

(a) This subchapter is intended to protect against unauthorized changes or "switches" in a customer's electric power supplier or natural gas supplier, as required by "The Electric Discount and Energy Competition Act," P.L. 1999, c.23, Section 37, N.J.S.A. 48:3-86 et seq.

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

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

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

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

#### **14:4-2.2 Definitions**

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

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

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

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

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

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

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

1. The change order shall be from an Electronic Data Interchange (EDI) transaction, or other electronic information exchange system with equivalent speed and security. Information on EDI may be found at the Board's website at <http://www.bpu.state.nj.us/home/EDIdocuments.shtml>; and
3. The change order shall demonstrate, through compliance with the verification requirements at (c) below, that the customer has authorized the switch affirmatively and voluntarily.

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

1. Documentation that the switch occurred pursuant to an opt-out municipal aggregation program established in accordance with N.J.A.C. 14:4-6;
2. An audio recording of a third party verification, performed verbally over the telephone by an independent third party. The verification shall:
  - i. Identify the customer;
  - ii. Verify that the person speaking is the customer of record, or is authorized to make the change;
  - iii. Indicate the date of the recording;
  - iv. Confirm that the person speaking voluntarily wishes to make the TPS change;
  - v. Identify the name of the TPS;
  - vi. Indicate the account number of the LDC and the type of service to be switched; or
3. A signature in ink on a paper form, showing that the customer voluntarily authorized the switch. This form shall:
  - i. Identify the customer;
  - ii. Verify that the signatory is the customer of record;
  - iii. Confirm that the signatory is authorized to make the change;
  - iv. Indicate the date upon which the document was signed;
  - v. Confirm that the signatory voluntarily wishes to make the TPS change;
  - vi. Identify the name of the TPS;
  - vii. Indicate the account number of the LDC and the type of service to be switched;
4. An electronic record of an internet transaction that meets the requirements at N.J.A.C. 14:4-2.4; or
5. An audio recording of a telephone call initiated by the customer.

(d) If a customer is switching both electric power supply and gas supply service, the new TPS shall submit a separate change order for each service, even if the same TPS is chosen to provide both electric service and natural gas service.

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



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

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

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

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

(a) A TPS or LDC may use electronic methods to sign up customers, renew customers' contracts for service, and/or obtain authorization to switch a customer in accordance with this section.

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

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

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

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

1. Customer information including, at a minimum, name, service address, e-mail address, utility account number and, where required by a utility to complete enrollment, meter number;
2. The full terms and conditions of the contract. The customer shall be required to affirmatively indicate that the customer has read the terms and conditions;
3. A requirement that the customer assent to a statement indicating that:

*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on April 16, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

- i. The customer has the authority to sign up, renew, and/or change its TPS for the account listed;
  - ii. The customer has read, understands and agrees to the terms and conditions of the contract; and
  - iii. The customer is voluntarily authorizing a new enrollment, a renewal, or a switch in its TPS or LDC;
4. The environmental disclosure information for the service being purchased or renew, as required under N.J.A.C. 14:8-3, or a prominently displayed link to this information;
  5. A prompt to the customer to print or save the terms and conditions to which the customer assents; and
  6. An electronic method and/or an e-mail address for the customer to submit a request to cancel the contract, consistent with the terms of the contract.

(e) The TPS or LDC shall retain an exact copy of the image of the acceptance screen, which shows that the customer accepted the TPS's terms of service when the customer signed up for or renewed service with, or changed the TPS.

(f) The TPS or LDC shall record the time and date of the customer's acceptance of the terms and conditions of service.

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

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

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

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

(k) 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 or LDC shall provide a cancellation number to the customer and to the LDC.

#### **14:4-2.5 Record keeping**

- (a) All change orders and records of customer authorization of switches shall be retained by the TPS for a minimum of three years.
- (b) The TPS shall maintain an exact copy of the screen image that shows the customer's actual acceptance of the terms of service that were offered to the customer on the TPS website, in the same form as those terms of service were presented to the customer.
- (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.

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

- (a) When an LDC receives a change order from a TPS to switch a customer's energy supplier, the LDC shall notify the subject customer of the change order.
- (b) The notice required in (a) above shall be sent in writing, within one business day after the LDC receives or prepares the change order. The Board may modify this time frame for a particular LDC, in special cases and for good cause shown, by Board order.
- (c) If an LDC receives a complaint from a customer about a pending or processed change order, the LDC shall immediately refer the customer either to the TPS for dispute resolution, or to Board staff for a customer complaint. Upon receiving the complaint, Board staff will conduct an investigation.
- (d) The LDC shall execute all TPS change orders that comply with this subchapter as soon as possible and without unreasonable delay.

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

- (a) A customer that believes it has been the victim of slamming may contact the TPS and/or LDC to resolve the problem, and/or may contact the Board and file a written complaint.
- (b) If a customer contacts the Board with an allegation that the customer has been slammed, the portion of the customer's bill that relates to the TPS's services shall be considered in dispute pursuant to N.J.A.C. 14:3-7.13, starting upon the date of the switch that is the subject of the slamming complaint.
- (c) The Board may investigate an allegation of slamming or any other violation of this subchapter upon its own initiative or upon a complaint.
- (d) In the event of a dispute, the TPS shall produce the customer switch authorization within three days of a request by the customer or the Board.

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

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

### **14:4-2.8 Enforcement**

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

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

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

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

(d) A TPS that collects charges from a customer as a result of a violation of this subchapter shall be liable to the customer's authorized TPS or LDC for all charges paid by the customer as a result of the violation, in addition to any penalties or other remedies authorized under this subchapter or other laws.

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

## **SUBCHAPTER 3. AFFILIATE RELATIONS**

### **14:4-3.1 Scope**

(a) This subchapter shall apply as follows:

1. N.J.A.C. 14:4-3.3 through 14:4-3.5 set forth standards of conduct applicable to transactions, between an electric public utility or gas public utility, including a related competitive business segment of an electric or gas public utility, and a related competitive business segment of the electric or gas public utility holding company providing or offering competitive services to retail customers in New Jersey or the public utility holding company itself providing or offering competitive services to retail customers in New Jersey;

2. N.J.A.C. 14:4-3.6 sets forth standards of conduct applicable to electric and/or gas public utilities and the related competitive business segments of each electric public utility and gas public utility, as well as the transactions, interactions and relations between an electric and/or gas public utility and a related competitive business segment of an electric and/or gas public utility; and
3. N.J.A.C. 14:4-3.7 through 3.9 address regulatory oversight, dispute resolution and violations and penalties applicable to electric and/or gas public utilities regarding affiliate relations, fair competition, accounting standards and related reporting requirements.

(b) A New Jersey electric and/or gas public utility, which is also a multi-state electric and/or gas public utility and subject to the jurisdiction of other state or Federal regulatory commissions, may file an application, requesting a limited exemption from this subchapter or part(s) thereof, for transactions between the electric and/or public utility and its affiliate(s) solely in its role of serving its jurisdictional areas wholly outside of New Jersey. To obtain such an exception, the applicant shall meet the requirements of N.J.A.C. 14:1-1.2(b).

#### **14:4-3.2 Definitions**

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

"Affiliate" means a "related competitive business segment of an electric public utility or a related competitive business segment of a gas public utility" or a "related competitive business segment of a public utility holding company" as defined in this section and in the Act.

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

"Category" means a group of products and/or services that use the same type of electric and/or gas public utility assets or capacity. For example, "leases of land under utility transmission lines" or "use of a utility repair shop for third party equipment repair" would each constitute a separate product and/or service category.

"Competitive service" means any services, goods, or products offered by an electric public utility or a gas public utility that the Board has already determined or that the Board shall in the future determine to be competitive pursuant to section 8 or section 10 of the Act or that is not regulated by the Board.

"Cross-subsidization" means the offering of a competitive product and/or service by an electric and/or gas public utility, or the offering of a product and/or service by an affiliate, which relies in whole or in part on the utilization of utility employees, equipment or other assets, and for which full compensation (via cost allocations or direct payment), as determined by the Board, has not been provided for the use of such electric and/or gas

public utility assets, resulting in the inappropriate transfer of benefits from the utility ratepayers to the competitive product and/or service or affiliate.

"Dth" means decatherms or ten therms.

"EBB" means an electric and/or gas public utility's electronic bulletin board.

"Existing products and/or services" means those products and/or services which an electric and/or gas public utility was offering prior to January 1, 1993, that have been approved by the Board prior to February 9, 1999, or an electric and/or gas public utility is offering on the effective date of the adoption of this subchapter.

"Fully allocated cost" means an allocation of the direct, indirect and other economic costs of all equipment, vehicles, labor, related fringe benefits and overheads, real estate, furniture, fixtures and other personality and administration utilized, and other assets utilized and costs incurred, directly or indirectly in providing competitive services.

"Functional separation" means the formation of a separate business unit by an electric or gas public utility for purposes of offering competitive services permitted by N.J.S.A. 48:3-55(f) or N.J.S.A. 48:3-58(b) of the Act, which separate business unit shall be a related competitive business segment of an electric public utility or gas public utility as defined in this section and in the Act.

"Individual proprietary information" means a customer's name, address, telephone number, energy usage and payment history and such other information as the Board, by Order, may determine.

"Joint purchases" means purchases made by a parent or holding company or affiliate thereof for use by one or more affiliates, the fully allocated costs of which are allocated to be paid proportionally by the affiliates, based upon utilization.

"Joint purchases allowed" means purchases not associated with merchant functions, examples of which would be joint purchases of office supplies and telephone services.

"Joint purchases not allowed" means purchases associated with merchant functions, examples of which would be gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, systems operations, and marketing.

"Merchant functions" means the marketing and/or the provision of electric generation service and/or gas supply service to wholesale or retail customers, as opposed to the marketing and/or provision of transmission and distribution services, by an electric and/or gas public utility.

"Public posting" means a posting on an electric and/or gas public utility's EBB, website or other industry recognized and publicly accessible electronic or print medium.

"Public utility holding company" or "PUHC" means:

1. Any company that, directly or indirectly, owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of an electric public utility or a gas public utility or of a company which is a public utility holding company by virtue of this definition, unless the Securities and Exchange Commission, or its successor, by order declares such company not to be a public utility holding company under the Public Utility Holding Company Act of 1935, 15 U.S.C. §§79 et seq., or its successor; or
2. Any person that the Securities and Exchange Commission, or its successor, determines, after notice and opportunity for hearing, directly or indirectly, to exercise, either alone or pursuant to an arrangement or understanding with one or more other persons, such a controlling influence over the management or policies of an electric public utility or a gas public utility or public utility holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in the Public Utility Holding Company Act of 1935 or its successor.

"Related competitive business segment of an electric public utility or gas public utility" means any business venture of an electric public utility or gas public utility including, but not limited to, functionally separate business units, joint ventures, and partnerships, that offers to provide or provides competitive services.

"Related competitive business segment of a public utility holding company" means any business venture of a public utility holding company, including, but not limited to, functionally separate business units, joint ventures, and partnerships and subsidiaries, that offers to provide or provides competitive services, but does not include any related competitive business segments of an electric public utility or gas public utility.

"Services that may not be shared" means those services which involve merchant functions, including, by way of example: hedging and financial derivatives and arbitrage services, gas and/or electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.

"Shared services" means administrative and support services that do not involve merchant functions, including by way of example: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.

"Short term" means a transaction of 31 days or less.

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

### **14:4-3.3 Nondiscrimination**

(a) An electric and/or gas public utility shall not unreasonably discriminate against any competitor in favor of its affiliate(s) or related competitive business segment.

(b) An electric or gas public utility shall not represent that, as a result of the relationship with the electric and/or gas public utility or for any other reason, a related competitive business segment of its public utility holding company, or customers of a related competitive business segment of its public utility holding company will receive any different treatment by the electric and/or gas public utility than the treatment the electric and/or gas public utility provides to other, unaffiliated companies or their customers.

(c) An electric or gas public utility shall not provide a related competitive business segment of its public utility holding company, or customers of a related competitive business segment of its public utility holding company, any preference (including, but not limited to, terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of products and/or services offered by the electric and/or gas public utility.

(d) Transactions between an electric and/or gas public utility and a related competitive business segment of its public utility holding company shall be prohibited, except for the following:

1. Tariffed products and services;
2. The sale or purchase of goods, property, products or services made generally available by the electric and/or gas public utility, by the PUHC or a related competitive business segment of its public utility holding company to all market participants through an open, competitive bidding process; or
3. As provided for in N.J.A.C. 14:4-3.5(g) and (h) (joint purchases), in N.J.A.C. 14:4-3.5 (i) and (j) (corporate support) or N.J.A.C. 14:4-3.6 (a) through (f) (competitive utility products and/or services), provided the transactions specified in N.J.A.C. 14:4-3.6 (competitive utility products and/or services) comply with all other applicable rules.

(e) An electric and/or gas public utility shall provide access to utility information, services, and unused capacity or supply on a non-discriminatory basis to all market participants, including affiliated and non-affiliated companies, except as provided for in N.J.A.C. 14:4-3.4, 3.5 and 3.6, provided the transactions specified in N.J.A.C. 14:4-3.6, Competitive utility products and/or services, comply with all other applicable rules.

1. If an electric and/or gas public utility provides supply, capacity, services, or information to a related competitive business segment of its public utility holding company, it shall make the offering available, via a public posting, on a non-discriminatory basis to non-affiliated market participants, which include competitors serving the same market as the related competitive business segment of the electric and/or gas public utility's holding company.



(f) An electric and/or gas public utility selling or making an offer to sell surplus energy, kWh and/or Dth, respectively, and/or capacity, kW or therms, respectively, on a short term basis to its PUHC or a related competitive business segment of its public utility holding company, shall make the offering available on a non-discriminatory basis to non-affiliated electric or gas marketers, via a public posting.

(g) An electric and/or gas public utility making an offer to sell surplus energy, kWh and/or Dth, respectively, and/or capacity, kW or therms, respectively, on a long term basis to the PUHC or a related competitive business segment of its public utility holding company, shall make the offering available on a non-discriminatory basis to non-affiliated electric or gas marketers, via a public posting.

(h) Except when made generally available by an electric and/or gas public utility through an open, competitive bidding process, an electric and/or gas public utility shall not offer a discount or waive all or any part of any other charge or fee to a related competitive business segment of its public utility holding company, PUHC, or offer a discount or waiver for a transaction in which a related competitive business segment of its public utility holding company is involved unless the electric and/or gas public utility shall make such discount or waiver available on a non-discriminatory basis to other market participants.

1. An electric and/or gas public utility shall not give its PUHC or a related competitive business segment of its public utility holding company involved in energy supply or marketing a preference with respect to tariff provisions that provide for discretionary waivers of fees, penalties, etc., unless offered to all others on a non-discriminatory basis.

(i) An electric and/or gas public utility shall document the cost differential underlying the discount to its PUHC or a related competitive business segment of its public utility holding company in the Affiliate Discount Report described in (q) through (s) below.

(j) An electric and/or gas public utility shall apply tariff provision(s) on a non-discriminatory basis to its PUHC or related competitive business segments of its public utility holding company and to other market participants and their respective customers if the tariff provision allows for discretion in its application.

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

(l) An electric and/or gas public utility shall process all requests for similar services provided by the electric and/or gas public utility on a non-discriminatory basis for its PUHC or a related competitive business segment of its public utility holding company and for all other market participants and their respective customers.

(m) An electric and/or gas public utility shall not condition or otherwise tie the provision of any products and/or services provided by the electric and/or gas public utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms

and conditions of any products and/or services provided by the electric and/or gas public utility to the taking of any products and/or services from its PUHC or a related competitive business segment of its public utility holding company.

(n) An electric and/or gas public utility shall not assign customers to which it currently provides products and/or services to any related competitive business segments of its public utility holding company, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors on a non-discriminatory basis.

(o) Except as otherwise provided by this subchapter, an electric and/or gas public utility shall not provide any assistance, aid or services to its PUHC or related competitive segment of the PUHC if related to customer enrollment, marketing or business development unless offered to all competitors on a nondiscriminatory basis. By way of example but not limited to, an electric or gas public utility shall not:

1. Provide leads to its PUHC or a related competitive business segment of its public utility holding company;
2. Solicit business on behalf of its PUHC or a related competitive business segment of its public utility holding company;
3. Acquire information on behalf of or to provide to its PUHC or a related competitive business segment of its public utility holding company;
4. Share market analysis reports or any other type(s) of proprietary or non-publicly available reports, including but not limited to, market, forecast, planning or strategic reports, with its PUHC or a related competitive business segment of its public utility holding company;
5. Share customer usage or end use equipment information, obtained during the course of providing electric and/or gas public utility services, with its PUHC or a related competitive business segment of its public utility holding company.
6. Request authorization from its customers to pass on customer information exclusively to its PUHC or a related competitive business segment of its public utility holding company;
7. Represent or imply that the electric and/or gas public utility speaks on behalf of its PUHC or a related competitive business segment of its public utility holding company or that the customer will receive preferential treatment as a consequence of conducting business with the related competitive business segment of its public utility holding company; or
8. Represent or imply that its PUHC or a related competitive business segment of its public utility holding company speaks on behalf of the electric and/or gas public utility.

(p) Provided it is in compliance with this subchapter, and subject to the provisions of N.J.A.C. 14:4-3.4(g), an electric and/or gas public utility may offer or provide customers advice or assistance with regard to a related competitive business segment of its public utility holding company and/or other product and/or service providers upon the unsolicited request of the customer, so long as such advice or assistance is provided with regard to other competitors on a non-discriminatory basis.

(q) If a discount, rebate, or other waiver of any charge, penalty, or fee associated with products and/or services provided by an electric and/or gas public utility is offered to its PUHC or a related competitive business segment of its public utility holding company, the electric and/or gas public utility shall provide the following information within 24 hours of the time of the transaction, via a public posting:

1. The name of its PUHC or related competitive business segment of its public utility holding company involved in the transaction;
2. The rate charged;
3. The maximum rate;
4. The time period for which the discount, rebate, or waiver applies;
5. The quantities involved in the transaction;
6. The delivery points involved in the transaction;
7. Any conditions or requirements applicable to the discount, rebate or waiver, and a documentation of the cost differential underlying the discount as required in (f) or (g) above; and
8. Procedures by which a non-affiliated entity may request a comparable offer.

(r) An electric and/or gas public utility that provides its PUHC or a related competitive business segment of its public utility holding company a discounted rate, rebate, or other waiver of a charge, penalty or fee associated with services offered by the electric and/or gas public utility shall maintain, in compliance with N.J.A.C. 14:5-5.2 or longer if required by another government agency, for each billing period, the following information:

1. The name of its PUHC or a related competitive business segment of its public utility holding company being offered products and/or services provided by the electric and/or gas public utility in the transaction;
2. The related competitive business segment's role in the transaction, that is shipper, marketer, supplier, seller, etc.;
3. The duration of the discount or waiver;
4. The maximum rate;
5. The rate or fee actually charged during the billing period;
6. The quantity of products and/or services scheduled at the discounted rate during the billing period for each delivery point; and
7. Facts demonstrating that the discounted rate, rebate, or other waiver of a charge, penalty or fee was offered to non-affiliated entities on a non-discriminatory basis.

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

#### **14:4-3.4 Information disclosure**

(a) An electric and/or gas public utility may provide individual proprietary information to its PUHC or a related competitive business segment of its public utility holding company, and only with prior affirmative customer written consent or as otherwise

authorized by the Board and only if it is provided to unaffiliated entities on a non-discriminatory basis.

(b) An electric and/or gas public utility shall make available non-customer specific non-public information acquired as a result of operating the public utility's distribution system, including information about an electric and/or gas public utility's natural gas or electricity purchases, sales, or operations or about an electric and/or gas public utility's gas-related goods or services, electricity-related goods or services, to a related competitive business segment of its public utility holding company only if the electric and/or gas public utility makes such information available, via a public posting, to all other service providers on a nondiscriminatory basis, and keeps the information open to public inspection.

1. An electric or gas public utility is permitted to exchange proprietary information on an exclusive basis with its PUHC or a related competitive business segment of its public utility holding company, provided it is necessary to exchange this information in the provision of the corporate support services permitted by N.J.A.C. 14:4-3.5(i) and (j).
2. The PUHC's or related competitive business segment's use of such proprietary information is limited to its use in conjunction with the permitted corporate support services, and is not permitted for any other use.

(c) When an electric and/or gas public utility makes available a list of electric generation and/or gas service suppliers (suppliers), said list shall only contain those suppliers who are duly licensed by the Board and comply with the electric and/or gas public utility's Board-approved tariff to operate on its distribution system. Said list shall be maintained in alphabetical order, and not highlight or otherwise promote any particular supplier.

(d) An electric and/or gas public utility may provide non-public information and data which have been received from unaffiliated suppliers to its PUHC or a related competitive business segment of its public utility holding company or other non-affiliated entities only if the electric and/or gas public utility first obtains written affirmative authorization to do so from said unaffiliated supplier.

(e) An electric and/or gas public utility shall not solicit the release of such information exclusively to its PUHC or a related competitive business segment of its public utility holding company in an effort to keep such information from other unaffiliated entities.

(f) Except upon request by a customer or as authorized in (c) above or otherwise by the Board, an electric and/or gas public utility shall not provide its customers with any list of product and/or service providers, which highlights or otherwise identifies its PUHC or a related competitive business segment of its public utility holding company, regardless of whether such list also includes the names of unaffiliated entities.

(g) If a customer requests information about any affiliated product and/or service provider, the electric and/or gas public utility may acknowledge that such affiliated product and/or service provider exists, but shall provide no additional information unless it provides a list of all providers of gas-related, electricity-related, or other utility-related

products and/or services in business in its service territory, including the related competitive business segment of its public utility holding company.

1. Any such list shall include all suppliers licensed by the Board.
2. Where maintaining such list would be unduly burdensome due to the number of service providers, the electric and/or gas public utility shall not provide a list and may direct the customer to a generally available listing of service providers, for example, the Board, the telephone directory or Internet.

(h) An electric and/or gas public utility shall maintain complete and accurate records, documenting all tariffed and non-tariffed transactions with its PUHC and a related competitive business segment of its public utility holding company, including but not limited to, all waivers of tariff or contract provisions.

(i) An electric and/or gas public utility shall maintain such records in compliance with the time frame required by N.J.A.C. 14:5-5.2 or longer if another government agency so requires.

(j) The electric and/or gas public utility shall make such records available for Board and/or Rate Counsel review upon 72 hours' notice, or at a time mutually agreeable to the electric and/or gas public utility and the Board and/or Rate Counsel.

(k) An electric and/or gas public utility shall maintain a record of all contracts and related bids for the provision of work, products and/or services to and from the electric and/or gas public utility to and from the PUHC or related competitive business segments of its public utility holding company in compliance with N.J.A.C. 14:5-5.2 or longer if another government agency so requires.

#### **14:4-3.5 Separation**

(a) An electric and/or gas public utility, its PUHC and related competitive business segments of its public utility holding company shall be separate corporate entities.

(b) An electric and/or gas public utility and related competitive business segments of its public utility holding company shall keep separate books and records.

(c) Electric and/or gas public utilities' books and records shall be kept in accordance with applicable Uniform System of Accounts (USOA), 18 CFR Part 101, as amended and supplemented, which is incorporated by reference herein.

(d) The books and records of its PUHC or a related competitive business segment of an electric and/or gas public utility's holding company engaged in transactions, interactions and relations with the electric or gas public utility shall be open for examination by the Board.

(e) An electric and/or gas public utility shall not share office space, office equipment, services, and systems with a related competitive business segment of its public utility

holding company, except to the extent appropriate to perform shared corporate support functions as follows:

1. An electric and/or gas public utility may access the computer or information systems of a competitive related business segment of its PUHC or allow a related competitive business segment of its PUHC to access its computer or information systems, for purposes of the sharing of computer hardware and software systems and may share office space, office equipment, services and systems, provided adequate system protections are in place to prevent the accessing of information or data between the utility and its affiliate(s) which would be in violation of this subchapter.
  - i. Prevention of unauthorized access to computer and information systems shall be specifically addressed as part of an electric and/or gas public utility's compliance plan submitted pursuant to N.J.A.C. 14:4-3.7(b).

(f) Subsection (e) above does not preclude an electric and/or gas public utility from offering a joint product and/or service, provided such joint product and/or service is authorized by the Board and is available to all non-affiliated product and/or service providers on the same terms and conditions, for example, joint billing services.

(g) An electric and/or gas public utility and its PUHC or related competitive business segments of its public utility holding company may make joint purchases of products and/or services, but not those associated with merchant functions.

(h) The electric and/or gas public utility shall insure that all such joint purchases are priced, reported, and conducted in a manner that permits clear identification of the electric and/or gas public utility's portion and its PUHC or the related competitive business segment's portions of such purchases, and that direct costs of the joint purchase(s) as well as the indirect purchasing costs are apportioned between the electric and/or gas public utility and the related competitive business segment of the public utility holding company in direct proportion to the relative amounts of the purchased product(s) and/or service(s) received and/or utilized, respectively, and in accordance with this subchapter and other applicable Board allocation and reporting rules.

(i) An electric and/or gas public utility, its public utility holding company and related competitive business segments, or separate business segments of the public utility holding company created solely to perform corporate support services may share joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with N.J.A.C. 14:4-3.4 and this section, as well as other applicable Board pricing and reporting rules.

(j) Such joint utilization shall not allow or provide a means for the transfer of confidential customer or market information from the electric and/or gas public utility to a related competitive business segment of its public utility holding company in violation of this subchapter create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-

subsidization of a related competitive business segment of the public utility holding company. In the compliance plan required pursuant to N.J.A.C. 14:4-3.7(a) through (e), a senior corporate officer from the electric and/or gas public utility and public utility holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the electric and/or gas public utility follows the mandates of this subchapter, and to ensure the electric and/or gas public utility is not utilizing joint corporate support services as a conduit to circumvent this subchapter.

(k) A related competitive business segment of a public utility holding company shall not trade upon, promote, or advertise its relationship with the electric and/or gas public utility, nor use the electric and/or gas public utility's name and/or logo in any circulated material, including, but not limited to, hard copy, correspondence, business cards, faxes, electronic mail, electronic or hardcopy advertising or marketing materials, unless it discloses clearly and conspicuously or in audible language that:

1. The PUHC or related competitive business segment of the public utility holding company "is not the same company as , the electric and/or gas public utility";
2. The PUHC or related competitive business segment of the public utility holding company is not regulated by the Board; and
3. "You do not have to buy products in order to continue to receive quality regulated services from the electric and/or gas public utility."

(l) The requirement of the name and/or logo disclaimer set forth in (k) above is limited to the use of the name and/or logo in New Jersey.

(m) An electric and/or gas public utility, through action or words, shall not represent that, as a result of its PUHC or a related competitive business segment of the public utility holding company's relationship with the electric and/or gas public utility, its affiliate(s) will receive any different treatment than other product and/or service providers.

(n) An electric and/or gas public utility shall not offer or provide to its PUHC or a related competitive business segment of its public utility holding company advertising space in the electric and/or gas public utility's billing envelope(s) or any other form of electric and/or gas public utility's written communication to its customers unless it provides access to all other unaffiliated service providers on the same terms and conditions.

(o) An electric and/or gas public utility shall not participate in joint advertising or joint marketing activities with its PUHC or related competitive business segments of its public utility holding company which activities include, but are not limited to, joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals) to existing or potential customers.

1. The prohibition in (o) above notwithstanding, at a customer's unsolicited request, an electric and/or gas public utility may participate, on a nondiscriminatory basis, in non-sales meetings with its PUHC or a related competitive business segment of its public utility holding company or any other market participant to discuss technical or operational subjects regarding the electric and/or gas public utility's provision of distribution service to the customer;

2. Except as otherwise provided for by this subchapter, an electric and/or gas public utility shall not participate in any joint business activity(ies) with its PUHC or a related competitive business segment of its public utility holding company which includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;
3. An electric and/or gas public utility shall not participate jointly with its PUHC or a related competitive business segment of the PUHC in trade shows, conferences, or other information or marketing events held in New Jersey; and
4. An electric and/or gas public utility shall not subsidize costs, fees, or payments with its PUHC or related competitive business segments of its public utility holding company associated with research and development activities or investment in advanced technology research.

(p) Except as permitted in (i) and (j) above, an electric and/or gas public utility and its PUHC or related competitive business segments of its public utility holding company which are engaged in offering merchant functions and/or electric related services or gas related services shall not employ the same employees or otherwise retain, with or without compensation, as employees, independent contractors, consultants, or otherwise.

1. Other than shared administration and overheads, employees of the competitive services business unit of the public utility holding company shall not also be involved in the provision of non-competitive utility and safety services, and the competitive services are provided utilizing separate assets than those utilized to provide non-competitive utility and safety services.

(q) An electric and/or gas public utility and the PUHC or related competitive business segments of its public utility holding company shall not have the same persons serving on the Boards of Directors as corporate officers, except for the following circumstances:

1. In instances when this subchapter are applicable to public utility holding companies, any board member or corporate officer may serve on the holding company and with either the electric and/or gas public utility or a related competitive business segment of the public utility holding company, but not both the electric and/or gas public utility and a related competitive business segment of the public utility holding company.
2. Where the electric and/or gas public utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the related competitive business segments, the prohibition against any board member or corporate officer of the electric and/or gas public utility also serving as a board member or corporate officer of a related competitive business segment shall only apply to related competitive business segments operating within New Jersey.
  - i. In the case of shared directors and officers, a corporate officer from the electric and/or gas public utility and holding company shall verify, subject to Board approval, in the electric and/or gas public utility's compliance plan required pursuant to N.J.A.C. 14:4-3.7(a) through (d), the adequacy of the specific mechanisms and procedures in place to ensure that the electric and/or gas public



utility is not utilizing shared officers and directors in violation of the Act or this subchapter.

(r) All employee transfers between an electric and/or gas public utility and its PUHC or related competitive business segments of its public utility holding company providing or offering competitive services to retail customers in New Jersey which are engaged in offering merchant functions and/or electric related services or gas related services shall be consistent with the following provisions:

1. The electric and/or gas public utility shall make a public posting of all employee transfers within three working days.
2. An electric and/or gas public utility shall track and report annually to the Board all employee transfers between the electric and/or gas public utility and such related competitive business segments of its public utility holding company.
3. Once an employee of an electric and/or gas public utility is transferred to such related competitive business segment of its public utility holding company, said employee may not return to the electric and/or gas public utility for a period of one year, unless the related competitive business segment of the public utility holding company to which the employee is transferred goes out of business or is acquired by a non-affiliated company during the one-year period.
4. In the event that an employee is returned to the electric and/or gas public utility, such employee cannot be transferred for employment by a related competitive business segment of the public utility holding company which is engaged in offering merchant functions and/or electric-related services or gas-related services for a period of one year.

(s) Employees transferring from an electric and/or gas public utility to a related competitive business segment of the public utility holding company are expressly prohibited from using any information gained from the electric and/or gas public utility to the benefit of the related competitive business segment of the public utility holding company or to the detriment of other unaffiliated product and/or service providers.

1. Any electric and/or gas public utility employee hired by a related competitive business segment of the public utility holding company shall not remove or otherwise provide information to said affiliate which said related competitive business segment of the public utility holding company would otherwise be precluded from having pursuant to this subchapter.
2. An electric and/or gas public utility shall not make temporary or intermittent assignments, or rotations to related competitive business segments of its public utility holding company.

(t) All transfers of services not prohibited by this subchapter shall be subject to the following provisions:

1. Transfers from the electric and/or gas public utility to a related competitive segment of its public utility holding company of services produced, purchased or developed for sale on the open market by the electric and/or gas public utility will be priced at no less than the fair market value.
2. Transfers from a related competitive business segment of the public utility holding

company to the electric and/or gas public utility of services produced, purchased or developed for sale on the open market by the related competitive business segment of the public utility holding company shall be priced at no more than fair market value.

3. Prices for services regulated by a state or Federal agency shall be deemed to be the fair market value.
4. Services produced, purchased or developed for sale on the open market by the electric and/or gas public utility shall be provided to related competitive business segments of its public utility holding company and unaffiliated company(ies) on a nondiscriminatory basis, except as otherwise required or permitted by this subchapter or other applicable law.
5. Transfers of services not produced, purchased or developed for sale on the open market by the electric and/or gas public utility from the electric and/or gas public utility to related competitive business segments of its public utility holding company shall be priced at fully allocated cost.
6. Transfers of services not produced, purchased or developed for sale on the open market by a related competitive business segment of the public utility holding company from that related competitive business segment of the public utility holding company to the electric and/or gas public utility shall be priced at the lower of fully allocated cost or fair market value.

(u) All transfers, leases, rentals, licenses, easements or other encumbrances of utility assets to a PUHC or related competitive business segments of a PUHC not prohibited by this subchapter shall be subject to the following pricing provisions, consistent with all other applicable Board rules:

1. Transfers, leases, rental, licenses, easements or other encumbrances of utility assets from the electric and/or gas public utility to a related competitive business segment of its public utility holding company shall be recorded at the higher of fair market value or book value; and
2. Transfers, leases, rental, licenses, easements or other encumbrances of assets from a related competitive business segment of the public utility holding company to the electric and/or gas public utility shall be recorded at the lesser of book value or fair market value.

#### **14:4-3.6 Competitive products and/or services offered by a utility or related competitive business segments of a utility**

(a) Except as provided for in the Act or this subchapter, an electric and/or gas public utility or a related competitive business segment of an electric and/or gas public utility shall not offer competitive products and/or services without the prior review and approval by the Board of a proposed tariff in accordance with N.J.A.C. 14:1-11, except where pre-empted by Federal law.

1. A public utility holding company may offer any competitive service, including, but not limited to, electric generation service, telecommunications services, and cable service, to retail customers of an electric public utility that is owned by the holding company, but only through a related business segment of the holding company that

is not an electric public utility or a related business segment of the electric public utility. Competitive services shall be offered in compliance with all Board rules and regulations for carriers of these services.

2. A public utility holding company may offer a competitive service to retail customers of a gas public utility that is owned by the holding company, but only through a related business segment of the holding company that is not a related business segment of the gas public utility; provided however, that in the event that a gas public utility is not part of a holding company legal structure, competitive services may be offered by a related competitive business of that gas public utility as long as that related competitive business segment is structurally separated from the gas public utility, and provide that interactions between the gas public utility and the related competitive business segment are in compliance with this subchapter.

(b) An electric and/or gas public utility or its related competitive business segment may only offer to provide the following competitive products and/or services:

1. Metering, billing or administrative services that are deemed competitive by the Board pursuant to N.J.S.A. 48:3-56;
2. Products and/or services related to customer and public safety and reliability of non-competitive utility services as determined by the Board;
3. Competitive products and/or services that have been offered by an electric and/or gas public utility in the State prior to January 1, 1993 or that have been approved by the Board prior to February 9, 1999, to be offered by any electric and/or gas public utility in the State;
4. Products and/or services that are substantially similar, as determined by the Board, to competitive services that have been offered by any electric and/or gas public utility in the State prior to January 1, 1993 or that have been approved by the Board prior to February 9, 1999 to be offered by any electric and/or gas public utility in the State and, in the case of electric public utilities, for which a request for approval by the public utility seeking to offer such service had been filed with the Board on or before July 1, 1998; or
5. Competitive services to non-residential customers using existing public utility employees.

(c) For a competitive product and/or service that has been offered by an electric and/or gas public utility prior to January 1, 1993 or that has been approved by the Board prior to February 9, 1999, the electric and/or gas public utility may continue offering such product or service provided, however, that if the electric and/or gas public utility does not have a tariff for the service on file with the Board, the electric and/or gas public utility shall file with the Board within 60 days of final adoption of this subchapter a tariff setting forth the pricing terms, and other terms and conditions of the product and/or service.

(d) For any new competitive product and/or service which an electric and/or gas public utility or its related competitive business segment intends to offer, the electric and/or gas public utility shall file a proposed public tariff to the Board for its review and approval for the new product and/or service, along with the information in the attachment (Appendix A).

(e) Copies of the petition for approval, including proposed tariff and other required information, shall be certified and shall be accompanied by a certificate of service demonstrating that the petition was served on the Division of Rate Counsel simultaneous to its submission to the Board.

(f) All tariffs for competitive services filed with the Board shall be in the public records unless the rates contained therein are determined to be proprietary, in which case said tariffs shall be filed under seal and made available under the terms of an appropriate protective agreement as provided by Board Order. The public utility shall have the burden of proof by affidavit and motions to demonstrate the need for proprietary treatment. The rates shall become public upon Board approval.

(g) The Board may approve a proposed new competitive product and/or service filing if the electric and/or gas public utility has demonstrated and the Board determines that:

1. The proposed product and/or service is competitive, consistent with the standards for competitive products and/or services set forth in the Act and as determined by the Board;
2. The provision of the proposed product and/or service by the electric and/or gas public utility will not adversely impact the electric and/or gas public utility's ability to offer its non-competitive services to customers in a safe, adequate and proper manner, and that in all instances where resources are jointly deployed by the electric and/or gas public utility to provide competitive and non-competitive services and resource constraints arise, the provision of safety-and reliability-related and non-competitive services receives the higher priority;
3. The competitive product and/or service will be offered in a non-discriminatory manner to all customers; and
4. The price which the electric and/or gas public utility or its related competitive business segment will charge for the competitive products and/or service will equal or exceed the fully allocated cost to the electric and/or gas public utility or its related competitive business segment to provide the competitive product and/or service, and will not otherwise result in cross-subsidization.

(h) Notwithstanding any other provisions of this subchapter, the Board may determine that any service shall remain regulated for purposes of public safety and welfare. Notwithstanding the other provisions of this subchapter an electric and/or gas public utility shall continue to offer safety-related services, as determined by the Board, free of charge to its customers or as otherwise determined by the Board.

(i) All electric and/or gas public utility employees who are directly involved in the provision of non-competitive services as well as competitive services, or who are involved in the provision of more than one competitive service, shall maintain complete and accurate time logs to track and record the amount of time spent in the performance of each service. For those employees who travel to remote or customer locations in the provision of competitive services, time logs shall account for and allocate as time to the competitive service all time spent traveling to and from each competitive service job, as

well as the time spent performing related diagnostics, repair and/or installation, and allocated share of downtime.

(j) Each electric and/or gas public utility is responsible for and has an ongoing obligation to track, monitor and update, as necessary, its fully allocated cost of providing each competitive product and/or service offering by itself or its related competitive business segment, and to ensure that the price it or its related competitive business segment charges for each such competitive product and/or service at all times equals or exceeds the fully allocated cost of providing such competitive products and/or services and to file the notification required by (t) and (u) below.

(k) Each electric and/or gas public utility is responsible for and has an ongoing obligation to ensure that its related competitive business segment's offering of competitive products and/or services does not adversely impact its ability to provide safe, adequate and proper electric and/or gas public utility service.

(l) Each electric and/or gas public utility is responsible for and has an ongoing obligation to ensure that it or its related competitive business segment's competitive products and/or services are offered in a non-discriminatory manner to all customers.

(m) An electric and/or gas public utility employee engaged in providing non-competitive, regulated services shall not:

1. Solicit competitive services business on behalf of the public utility or its related competitive business segment, or provide business leads to the public utility's or its related competitive business segment's employees engaged in the offering of competitive services;
2. Share market analysis reports or other type(s) of proprietary or non-publicly available reports, including, but not limited to, market, forecast, planning or strategic reports, with the public utility's employees involved in the offering of competitive products and/or services, or with employees of a related competitive business segment of the public utility, unless such information is made available on a non-discriminatory basis to all other service providers and the information is kept open to public inspection;
3. Represent or imply that a customer will receive preferential treatment as a consequence of obtaining competitive products and/or services from the public utility or its related competitive business segment as opposed to a non-affiliated service provider;
4. Provide a customer preferential treatment as a consequence of obtaining competitive products and/or services from the public utility or its related competitive business segment as opposed to a non-affiliated service provider;
5. Process any request for non-competitive services offered by the electric and/or gas public utility on a preferential or discriminatory basis for a customer taking competitive products and/or services from the public utility or its related competitive business segment, as opposed to taking such products and/or services from a non-affiliated provider;
6. Condition or otherwise tie the provision of any non-competitive services provided by

the public utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any non-competitive products and/or services provided by the public utility to the taking of any competitive products and/or services from the public utility or its related competitive business segment;  
or

7. Assign customers to which the public utility currently provides products and/or services to its related competitive business segment, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors.

(n) Each electric and/or public utility and/or its related competitive business segment shall maintain, within its general ledger, separate subledgers for each competitive service and/or product offered. The subledgers shall contain assets, revenue and expense accounts as necessary to record all transactions of each competitive product and/or service offered. Each electric and/or gas public utility and/or its related competitive business segment shall also track the following:

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

(o) Each electric and/or gas public utility shall file with the Board, by no later than 45 days following the close of each calendar year, an annual financial report and, no later than six months thereafter each year, a semi-annual financial report, providing information on the financial performance of each competitive product and/or service offering made by the public utility and/or its related competitive business segment, utilizing the information compiled pursuant to (n) above.

(p) Each electric and/or gas public utility is responsible in the preparation of its annual and semi-annual reports to be filed in accordance with (o) above, to reflect the most current cost information available to report the financial performance of it and/or its related competitive business segment's competitive product and/or service offerings.

(q) All transfers, leases or rental of utility assets from an electric and/or gas public utility to a related competitive business segment of the public utility, for purpose of the asset becoming a dedicated asset of the related competitive business segment of the public

utility, shall be recorded at the greater of book cost or fair market value and shall be subject to approval by the Board in accordance with N.J.S.A. 48:3-7.

(r) The revenues received by an electric and/or gas public utility or its related competitive business segment(s) for the provision of a competitive product and/or service shall be treated in accordance with the applicable Uniform System of Accounts (USOA), 18 CFR Part 101. Specifically, the following revenues shall be treated in the following manner:

1. The level of gross revenues representing the fully allocated cost of providing the service shall be recorded in the respective competitive service revenue account and treated above-the-line for ratemaking purposes and credited to ratepayers;
2. For electric public utilities and related competitive business segments of electric public utilities except as set forth in (r)3 below, pursuant to N.J.S.A. 48:3-55(b), 50 percent of the total margins shall be recorded in respective competitive service revenue accounts and treated above-the-line for ratemaking purposes and credited to ratepayers via a credit to the market transition charge, or distribution service charge;
3. For a related competitive business segment of an electric public utility, 25 percent of the total margins shall be recorded in respective competitive service revenue accounts and treated above-the-line for ratemaking purposes and credited to ratepayers of the electric public utility via a credit to the market transition charge, or distribution service charge; and
4. For gas public utilities, the total margins shall be treated above-the-line for ratemaking purposes and credited to ratepayers.

(s) Revenues received by an electric and/or gas public utility as the result of a transfer of services or a transfer, lease or rental of assets to an affiliate shall be recorded in respective competitive service revenue accounts in accordance with the applicable Uniform System of Accounts (USOA), 18 CFR Part 101, and credited to ratepayers.

(t) Each electric and/or gas public utility is required to file a public tariff with the Board for each competitive product and/or service it or its related competitive business segment offers in the State, setting forth the pricing terms and other terms and conditions associated with these competitive products and/or services.

(u) Subsequent to the filing of an initial tariff for an existing competitive product and/or service offering pursuant to (c) above, or subsequent to the initial approval by the Board for the offering of a new competitive product and/or service by an electric or gas public utility or its related competitive business segment pursuant to (r)2 above, respectively, an electric and/or gas public utility or its related competitive business segment may make modifications to the pricing terms or other terms and conditions of a competitive product and/or service offering without further approval of the Board, provided that the electric and/or gas public utility shall notify the Board of the proposed change at least 30 days prior its intended implementation. Such notification shall include:

1. A proposed revised tariff with changes in pricing and/or other terms and conditions clearly identified; and

2. An affidavit from an officer of the electric and/or gas public utility, including justification, that the proposed changes do not render the product and/or service offering in non-compliance with the standards for approval set forth in (g) and (h) above.

(v) Any change by an electric and/or gas public utility or its related competitive business segment of a previously Board-approved competitive product and/or service offering, which change shall include, but is not limited to, an expansion of the product and/or service offering outside of the electric and/or gas public utility's franchise area, shall require the review and prior approval of the Board in accordance with (t) above.

(w) An electric and/or gas public utility proposing a substantive change in offering by itself or its related competitive business segment shall submit to the Board, at least 60 days prior to the intended effective date of the change in offering, information sufficient to demonstrate that the change in offering will not adversely impact the ability of said electric and/or gas public utility to provide safe, adequate and proper electric and/or gas public utility service.

(x) In the event that the Board determines that an electric and/or gas public utility or its connected competitive business segment has offered a competitive product and/or service without the prior approval of the Board pursuant to (a) through (f), (g) and (h), or (v) and (w) above, or without the prior notification to the Board pursuant to (t) and (u) above, such electric and/or gas public utility or its related competitive business segment shall immediately be required to cease and desist such unauthorized product and/or service offerings for a period of at least 90 days as determined by the Board and, subject to further hearings of the Board, may be subject to further penalties as determined by the Board pursuant to N.J.A.C. 14:4-3.9(b).

(y) In the event that the Board determines as a result of the audit performed pursuant to N.J.S.A. 48:3-56, N.J.A.C. 14:4-3.7(e) through (g) or by other means, after providing the electric and/or gas public utility an opportunity to be heard, pursuant to Section 8(f)3 of the Act, that an electric and/or gas public utility or its related competitive business segment has violated any provision(s) of this section, the Board may take one or more of the following actions:

1. Order a reimbursement, including interest, to competitive product and/or service offering customers of any overcharges resulting from the violation;
2. Order a reimbursement to electric and/or gas public utility ratepayers, including interest, of any cross-subsidy(ies) found to have been provided to the competitive product and/or service offerings;
3. Impose a penalty of up to \$10,000 for each such violation;
4. For a first violation:
  - i. Order a violating electric and/or gas public utility to cease some or all competitive product and/or service offerings and form a related competitive business segment of the public utility to perform the competitive product and/or service offerings; or
  - ii. Order a violating related competitive business segment of an electric and/or gas



public utility to cease some or all competitive product and/or service offerings and permit further competitive offerings only through a related competitive business segment of the public utility holding company; and

5. For a second and subsequent violations:

- i. Order a violating related competitive business segment of the previously-violating public utility to cease some or all competitive product and/or service offerings and permit further competitive offerings only through a related competitive business segment of the public utility holding company.

#### **14:4-3.7 Regulatory oversight**

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

(b) Said compliance plan shall demonstrate that there are adequate procedures in place to ensure compliance with this subchapter and shall include the electric and/or gas public utility's dispute resolution procedure pursuant to N.J.A.C. 14:4-3.8(a).

1. Said compliance plan shall contain an accurate list of all affiliates of an electric and/or gas public utility, including the business name and address, name and business telephone number of at least one officer of each affiliate and a brief description of the business of each affiliate.

- i. The information required by (b)1 above shall be updated within five business days of any change(s) thereto, and a public posting of the information shall also be made within that time period.

(c) Absent Board action to the contrary, the electric and/or gas public utility's compliance plan shall be in effect between its filing and the Board's decision.

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

(e) Every two years or more often at the discretion of the Board, the electric and/or gas public utility shall have an audit prepared by an independent auditor, to be selected by the Board, which verifies that the electric and/or gas public utility is in compliance with this subchapter.

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

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

#### **14:4-3.8 Dispute resolution**

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

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

(b) At a minimum, the procedure shall designate a person to conduct an investigation of the complaint and communicate the results of the investigation to the complainant, in writing, within thirty days after the complaint is received, including a description of any action taken.

(c) An electric and/or gas public utility shall report any violation of this subchapter to the Board, with a copy provided to the Rate Counsel, within five business days of becoming aware of any such violation(s).

(d) The electric and/or gas public utility shall maintain a log of all resolved and pending complaints. The log shall be subject to review by the Board and Rate Counsel and shall contain, at minimum, a summary of the complaint, the manner in which the complaint was resolved, or an explanation why the complaint remains pending.

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

(a) If, as a result of an audit conducted pursuant to N.J.A.C. 14:4-3.7(e) through (g) or by any other means, the Board determines that an electric and/or gas public utility has committed violations of N.J.A.C. 14:4-3.3, 3.4, 3.5, 3.7 or 3.8 which are not substantial violations as described under (b) below, the Board is authorized to impose a penalty of up to \$10,000 for each such violation upon said electric and/or gas public utility.

(b) If, as a result of an audit conducted pursuant to N.J.A.C. 14:4-3.7(e) through (g) or by any other means, the Board determines after providing the electric and/or gas public utility notice of a public hearing and an opportunity to be heard, that an electric and/or gas public utility has committed violations of N.J.A.C. 14:4-3.3, 3.4, 3.5, 3.7 or 3.8 which are substantial in nature so as to result in unfair competitive advantages for an electric or gas public utility, the Board is authorized to take some or all of the following actions:

1. Impose a penalty of up to \$10,000 for each such violation(s).
2. Order appropriate reimbursement to electric and/or gas public utility ratepayers, including interest.
3. For a first violation:
  - i. Order a violating electric and/or gas public utility to cease some or all competitive product and/or service offerings and form a related competitive business segment of the public utility to perform the competitive product and/or service offerings; or
  - ii. Order a violating electric and/or gas public utility to cease some or all competitive product and/or service offerings through a related competitive business segment of the public utility holding company; and/or
4. For a second violation:

- i. Initiate a hearing to reconsider its approval of the formation of the public utility holding company.

## **APPENDIX A**

### **SECTION 1 Timing and Review**

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

- a. The EDC/GDC shall file a petition at least sixty (60) days prior to the offering of any new maintenance, repair, replacement parts, service contract, power conditioning or equipment sales and/or lease or any other tariffed or non-tariffed EDC/GDC competitive services.
- b. The EDC/GDC shall provide Staff a draft petition at least two weeks prior to filing of said petition with the Board, so that EDC/GDC representative(s) may discuss the salient aspects of said filing with Board staff at a mutually agreed to time.

#### **2. Conditions for Review**

- a. The following conditions must be satisfied prior to Staff's review of said petition:
  - i. All filing requests are met and acknowledged by letter from Board Staff;
  - ii. Copies of the filing are served on the Division of the Ratepayer Advocate and other interested parties; and
  - iii. All confidentiality issues are resolved.

### **SECTION 2 Petition Filing and Confidentiality**

#### **1. Required Petition Contents**

- a. Said Petition shall include the following to show that the competitive service offering(s) will not impair the EDC/GDC's ability to provide safe, adequate and proper service and that the service shall be offered on a non-discriminatory basis:
  - i. Dispatching schedules;
  - ii. A prioritization schedule which would show how the EDC/GDC will handle emergency, same day customer originated orders and proposed appliance service orders;
  - iii. Detailed description of how new competitive service offering(s) will affect this schedule, meter reading schedules, routine maintenance, etc.;
  - iv. Titles, competitive and non-competitive service responsibilities and number of all employees who are anticipated to be involved in the proposed competitive service offering(s);
  - v. Detailed description of how the proposed competitive service offering(s) will be marketed throughout demographic segments of the customer base;
  - vi. Indicate where the proposed competitive service offering(s) will be marketed;
  - vii. Detailed description of the proposed competitive service offering(s), including a list of the parts covered under said offering(s);
  - viii. Draft bill inserts shall state that:
    1. The Board has not approved the rates;
    2. "All prices may vary and will depend upon contractor and type of work

- performed" if rates vary;
3. These services are also available from independent contractors;
  4. The EDC/GDC will provide free of charge, such services as gas leak investigations and other safety related services.
- ix. Derivation of the proposed charge(s) for each competitive service offering, which shall include calculations, working papers, statistical data and other information utilized. Said proposed charge(s) should exceed the fully allocated current cost of providing the proposed competitive service offering(s), which shall include the current cost of all equipment, vehicles, labor, fringe benefits, and overheads and administration expenses, other assets utilized and costs incurred, directly or indirectly, all current promotional, advertising and marketing costs, and the current fully loaded labor cost of management involved with this proposed competitive service offering(s);
  - x. Estimate of market penetration which may be defined as the estimated number of orders or calls;
  - xi. Estimated three year proforma revenue and expense statements relating to the proposed competitive service offering(s) which shall include all relevant calculations, working papers, surveys and other data in support of the projected revenues and expenses based upon a fully loaded labor rate and all promotional expenses;
  - xii. A comparison of proposed charges with those of other EDC/GDCs and independent contractors for the same type(s) of service and specifically provide service charges for the following:
    1. EDC/GDC itself;
    2. 5 to 10 in-State independent contractors;
    3. Any out-of-State utility affiliates;
    4. Any out-of-State independent contractors;
    5. Any New Jersey EDC/GDC that offers the proposed competitive services offering(s) outside of its franchise area.
  - xiii. Detailed explanation of the accounting treatment of revenues and costs of proposed competitive service offerings including whether the proposed competitive service offering(s) will be above or below the line;
  - xiv. Accounts and Account Numbers that will be utilized in booking the revenues and expenses pertaining to the proposed competitive service offerings to ensure that there is strict separation and allocation of the EDC/GDC's revenues, costs, assets, risks and functions between competitive business segment and EDC/GDC;
  - xv. Detailed explanation of how prices will be conveyed to customers if subcontractors are used;
  - xvi. Complete list of all competitive service offering(s) currently offered by the EDC/GDC, the date of implementation, date of Board Order and Docket Number;
  - xvii. In the alternative to xvi above, Competitive Service Tariffs, Competitive Service Schedules, etc., shall be maintained similar to EDC/GDC tariffs, rates schedules, etc., and should provide a full description of the service, current

- rates and may be filed in redacted and unredacted versions, with the date of the Board Order approving the current tariff as well as the respective Docket Number reflected on the bottom of the tariff sheet;
- xviii. Detailed description of the procedures the EDC/GDC will utilize to resolve any consumer complaints, dissatisfaction, etc., if the proposed competitive service offering(s) will be performed or rendered by a participating subcontractor; and
  - xix. Copies of a standard contract between the EDC/GDC and customer, the subcontractor and the customer, and EDC/GDC and the subcontractor which shall include provisions guaranteeing work quality assurance, customer satisfaction, warranties on parts and labor, response to customer complaints, pricing and response time, as agreed by the participating subcontractors.
2. Petition Confidentiality
- i. If the EDC/GDC claims that certain information contained in said Petition should be treated as confidential and proprietary, the EDC/GDC shall submit a confidentiality claim in accordance with the Board's Open Public Records Act (OPRA) rules at N.J.A.C. 14:1-12.

## **SUBCHAPTER 4. (Reserved )**

## **SUBCHAPTER 5. ENERGY LICENSING AND REGISTRATION**

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

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

1. Electric power suppliers;
2. Gas suppliers;
3. Energy agents, including energy consultants. An energy consultant is an energy agent that has met additional requirements in this subchapter, and is therefore eligible to access certain customer information;
4. Private aggregators;
5. Clean Power Marketers; and
6. Local distribution companies (LDCs).

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

(c) The requirements in this subchapter apply in addition to all other applicable requirements of N.J.A.C. 14:3, 14:4, 14:5 and 14:6; and other applicable law.

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

1. Provide electric generation service or gas supply service for use by retail customers;

*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on April 16, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

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

(e) A person shall not be eligible to participate in the Board's Clean Power Choice program, as set forth in "In The Matter Of A Voluntary Green Power Choice Program," BPU Docket No. EO05010001, dated January 24, 2005, without first obtaining a clean power marketer license under this subchapter.

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

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

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

1. Submit a completed application that meets the requirements at N.J.A.C. 14:4-5.3 or 5.6, as applicable;
2. Submit the appropriate fees, as required under N.J.A.C. 14:4-5.12; and
3. If the application is for an electric power supplier or gas supplier license, provide a surety bond that meets the requirements at N.J.A.C. 14:4-5.4.

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

(j) Applications, forms and information relating to this subchapter may be obtained at:  
New Jersey Board of Public Utilities  
ATTN: Division of Audits/Licensing  
2 Gateway Center  
Newark, New Jersey 07102  
[www.bpu.state.nj.us](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 or gas supplier license, or obtaining registration as an energy

agent (including an energy consultant) or private aggregator, shall be deemed public information, except for the following:

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

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

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

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

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

1. Lease or own space in a building in New Jersey. The space shall be sufficient to house all records required to be kept under this subchapter. The records may be kept in electronic form; and
2. Provide the street address of the New Jersey office. A post office box or rented mail-receiving space at a mail service store (for example, Mailboxes, Etc.) shall not constitute a New Jersey office.

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

1. An internet website and e-mail address through which Board staff and customers can contact the applicant;
2. A customer service representative, who is available by toll-free telephone during normal New Jersey business hours to respond to complaints or inquiries from customers; and
3. A regulatory affairs representative, who is available by telephone during normal New Jersey business hours, and who will do the following:
  - i. Assist staff in pursuing investigations on behalf of the Board and/or the Division of Consumer Affairs in the New Jersey Department of Law and Public Safety; and
  - ii. Facilitate the resolution of billing complaints and other problems.

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

be available to Board staff and/or customers within 24 hours, if necessary to resolve a problem.

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

1. Membership in PJM interconnection, as defined at N.J.A.C. 14:4-1.2;
2. A signatory to the PJM Reliability Assurance Agreement, as a Load Serving Entity;
3. Compliance with the reliability requirements of the New York Independent System Operator;
4. Compliance with the reliability standards and requirements of the following, as applicable:
  - i. The Federal Energy Regulatory Commission (FERC);
  - ii. All Board rules, orders, and directives; and
  - iii. Any other applicable reliability standards or requirements issued by any state, regional, federal or industry body with authority to establish such standards.

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

1. All applicable reliability standards and requirements of the Federal Energy Regulatory Commission;
2. The requirements of the rules for natural gas service at N.J.A.C. 14:6;
3. The requirements in the Liquefied Natural Gas Facilities: Federal Safety Standards: Part 193, Title 49 of the Code of Federal Regulations (CFR), which are incorporated herein by reference, as amended and supplemented; and
4. The requirements of the National Fuel Gas Code, ANSI Z223.1/NFPA 54, published by the American National Standards Institute, which are incorporated herein by reference, as amended and supplemented and which may be obtained at [www.ansi.org](http://www.ansi.org).

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

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

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



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

1. Information identifying the applicant and the applicant's business, including past and present name(s), address(es), and contact information for the company, dating back to its original formation and/or incorporation;
2. The name of the registered New Jersey energy agent that the business will retain, including the agent's New Jersey office address;
3. The appropriate application fee, set forth at N.J.A.C. 14:4-5.12;
4. Descriptive information regarding the applicant, and the applicant's business, including the business profile and history;
5. A list of services and/or products the applicant plans to offer in New Jersey;
6. Samples of documents that the applicant will use in the course of business, including a sample residential contract;
7. Evidence of financial integrity, including records of and information on past financial dealings and conditions, and references from financial institutions;
8. A statement disclosing existing, pending or past adverse investigations, judgments, litigation, criminal charges or convictions against any of the following:
  - i. The applicant;
  - ii. Any corporate officers, directors, partners, or owners of the applicant;
  - iii. Any key operating personnel of the applicant; or
  - iv. Any person that owns or controls ten percent or more of the shares of the applicant;
9. Any releases necessary to authorize the BPU to obtain or receive criminal history information;
10. A list of all affiliated TPSs, public utilities, and other persons;
11. A list of all persons, as defined at N.J.A.C. 14:4-1.2, that have a ten percent or greater ownership interest in the applicant's business;
12. Documentation that a notice has been sent, return receipt requested, to all LDCs in whose territory the licensee will do business, stating that the application has been submitted to the Board. This documentation may be in the form of a U.S. Postal Service Certified Mail Receipt;
13. Any other information that the Board requires for a particular applicant, in order to enable the Board to evaluate compliance with this subchapter, or to ensure compliance with State and/or Federal law;
14. If the application is for an electric power supplier or gas supplier license, a certification, signed by an officer of the corporation, stating that the applicant is in compliance with the retail choice consumer protection rules at N.J.A.C. 14:4-7; and
15. A certification, under oath, of truth and accuracy, signed by a corporate officer, partner, sole proprietor, or other appropriate legal representative of the applicant, attesting to the accuracy of the contents of the application, and to the fact that the sample contract and other material submitted as part of the application complies with this subchapter.

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

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

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

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

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

1. The applicant shall have 45 days from the date of the request to submit the additional information;
2. If the additional information is not submitted within this 45 day period, Board staff shall cancel the application and provide notice of the cancellation to the applicant; and
3. If an application is cancelled, any later application submitted by the same entity shall be deemed a new application and shall be accompanied by a new application fee.

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

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

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

1. \$250,000 for an electric power supplier license or a gas supplier license; or
2. \$25,000 for a clean power marketer license.

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

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

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

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

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

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

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

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

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

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

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

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

(e) A licensee shall maintain the surety bond required under N.J.A.C. 14:4-5.4 throughout the duration of the license, including any time during which the license term is extended under N.J.A.C. 14:4-5.6(a). The Board may increase the bond amount required if the Board determines that an increase is necessary to protect the interests of the ratepayers of New Jersey. A licensee shall report to the Board at any time when its sales volume has increased by 33% from its previously reported amount, and the Board may increase its surety bond accordingly.

(f) A licensee shall notify Board staff in writing within thirty days after any material change in the organizational structure or operation of a licensee's business.

(g) If a licensee undergoes a merger, or acquires or is acquired by another company, and the name of the resulting company remains the same, the licensee shall submit a licensing update, including any information about the new entity that is necessary for Board staff to evaluate the entity's compliance with this chapter. If the resulting company does not retain the name of the original licensee, the new entity shall submit an application for a new license in accordance with this subchapter, and shall meet all of the requirements that would apply if the entity had never held a license, including application fees and the issuance of a new surety bond.

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

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

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

1. Immediately stop all advertising and marketing activities;
2. Immediately stop enrolling new customers;
3. Continue to serve all existing customers (as of the date of license expiration) until directed otherwise by Board staff; and
4. Submit a complete application for a new license (not a renewal) within 45 days after license expiration, and/or submit a new surety bond within 45 days after surety bond expiration, as applicable.

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

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

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

(f) If the Board notifies an LDC that a supplier or marketer that is serving customers in the LDC's service territory does not have a valid license under this subchapter, or does not have the required surety bond, the LDC shall immediately stop doing business with the supplier or marketer, except under (b)3 above, or under an extension issued under (d) above. This subsection shall apply regardless of whether the person has never had a license; a license has expired; or a license has been denied, suspended or revoked.

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

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

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

(c) In accordance with N.J.A.C. 14:4-5.6(a), if a licensee has submitted a complete renewal application within the 30-day deadline in N.J.A.C. 14:4-5.7(a), the existing license shall not expire until a decision has been reached upon the renewal application.

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

1. Any changes to the information submitted in the licensee's most recent application for an initial license or license renewal;
2. The appropriate fee, set forth at N.J.A.C. 14:4-5.12;
3. Information regarding the number, types, and locations (by zip + 4 code) of residential customers being served by the licensee as of the date the renewal application is submitted;
4. Information regarding the licensee's sales and revenue, by month and customer class, during the term of the license that is being renewed;
5. Copies of relevant tax forms and reports;
6. Documentation that the licensee has maintained and continues to maintain the surety bond required under this subchapter;
7. Any other information necessary to enable Board staff to evaluate the licensee's continued compliance with the license being renewed, or with this subchapter;
8. If the application is for an electric power supplier or gas supplier license, a certification, signed by an officer of the corporation, stating that the applicant is in

compliance with the retail choice consumer protection rules at N.J.A.C. 14:4-7;  
and

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

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

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

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

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

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

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

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

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

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

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

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

1. Identifying and contact information for the registrant and the registrant's business;

*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on April 16, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

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

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

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

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

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

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

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

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

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

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

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

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

#### **14:4-5.10 LDC responsibilities**

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

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

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

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

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

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

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

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

1. Proof that the person is a registered energy agent, or, alternatively, all of the information required under this subchapter to register as an energy agent;
2. A \$10,000 surety bond; and
3. Documentation that the person maintains an office in New Jersey in accordance with N.J.A.C. 14:4-5.2(b).

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



*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on April 16, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

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

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

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

#### 14:4-5.12 Fees

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

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

(b) If an applicant applies for more than one license, the applicant shall submit the application fees for both licenses. For example, the application fee for both an electric power supplier license and a clean power marketer license would be \$2,500.00; and the fee for both an electric power supplier license and a gas supplier license would be \$2,050.00. Similarly, an applicant that applies for more than one license shall post a surety bond for the sum of the applicable amounts required at N.J.A.C. 14:4-5.4(f).

#### 14:4-5.13 Enforcement

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

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

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

1. The good faith efforts, if any, of the entity charged in attempting to achieve compliance;
2. The gravity of the violation or failure to comply with the requirements in this subchapter;
3. The number of past violations by the entity charged regarding this subchapter and other Board rules or orders; and
4. The appropriateness of the sanction or fine to the financial situation or customer

base of the company charged.

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

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

### **14:4-6.1 Scope**

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

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

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

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

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

### **14:4-6.2 Definitions**

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

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

"Energy aggregation program" means an arrangement for the procurement of energy and/or energy related services, in which a lead agency contracts with a TPS, so as to provide for the energy needs of participants in the program. An energy aggregation program established by a government aggregator is a type of cooperative purchasing

system, as defined in the rules of the Department of Community Affairs governing local public and public school cooperative purchasing, set forth at N.J.A.C. 5:34-7.

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

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

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

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

"Non-residential customer" means a commercial, industrial or institutional energy customer that is not a government entity that is subject to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.; the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq.; or the County College Contracts Law, N.J.S.A. 18A:64A-25.1 et seq.

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

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

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

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

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

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

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

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

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

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

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

(e) In contracting for services under this subchapter, a government aggregator shall comply with all applicable requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., the County College Contracts Law, N.J.S.A. 18A:64A-25.1 et seq., and N.J.A.C. 14:4-6.8, as applicable.

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

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

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

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

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

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

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

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

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

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

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

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

(e) A municipality or county may choose to include appliance repair services in its energy aggregation program. These services may be obtained for government use or, in

a government-private energy aggregation program, for use by residential and/or non-residential customers. However, appliance repair services shall be provided only to residential and non-residential customers that affirmatively choose to obtain these services through the energy aggregation program. Potential customers shall be advised of the option to obtain these services through the energy aggregation program as follows:

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

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

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

1. An Option 1 government-private energy aggregation program. An Option 1 program has the following characteristics:
  - i. The program automatically includes all residential customers in each participating municipality unless:
    - (1) The residential customer has contracted for service with a TPS prior to establishment of the program; or
    - (2) The residential customer opts-out, as defined at N.J.A.C. 14:4-6.2, of the program;
  - ii. The program may, at each participating municipality's discretion, include non-residential customers, as defined at N.J.A.C. 14:4-6.2, if the non-residential customers are located within the geographic boundaries of the participating municipality and opt-in, as defined at N.J.A.C. 14:4-6.2, to the program;
  - iii. The LDC is responsible for notifying residential customers of their option to participate in the program or to opt-out, and of notifying non-residential customers of the right to opt-in. This notice shall be provided prior to the advertisement for the receipt of bids for a TPS; and
  - iv. The LDC shall be the option administrator, as defined at N.J.A.C. 14:4-6.2; and
2. An Option 2 government-private energy aggregation program. An Option 2 energy aggregation program has the following characteristics:
  - i. The program automatically includes all residential customers in each participating municipality unless:
    - (1) The residential customer has contracted for service with a TPS prior to establishment of the program; or
    - (2) The residential customer opts-out of the program;
  - ii. The program may, at each participating municipality's discretion, include non-residential customers that:
    - (1) Are located within the geographic boundaries of the participating municipality; and
    - (2) Opt-in in accordance with N.J.A.C. 14:4-6.6; and

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

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

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

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

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

(i) An option administrator may choose to use the Internet as a means to accept opt-in or opt-out responses from potential participants in an energy aggregation program. Use of the Internet shall be accompanied with other, more widely accessible forms of communication.

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

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

(b) Each participating municipality in Option 1 government-private energy aggregation program shall execute an LDC aggregation agreement with each LDC that serves customers in the municipality, using the applicable form agreement found on the Board's website at [www.bpu.state.nj.us](http://www.bpu.state.nj.us). A detailed description of the LDC aggregation agreement is set forth at N.J.A.C. 14:4-6.7.

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

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

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

1. The LDC aggregation agreement has been signed by all parties to the agreement; and



2. If the LDC aggregation agreement contains any prior conditions that must be met before the notice is sent, all of these prior conditions have been met.

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

1. A statement that the participating municipality is establishing or participating in an energy aggregation program;
2. If the notice is to a residential customer, a statement that the residential customer has a right to opt-out of the program, but that if no opt-out response is submitted the customer will be included in the program;
3. If the notice is to a non-residential customer, a statement that the customer has a right to opt-in to the program, but that if no opt-in response is submitted the customer will not be included in the program;
4. If the notice is to a non-residential customer, a statement that by choosing to opt-in to the program, the customer has authorized the participating municipality or lead agency to obtain the non-residential customer's 12-month historical usage information;
5. A requirement that any opt-out or opt-in response be submitted to the option administrator within 30 calendar days after the postmark on the notice;
6. Directions on how to submit an opt-in or opt-out response; and
7. A telephone number and e-mail address for customer inquiries regarding the energy aggregation program.

(g) The Board shall post on its website a form for use in notifying customers under (c) above at [www.bpu.state.nj.us](http://www.bpu.state.nj.us). The form notice shall be used for all government-private energy aggregation programs, except if a program uses special pricing for renewable energy in accordance with N.J.A.C. 14:4-6.9(g), or includes appliance repair service. For these programs, the lead agency shall submit a draft notice to the Board secretary for prior approval. The draft notice shall include, at a minimum, all of the information required at (f) above.

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

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

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

1. The number of that LDC's residential customers, by rate class, that:
  - i. Are located within the geographic boundary of the participating municipality;
  - ii. Are not already being served by a third party supplier; and
  - iii. Did not submit an opt-out response during the 30-day response period;
2. The 12-month historical usage for each non-residential customer located within the geographic boundary of the participating municipality, that has chosen to opt-in to the

energy aggregation program. Less than 12 months of data may be supplied if the customer is new to the LDC system or, in the case of electric interval data, if the appropriate metering has been installed less than 12 months previously; and

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

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

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

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

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

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

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

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

(a) Each municipality or county that wishes to establish or participate in a government-private Option 2 energy aggregation program shall provide a copy of the resolution or

ordinance adopted pursuant to N.J.A.C. 14:4-6.4(c) to each LDC that serves the geographic area governed by the municipality or county.

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

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

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

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

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

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

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

1. The number of residential customers, by rate class, that are located within the geographic boundaries of the participating municipality and are not being served by a third party supplier;
2. The 12-month historical usage of the non-residential customers that the option administrator has identified as program participants. This information may be provided separately for each customer or as an aggregate amount; and
3. The 12-month historical usage for each government facility that each participating government aggregator has indicated will be included in the energy aggregation program. Less than 12 months of data may be supplied if the customer is new to the

LDC system or, in the case of electric interval data, if the appropriate metering has been installed less than 12 months previously.

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

(i) The lead agency shall provide a copy of the draft bidding documents to the Board and to the Ratepayer Advocate for their comment at least 30 calendar days prior to advertising for bids. The Board and the Ratepayer Advocate shall have 15 calendar days from receipt of the draft bidding documents to provide comments. The lead agency may accept or reject comments submitted by the Board and the Ratepayer Advocate.

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

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

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

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

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

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

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

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

(q) After receiving the information required under (p) above from the LDC, the lead

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

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

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

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

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

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

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

(a) After the adoption of an ordinance or resolution authorizing establishment of a government-private energy aggregation program, each participating municipality shall execute a LDC aggregation agreement with each LDC that serves customers in the municipality, using the applicable form agreement found on the Board's website at [www.bpu.state.nj.us](http://www.bpu.state.nj.us). This agreement governs the working relationship between the participating municipality and the LDC during the establishment and operation of the government-private energy aggregation program.

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

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

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

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

(d) The LDC aggregation agreement shall set forth the methods and procedures to be followed by both parties in performing their obligations under the agreement, including procedures for the transfer and handling of confidential customer information.

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

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

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

1. An estimate, by rate class, of the number of residential customers, if any, that will participate in the aggregation program;
2. An estimate of the energy needs of the non-residential customers, if any, that will participate in the aggregation program; and

3. A specific listing of all government facilities that will be served under the energy aggregation program, and an estimate of the energy needs of each.

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

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

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

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

(f) All expenditures and reimbursements of preliminary costs under this chapter shall be budgeted in accordance with the Local Budget Law, N.J.S.A. 40A:4-1 et seq., and procured pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

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

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

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

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

- (a) This section governs the rates for services provided to residential and non-residential customers under a government-private energy aggregation program.
- (b) A contract providing for electric generation service and/or gas supply service to residential customers shall not set a rate for such service that, at the time of the contract award, exceeds the benchmark price, as determined pursuant to this section, except that the rate for electric generation service may exceed the benchmark price in accordance with (g) below.
- (c) The contract may set a fixed price per kilowatt hour, or may include a pricing structure that allows for fluctuations in price during the life of the contract. However, the pricing structure shall not be changed without notice to the customers in accordance with N.J.A.C. 14:4-6.11(a).
- (d) The benchmark price for each rate class shall be calculated using a worksheet provided by the Board on its website at [www.bpu.state.nj.us](http://www.bpu.state.nj.us), and shall not exceed the applicable amount specified at (e) or (f) below.
- (e) The benchmark price for electricity generation service shall be:
1. The cost of basic generation service, as defined at N.J.A.C. 14:4-1.2, 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.
- (f) The benchmark price for gas supply service shall be the rate for basic gas supply service.
- (g) A contract providing for electric generation service and/or gas supply service to residential customers under a government-private energy aggregation program may set a rate for such service that is higher than the benchmark price only if both of the following criteria are met:
1. The electricity provided contains a percentage of class I and class II renewable energy, as defined at N.J.A.C. N.J.A.C. 14:8-1.2, that exceeds the applicable percentage required under the renewable portfolio standards at N.J.A.C. 14:8-2; and
  2. The participating municipality notifies all residential customers that will participate in or are eligible to participate in the program that an electricity rate higher than the benchmark price is under consideration. This notice shall be provided through the customer opt-out notice letter required under N.J.A.C. 14:4-6.5(g) and 6.6(s).



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

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

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

1. The specific responsibilities of the government aggregator and the TPS;
2. The charges, rates, and fees for services under the energy aggregation program;
3. If applicable, the method and procedures to be followed by the TPS to enroll and educate customers concerning the energy aggregation program;
4. The terms and conditions that shall govern the relationship between the TPS and each customer, which shall include provisions that:
  - i. Allocate the risks associated with providing services, between the TPS and the customer receiving the services;
  - ii. Allocate the risks associated with circumstances or occurrences beyond the control of the parties to the contract;
  - iii. Define default, and establishing remedies in case of default by a party to the contract; and
  - iv. Allocate the responsibility for any penalties that may be imposed by an LDC as a result of over-delivery of electricity or gas, under-delivery of electricity or gas, or non-performance by the TPS;
5. Provisions for the use by the TPS of the government aggregator's resources, equipment, systems or employees in connection with the contract;
6. The term of the contract;
7. Provisions indemnifying and holding the government aggregator harmless from all liabilities, damages and costs associated with any contract between a customer and the TPS;
8. A requirement that the TPS provide a performance bond if required by the government aggregator;
9. Procedures to ensure that participation in the aggregation program is consistent with this subchapter;
10. Any provisions necessary to ensure compliance with the Board's consumer protection rules at N.J.A.C. 14:4-7;
11. If appropriate, provisions requiring the TPS to provide certain communications to customers in a language other than English; and
12. Any other terms and conditions that the government aggregator deems necessary.

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

#### **14:4-7.1 Scope**

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

#### **14:4-7.2 Definitions**

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

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

"Redlining" means a procedure which involves unreasonable discrimination based upon race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location.

#### **14:4-7.3 Advertising standards**

(a) Any advertisements by a TPS which offers to customers optional services, whether such advertisement is in electronic, print, radio or television media, or via telemarketing or an internet website, which specifically targets residential customers for electric generation service or gas supply service, shall clearly and conspicuously state whether such optional services are provided at an additional charge which is not reflected in the advertised cost per kWh or per therm, or the advertised percentage savings.

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

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

1. A toll-free or local telephone number which a customer may call or website which a customer may access to request detailed information concerning the average price per kWh for and environmental characteristics of electric generation service or average price per therm for gas supply service over the term of a contract for the service being offered, exclusive of any charges for any optional services other than electric generation or gas supply service; and
2. The LDC(s) in whose service territory(ies) the TPS is offering services.

#### **14:4-7.4 Marketing standards**

(a) In marketing materials provided by the TPS to residential customers for the purpose of persuading the customer to authorize a switch to the TPS for electric generation service or gas supply service, whether such materials are in hardcopy form,

electronically or via internet websites, the following information, and that in either (b)1 or 2 below, shall be provided:

1. The average price per kWh for electric generation service or average price per therm for gas supply service over the term of a contract for the service being offered, exclusive of any charges for any optional services other than electric generation or gas supply service;
2. The period of time over which the advertised price is valid;
3. The term (duration) of the contract for which the advertised price is being offered;
4. The average price per kWh for electric generation service or the average price per therm for gas supply service being charged for basic generation service or basic gas supply service by the LDC over the same period;
5. The TPS's license number;
6. The LDC(s) in whose service territory(ies) the TPS is offering the advertised services;
7. Other materials or information which may be required to comply with the Environmental Disclosure Standards; and
8. A clear statement indicating whether or not the TPS offers budget billing.

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

1. The estimated percentage savings on the total bill which a customer will realize under the advertised price relative to the customer taking basic generation service or basic gas supply service from the LDC. The estimated percentage savings on the total electric bill shall not include and shall only represent the savings above and beyond the rate reductions which all electric customers receive under the Act whether they switch suppliers or not; or
2. If a TPS does not offer a fixed price or guaranteed price electric generation service or gas supply service, the TPS shall describe in clear and conspicuous language the mechanism or formula by which the price is determined, and provide a detailed customer bill comparison which demonstrates for a residential customer: for 250 kWh, 500 kWh, 1,000 kWh and 2,000 kWh plus any monthly fixed and/or variable charge(s) for each month of the year, the customer's total electric bill under the proposed contract with the customer's total electric bill at the same electricity usage levels for each month of the year if the customer were to remain on basic generation service; and for 50 therms, 100 therms, 150 therms and 200 therms plus any monthly fixed and/or variable charge(s) for each month of the year, the customer's total gas bill under the proposed contract with the customer's total gas bill at the same gas usage levels for each month of the year if the customer were to remain on basic gas supply service; for the term of the contract being offered; such TPS shall also clearly indicate the period of time for which the savings offer is valid, and the term (duration) of the contract being offered.

(c) If the Board determines that information other than that required under (a)4 and/or (b) above would provide customers with a more accurate understanding of the potential

savings from obtaining energy through the TPS instead of through BGS or BGSS, the Board may, by order, require that TPS marketing materials include that information in addition to, or instead of, the information listed in (a)4 and/or (b) above.

(d) The TPS shall comply with all FTC telemarketing rules, including the restriction on telemarketing between the hours of 9 pm. and 8 am.

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

(f) The TPS shall clearly state in its solicitations to the customer, and in its marketing materials, whether in hardcopy, electronically or via internet website, that switching to a competitive third party supplier is not mandatory, and the customer has the option of remaining with the LDC for basic generation service or basic gas supply service.

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

(h) The TPS shall not represent that it can terminate any services from the LDC, including but not limited to, delivery of electricity and/or natural gas.

(i) The TPS shall not make misrepresentations, in its solicitations or its marketing materials or any way, in violation of any standards implemented by the Board pursuant to the Act, of any other consumer protection laws or rules implemented or enforced by the Division of Consumer Affairs, or of the mechanics of the customer enrollment process adopted by the Board.

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

(k) A TPS shall not make a decision to market to a customer or customer group, or to accept or reject a customer, based upon race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location.

(l) Marketing to specific groups, such as housing associations, developments, senior citizen organizations, church/religious associations, and the like, shall not be considered discriminatory pursuant to this section. However, once a TPS has received applications from specific groups, the decision to accept or reject any customer or group thereof, shall not be based upon race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location.

(m) Marketing to specific LDC service territory(ies) shall not be considered discriminatory pursuant to this section. However, once a TPS has received applications from customers within a specific LDC service territory(ies), the decision to accept or reject any customer or group thereof, shall not be based upon race, color, national

origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location.

#### **14:4-7.5 Credit**

(a) A TPS shall employ uniform income, security deposit and credit requirement(s) for purposes of making decisions whether to offer service to a customer within the same customer class.

(b) A TPS shall maintain a written explanation of its income, security deposit and credit requirements, which shall be made available to the Board and the Division of Consumer Affairs within forty-eight hours after a request.

(c) A TPS shall apply such income, security deposit and credit requirements in a uniform manner for all customers for the same customer class.

(d) In the event that a TPS requires a security deposit from a customer, such deposit shall be maintained in an interest bearing escrow account, and the customer shall be provided a receipt.

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

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

(a) A TPS shall not provide electric generation service or gas supply service to a retail customer without the customer's written signature on a contract or such alternative forms of verification identified in N.J.A.C. 14:4-2.3 and as the Board may permit to initiate such service(s), for switching TPSs or for renewal thereof.

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

1. A clear statement of the duration of the contract;
2. The price per kWh or therm or, if a fixed pricing arrangement is not made, a clear and unambiguous statement of the precise mechanism or formula by which the price will be determined; if the contract contains no particular pricing terms, but rather, expresses the charges for service rendered on a percentage savings basis, the contract language shall clearly and conspicuously state the percentage savings being guaranteed, as well as the price or charges to which the percentage savings is being compared;
3. A complete list of any other fees, including but not limited to, early termination penalties, due date for payment, late payment fees and the number of days after which a late payment fee may be applied, and interest charges, which will or can be imposed on residential customers, including but not limited to the specific conditions under which such penalties and/or fees can be imposed;

*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on April 16, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

4. A statement of the residential customer's rights, which shall provide that the customer will receive a confirmation notice of its choice of supplier and that, at a minimum, the customer will have 14 calendar days from the date of the confirmation notice to contact its LDC and rescind its selection. Furthermore, that a contract for electric generation or gas supply service shall not be legally binding upon the residential customer until the 14 day confirmation period has expired, and the customer has not, directly or indirectly, rescinded his/her selection;
5. A statement of the TPS's termination rights, which shall explain the specific conditions under which the TPS may terminate service, and that at a minimum the TPS shall provide the customer with thirty days' written notice of the termination and an opportunity to remedy the termination condition. The notice shall state the TPS's rights to terminate the contract, regardless of whether the customer remedies the condition that triggered the termination notice; and
6. No statement which asks that any customers waive any rights they have under New Jersey or federal Consumer Protection laws.

(c) A TPS contract shall include the TPS' local or toll-free telephone number, the LDC's emergency and toll-free customer service telephone numbers and the Board's Division of Consumer Relations toll-free telephone number.

(d) A TPS contract shall state that the customer should call the LDC in the event that an electric/gas-related emergency, such as a gas leak or power outage, exists.

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

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

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

(h) A TPS shall file a sample copy of its residential contract(s) with the Secretary of the Board, with a copy provided to the Division of Consumer Affairs and the Division of Ratepayer Advocate on a confidential basis; the initial filing of the sample copy of TPS contract(s) shall include a consumer complaint resolution process; a TPS shall file a sample copy of subsequent revisions of its contract(s) with the Secretary of the Board, with a copy provided to the Division of Consumer Affairs and the Division of Ratepayer Advocate on a confidential basis, within three (3) business days.

(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 period.

(j) Where an affirmative written signature is not obtained for renewal of a residential electric generation service or gas supply service contract, the existing contract shall continue on a month-to-month basis under the current terms and condition and pricing.

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

#### **14:4-7.7 Customer bills**

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

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

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

(c) If a TPS does not issue separate bills for its services, the TPS shall provide to the LDC all of the information at (b)2, 4 and 8 above for inclusion in the LDC's consolidated bills. LDC bills shall comply with the Board's rules for all public utility bills at N.J.A.C. 14:3-7.5 and 7.6.

#### **14:4-7.8 Customer information**

(a) Customer information shall not be disclosed, sold or transferred to a third party without the affirmative written consent of the customer or alternative Board-approved consent methodology, except pursuant to N.J.A.C. 14:4-2.3, or under certain conditions, e.g., a third-party performing services directly for a TPS under a binding confidentiality agreement.

(b) In the case of a transfer or sale of a TPS, customer consent shall not be required to

transfer customer information to the subsequent owner of the business in order to maintain continuity of electric generation service or gas supply service.

#### **14:4-7.9 Complaints**

- (a) TPS shall use good faith efforts to respond to and resolve all complaints promptly.
- (b) If the TPS has been advised that the customer is not satisfied with the TPS's response, the TPS shall advise the customer that the customer can contact the Board, at 1-800-624-0241, to request an Alternate Dispute Resolution procedure or to file a formal complaint.
- (c) Each TPS shall maintain a record of the complaints received, how resolved, and still pending, for review by the Board upon request, within 3 days' notice.

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

- (a) A TPS shall not terminate a residential contract due to non-payment in cases where charges are in dispute, provided undisputed charges are paid and the TPS and customer agree to resolve the disputed charges within 30 days of the time that a customer has notified the TPS that charges are in dispute.
- (b) Residential customers may be terminated for non-payment at the time of the next meter reading but with at least the minimum 30 days' written notice, which shall include a toll-free or local telephone number of the TPS and the Board, the effective date, the reason for the contractual termination, timetable for the residential to choose another TPS before defaulting to basic generation service or gas service, and 15 to 30 days' notice to the LDC.
- (c) TPS shall not terminate a separate or independent residential contract due to non-payment of a non-residential contract.
- (d) TPS shall not terminate a residential contract for gas supply service or electric generation service for non-payment of another service, including gas supply service, gas related service, electric generation service or electric related service.

## **CHAPTER 8 RENEWABLE ENERGY AND ENERGY EFFICIENCY**

### **SUBCHAPTER 3 ENVIRONMENTAL INFORMATION DISCLOSURE**

#### **14:8-3.1 Scope**

- (a) Each electricity supplier or basic generation service provider serving retail customers in the State is required to disclose to such customers, including residential, commercial and industrial customers, a uniform, common set of information about the environmental



characteristics of the energy purchased by the customer. The environmental information shall be published in a standardized label format attached hereto as Appendices A, B, and C, incorporated herein by reference, and distributed as part of the customer's billing materials, and on customer contracts and marketing materials. This disclosure requirement is mandatory and applies to every electricity supplier and every electricity product, regardless of whether or not the supplier is making an environmental claim about the electricity product. The environmental information to be disclosed to the customer includes the following, as illustrated in Appendices A, B, and C:

3. Fuel mix associated with the generation of the electricity, including categories for coal, gas, hydroelectric (large), nuclear, oil and renewable energy, or regional average default values as determined by the New Jersey Board of Public Utilities (herein the "Board");
4. Air emissions, in pounds per megawatt hour, of sulfur dioxide, carbon dioxide, oxides of nitrogen, and any other pollutants that are associated with the generation of the electricity and that the Board may determine to pose an environmental or health hazard, or emissions default values determined by the Board; and
5. The electricity supplier's support of energy efficiency, as reflected in the number of discrete emission reduction credits that are based on energy conservation measures and that are retired pursuant to rules and regulations adopted pursuant to P.L. 1995, c.188.

(b) For the label in Appendix A, the environmental information shall be values based on actual data; for the label in Appendix B, the environmental information shall be a commitment by the supplier as to the electricity to be provided over the next year; and for the label in Appendix C, the environmental information shall be default values or averages determined in accordance with this subchapter.

(c) Electricity suppliers shall be permitted to elect whether to sell their entire portfolio of electricity supply as a single electricity product or to disaggregate their portfolio into distinct electricity products in accordance with N.J.A.C. 14:4-3.6(e).

(d) Environmental disclosure pertains to electricity purchases and not installed capacity purchases.

### **14:8-3.2 (Reserved)**

### **14:8-3.3 Definitions**

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

"Benchmark" means a reference point, describing emissions levels, to allow customers to make comparisons among alternative electricity products offered by suppliers. That is, a point of comparison for the air emissions associated with the electricity product being offered or sold to the customer. The specific benchmarks shall be based on the most recent data available from the Energy Information Administration and shall reflect the average emission rate of all electric generating units in New Jersey for SO<sub>2</sub>, CO<sub>2</sub> and NO<sub>x</sub>.

"Bilateral contract" or "bilateral wholesale contract" means a unit or system contract, or a contract for specified resources, between an electricity supplier and a generating company or between an electricity supplier and a wholesale power marketer.

"Contract for specified resources" means a contract between an electricity supplier and a generating company or wholesale power marketer:

1. In which the types of generating resources that may supply the electricity are specified, along with any other environmental criteria applicable to those resources;
2. Which requires the generating company or wholesale power marketer to deliver the resources into the PJM control area, or for Orange & Rockland, into the New York Power Pool (NYPP); and
3. Which requires that the generating company or wholesale power marketer be able to identify after the fact, and establish an audit trail to verify, the specific generating unit or units used to supply the contracts and to establish that the energy was generated and delivered into the PJM control area, or for Orange & Rockland, into the NYPP, and was not sold more than once.

"Default values" means the fuel mix and air emissions information set forth by the Board that electricity suppliers shall be allowed to disclose to retail customers in place of the actual fuel mix and air emissions information data, when required to do so pursuant to this subsection. The default value for fuel mix (energy source) is set forth in Appendix F, Table I. The default value for air emissions shall be the PJM average adjusted, as set forth in Appendix F, Table II.

"Electric generating unit" means a unit that generates electricity, if the owner or operator of the unit sells any portion of the electricity generated by the unit (or where the electricity produced by the unit is co-mingled at the facility at which the unit is located with electricity produced by another unit, sells any portion of the co-mingled electricity).

"Electricity supplier" has the same meaning as "electric power supplier", as defined at N.J.A.C. 14:4-1.2.

"Energy Information Administration" means the Energy Information Administration of the United States Department of Energy.

"Environmental characteristics" means, in respect to electricity that is supplied to a retail customer:

*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on April 16, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

1. The fuel mix used to provide the energy; and
2. The amount of emissions associated with electric generating resources which produced the electricity.

"Generating company" means a company that owns electric generating resources.

"Fuel" means the material used in an electric generating unit to provide the energy to produce electricity.

"Generator" means a device that produces electricity.

"Incumbent utility" means, in New Jersey, the following electric public utilities: Atlantic Electric Company, GPU Energy, Rockland Electric Company and Public Service Electric and Gas Company or, as applicable, their corporate successors.

"Imported power" means electricity sold into the PJM control area from another control area.

"Load-serving entity," or "LSE" means an electric utility providing basic generation service, or an entity or organization that is licensed to serve retail load in New Jersey, otherwise referred to as an electricity supplier.

"On-site generation facility" means a generation facility, and equipment and services appurtenant to electric sales by such facility to the end use customer located on the property or on property contiguous to the property on which the end user is located. An on-site generation facility shall not be considered a public utility. The property of the end use customer and the property on which the on-site generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an easement, public thoroughfare, transportation or utility-owned right-of-way.

"Owned generation" means electric power produced by electric generating resources located within the PJM control area that are owned by an electricity supplier. However, an electricity supplier that is an unregulated affiliate of an incumbent utility shall not be considered an owner of electric generating resources that are owned by such utility.

"Program Administrator" means the office, to be established by the Board, to implement and oversee New Jersey's environmental information disclosure program.

"Retail load" means the demand of retail customers for electricity.

"Schedule" means the process by which a generator, electricity supplier, or wholesale power marketer informs the PJM ISO or the NYPP ISO (in the case of Rockland Electric), or the PJM ISO or NYPP ISO itself determines, that a specific generating unit or units will operate for a specific period of time.

"Spot market" means the regional market administered by the PJM ISO in which electricity is scheduled by the PJM ISO for purchase and sale on the basis of a bid price. This term does not include the scheduling of bilateral contracts for the purchase and sale of hourly energy based on bid prices submitted by market participants other than the PJM ISO.

"System contract" means a bilateral contract between an electricity supplier and a generating company, or between an electricity supplier and a wholesale power marketer, pursuant to which the supplier purchases a share of a generating company's system power which is specifically identified in the contract and is backed by the generating company's assets, excluding power that is sold pursuant to unit contracts or contracts for specified resources.

"System power" means all of the electric power generated by all units which are owned by a single generating company and located within the control area from which the power is being sold, excluding power that is sold pursuant to unit contracts or contracts for specified resources.

"Unit contract" means a contract between an electricity supplier and a generating company, or between an electricity supplier and a wholesale power marketer:

1. In which the generating unit or units are specified and receipt of electricity is tied to the performance of such unit or units;
2. For electricity for which the supplier has scheduled transmission into the PJM control area, or in Rockland & Orange's case, into the NYPP control area; and
3. With respect to which the control area operator in the generator's control area is able to verify the electricity being supplied was generated by the specified unit or units.

For the purposes of environmental disclosure, any contracts entered into under Federal PURPA or other similar state authority between an electric public utility serving retail load in New Jersey and an independent power producer shall be considered a unit contract.

"Wholesale electricity" means power sales or purchases that do not meet the definition of unit or system contracts, or contracts for specified resources.

(b) The following are measurements, abbreviations, and acronyms used in this subchapter:

Board or BPU	New Jersey Board of Public Utilities
Btu	British thermal unit
CO <sub>2</sub>	carbon dioxide
DER	Discrete Emission Reduction (credits)
EIA	Energy Information Administration
hr	hour
ISO	Independent System Operator
kWh	kilowatt hour

*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on April 16, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

lb	pound
LSE	load-serving entity
mmBtu	million Btu
MWh	megawatt hour
NJDEP	New Jersey Department of Environmental Protection
NOx	nitrogen oxides (or oxides of nitrogen)
NUG	Non-utility generator
NYPP	New York Power Pool
OMET	open market emission trading
PJM	Pennsylvania/New Jersey/Maryland (control area)
SO <sub>2</sub>	sulfur dioxide
T & D	transmission and distribution
ton	2000 pounds
USEPA	US Environmental Protection Agency

#### **14:8-3.4 Environmental information required**

(a) Pursuant to the mandates embodied in P.L. 1999, c.23, the rules for environmental disclosure to retail customers require every electric service supplier to provide the following:

1. Standardized environmental information: Environmental disclosure information distributed to retail customers shall contain the following information:
  - i. Fuel mix, expressed in percent of the electricity provided that has been produced from each fuel;
  - ii. Air emissions, expressed in pounds of emissions per megawatt-hour of electricity supplied (lbs/MWh); and
  - iii. The electricity supplier's support of energy efficiency, expressed in kilowatt-hours (kWh) saved per year;
2. Fuel mix (energy source) information:
  - i. Electricity suppliers shall disclose to retail customers the fuels in the fuel mix associated with the generation of the electricity product being provided or offered using the following energy resource categories: coal, gas, hydroelectric (large), nuclear, oil, and renewable energy, including captured methane gas, fuel cells, geothermal, hydroelectric (small), solar, solid waste, wind and wood or other biomass.
  - ii. An electricity supplier making a prospective offer for a "renewable energy" product may not be able to predict the exact percentages of each renewable resource it will provide. In this case, the electricity supplier may list a percentage of its fuel mix as being from "renewable energy," without providing specific percentages for wind, solar, hydroelectric or other generating resources. In disclosure for existing products, based on a historical record, specific percentages shall be given for each renewable resource.
  - iii. If an electric power supplier or basic generator service provider arranges with a customer for the installation and use of fuel cells, geothermal technology, solar technology, or other renewable energy technologies to generate electricity, the supplier may claim the equivalent amount of electricity generated by the

customer-generator as part of its renewable energy fuel mix. This shall not include renewable energy technologies funded through the Societal Benefits Charge;

3. Air emissions information: Each electricity supplier shall report for each electricity product it sells in New Jersey, the emissions of sulfur dioxide (SO<sub>2</sub>), oxides of nitrogen (NO<sub>x</sub>) and carbon dioxide (CO<sub>2</sub>), based on a weighted average (expressed in lbs/MWh); and
4. Energy efficiency information: Each electricity supplier serving retail customers in New Jersey shall disclose to its retail customers the amount of electricity that has been saved through the supplier's investments in energy efficiency. This shall not include electricity saved under energy efficiency programs funded through the Societal Benefits Charge. The supplier shall report the amount of electricity savings, expressed in kilowatt-hours, represented by the retirement of emissions credits based on the implementation of electrical energy efficiency measures. Such credits may be discrete emission reduction (DER) credits, generated pursuant to New Jersey's open market emissions trading (OMET) program (N.J.A.C. 7:27-30), or allowances allocated from the Incentive Reserve under New Jersey's NO<sub>x</sub> budget program. Documentation of the kWhs saved is a component of the quantification required for the generation or claiming of these credits; therefore, the value of the credits in kWhs can readily be determined by consulting this documentation. All electricity suppliers will be required to file each disclosure label with the Board or Program Administrator.

#### **14:8-3.5 Determining the fuel and emissions characteristics**

(a) For existing electricity products that have been offered for some period of time and are associated with a record of generation, the fuel mix and emissions information associated with such electricity products and disclosed on labels shall be based on "historical" data that reflect the generation of the power provided by the supplier in the preceding year. These existing products include electricity the utility provides pursuant to its basic generation service obligations. These disclosure labels shall reflect to the extent feasible the characteristics of the emissions and fuel mix information of the actual electric generating units or systems used by an electricity supplier to meet its retail load in the most recent 12-month period, or an approximation of such units or systems, developed pursuant to the methodologies set forth in N.J.A.C. 14:8-3.6.

1. Notwithstanding (a) above, where landfill gas or sewage or agricultural waste digester gas is co-fired in a fossil-fuel plant, a supplier may present the fuel mix and emissions characteristics associated with the landfill, sewage or agricultural waste digester gas alone, if the supplier has purchased the electricity generated from the landfill, sewage or agricultural waste digester gas separately and the fossil fuel generator has agreed not to reflect the fuel mix and emissions characteristics of the landfill, sewage or agricultural waste digester gas in disclosure regarding the fossil-fuel plant.

(b) For new products and for new market entrants in New Jersey, electricity suppliers will be permitted to disclose environmental information on a prospective basis for a period up to one year (four quarters).

1. If the new supplier, however, is making an environmental claim for its product, then it may not use the default values, but rather shall prospectively disclose fuel mix and emissions of the electricity it intends to provide for a period of at least 12 months. For products with environmental claims, the use of default values shall only be allowed for energy that is purchased from the spot market or wholesale electricity purchased by the supplier only if and as long as contractual information that can trace the energy to its originating system or unit is not available.
2. As of the beginning of the next quarter, once the 12-month or 18-month period (as applicable) has ended, the supplier will commence providing a label based on historical information, as described in the preceding paragraph.

(c) New market entrants and electricity suppliers introducing new products may base their disclosure labels on prospective environmental claims for a period of 12 months. After the 12 months, the supplier will revise its disclosure labels to reflect the environmental information associated with the actual electric generating units or systems that generated the power it supplied during those first 12 months. Also following the 12 months, for the electricity it supplied during the 12 month period, the electric supplier will document that it has met the fuel mix and emissions specifications set forth in its prospective claims using one or more of the following, as applicable:

1. The emissions and fuel mix characteristics of electricity generated by owned units or systems;
2. The emissions and fuel mix characteristics of electricity that the electricity supplier purchased through unit or system contracts or contracts for specified resources that the electricity supplier enter into for electricity generated within PJM or for imported power, where the electricity supplier has filed with the Board or Program Administration documentation which shows that the unit(s), specified resource(s) or system operated, that the electricity was transmitted to PJM and that the generating company has not sold the electricity to any other party; and
3. The default values for the fuel mix and emissions.

(d) As with disclosure based on historical data, electricity suppliers will determine the environmental characteristics of owned generation and electric power purchased through bilateral contracts by reference to information supplied by the generator or to publicly available information and will ascribe the default environmental characteristics set forth to all other resources.

(e) In determining whether a supplier has succeeded in documenting that the electricity provided has met the environmental claim for the new product, electricity suppliers will be permitted a margin of error. In respect to a claim for fuel mix, the claim will be considered to be met if the actual percentage of each given fuel type does not differ from the amount claimed by an amount equal to the lesser of 20 percent of the percentage indicated for any given fuel type or five percent of the total product. Thus, if an electricity supplier indicated that its product would include 10 percent wind power, it

would be permitted to include between eight percent and 12 percent wind power. A product advertised as "90 percent hydropower" could range between 85 percent and 95 percent. In no case would the electricity supplier be allowed to serve its retail customers with power generated from fuels other than those claimed on the label. No margin of error for fuel mix shall be permitted for products comprised of 100 percent of a specified resource. In respect to emissions, an emissions claim will not be considered to be met if the emissions exceed the claim by more than five percent. Providing more than the specified percentage of renewable energy shall not constitute noncompliance with an environmental claim.

(f) A new market entrant that does not choose to base disclosure labels on prospective environmental claims shall disclose the default claim set forth by the Board for the emissions and fuel mix information for all products it sells in New Jersey for a period of 18 months, after which time it will update its disclosure labels to reflect actual electric generating units or systems that generated the power it supplied during those first 18 months.

#### **14:8-3.6 Methodology for developing a disclosure label**

(a) During Phase I, each electricity supplier shall disclose the emissions and fuel mix associated with the electricity used to meet its retail load (except for new products) using information that is readily available to the supplier and verifiable by the Board or Program Administrator. The electricity will fall in one of the following categories:

1. Electricity generated by units owned by the supplier;
2. Electricity purchased by the supplier through bilateral unit contracts (including imported power);
3. Electricity purchased by the supplier through bilateral system contracts or contracts for specified resources (including imported power);
4. Wholesale electricity purchased by the supplier; and
5. Electricity purchased by the supplier from the spot market administered by the PJM ISO.

(b) With respect to electricity where its point of generation is known by the supplier (that is, owned generation or electricity generated or controlled by another company with which the supplier has a bilateral contract; and unit or system power scheduled with the PJM ISO for sale to the supplier), the supplier shall use the actual emission rates and fuel characteristics for the most recent year for which they are available pertaining to the specific electric generating units in determining the fuel mix and emissions values to be disclosed on its label. (See (d) below.) The supplier can determine these characteristics utilizing information that is reported to, and made available by, the US Environmental Protection Agency (USEPA) and Energy Information Administration (EIA), or information supplied by the generator that is made available to and is verifiable by the Board or Program Administrator. Each electricity supplier that is relying on publicly available information to determine the actual emission rates and fuel characteristics associated with electricity supplied will use the most recent year for which data is available, to develop its disclosure labels. The source of publicly available information shall be the



USEPA's Emissions and Generation Resource Integrated Database (EGRID) which can be accessed at: <http://www.epa.gov/cleanenergy/egrid/index.htm>.

1. These emission rates and fuel characteristics shall be applied to the actual generating units or systems used by the electricity supplier to meet its retail load for the 12-month period being reported on the label.
2. In the case where information regarding emissions associated with NUG contracts is not available from the generator, the electricity supplier may calculate the emissions characteristics for the contract using the generation permit levels of the NUG, as allowed by the NJDEP, and a conservative estimated emission heat rate factor approved by Board staff.

(c) With respect to electricity where its point of generation can not be readily known by the supplier (that is, electricity purchased on the spot market or from a wholesale supplier), default values set forth in Appendix F shall be used to determine the environmental information to be disclosed on the label.

(d) In developing disclosure labels, each category of electric generating resources shall be treated as follows:

1. Owned generation. An electricity supplier that owns electric generating units located in the PJM control area shall disclose the fuel mix and emissions associated with all electricity generated from those units, unless the electricity was sold in the wholesale market through a unit or system contract, or contract for specified resources. If, in the previous calendar year, an electricity supplier's owned generation exceeded its retail load, the electricity supplier shall ascribe the average environmental characteristics of its owned electric generating units (minus the electricity sold through unit or system contracts or contracts for specified resources to the wholesale market) to its retail sales. If, in the previous calendar year, the electricity supplier's owned generation was less than its retail load, the electricity supplier shall ascribe the average environmental characteristics of its owned generation (again subtracting the electricity sold through unit or system contracts or contracts for specified resources to the wholesale market) to the portion of its retail load that is equal to the electricity it generated during that period. The remaining retail load shall be ascribed the environmental characteristics of unit contracts, system contracts or the default values set forth in Appendix F, as applicable.
2. Unit contracts. An electricity supplier that purchases electric power through a unit contract shall ascribe the fuel mix and emissions associated with the specified unit or units to all electric power purchased through that contract. With respect to a unit contract for imported power, the electricity supplier may characterize this power with the electric generating unit's emissions and fuel mix information after filing the following with the Board or the Program Administrator: documentation that the unit or units generated the amount of electricity claimed during the specified period; documentation that the electricity was scheduled for transmission into the PJM control area, or in the case of Rockland & Orange, into the NYPP control area; and certification from the generating company that it has not sold the electricity claimed by the electricity supplier to any party other than

that electricity supplier. The certification documentation shall be included in the annual certification completed by an independent entity as set forth in N.J.A.C. 14:8-3.9. In the event that the electricity supplier does not file such information, the supplier shall characterize the electricity with the average environmental characteristics of the generating units owned by the company from which the electricity was purchased.

3. Contracts for specified resources. An electricity supplier that purchases electric power through a contract for specified resources shall ascribe the fuel mix and emissions associated with the resources actually used to supply the contract. With respect to imported power, the electricity supplier may characterize this power with the electric generating unit's emissions and fuel mix information after filing the following with the Board or the Program Administrator: documentation that the unit or units generated the amount of electricity claimed during the specified period; documentation that the electricity was scheduled for transmission into the PJM control area, or in the case of Orange & Rockland, into the NYPP control area; and certification from the generating company or wholesaler supplying the electricity supplier that the electricity claimed by the electricity supplier has not been sold to any party other than that electricity supplier. The certification documentation shall be included in the annual certifications completed by an independent entity as set forth in N.J.A.C. 14:8-3.9. In the event that the electricity supplier does not file such information, the supplier shall characterize the electricity with the average environmental characteristics of the generating units owned by the company in the control area from which the electricity was purchased.
4. System contracts. Electricity suppliers that purchase electric power through bilateral system contracts shall characterize this power with the generating company's average fuel mix and emissions (less any electricity sold through unit contracts) if, in the previous calendar year, the generating company's owned generation exceeded its retail load. Such purchases shall be considered to be undifferentiated power obtained from a wholesale supplier and characterized by the default fuel mix and emissions set forth in this chapter, if the seller's retail load exceeded its owned generation in the previous calendar year.
5. With respect to a system contract for imported power, an electricity supplier may characterize this power with the generating company's average emissions and fuel mix information after filing the following with the Board or the Program Administrator: documentation that the specified system generated the amount of electricity claimed during the specified period; documentation that the electricity was scheduled for transmission into the PJM control area, or in the case of Orange & Rockland, into the NYPP control area; and certification from the generating company that it has not sold the electricity claimed by the electricity supplier to any party other than that electricity supplier. The certification documentation shall be included in the annual certification completed by an independent entity as set forth in N.J.A.C. 14:8-3.9. In the event that the electricity supplier does not file such information, the supplier shall characterize the electricity with the average environmental characteristics of the generating units located in the control area from which the electricity was purchased.

6. Spot market purchases and wholesale electricity contracts. Electricity suppliers shall ascribe the default fuel mix and emissions to all electricity purchased from the spot market or purchased through wholesale electricity contracts. If a supplier can confirm the environmental characteristics of the energy from an undifferentiated wholesale electricity contract, it may report this data to the Program Administrator.

(e) Except for new products for which such information is not available, suppliers shall base disclosure for a product on a weighted average of the characteristics of the various electric generating units contracted to produce the electricity over the period of a single calendar year. The average emission rate (pounds per MWh) of a generating unit can, for most units, be determined by reference to the most recent data reported to, and made available to the public by, the USEPA and the EIA.

(f) Each electricity supplier shall be permitted to differentiate its electricity supply portfolio into discrete retail products. Such differentiation is subject to the following restrictions:

1. An electricity supplier's demonstration that a new electricity product supplied to New Jersey retail customers during a specific period met the environmental claims made for that product shall be based on owned generation or on one or more bilateral contracts. Any source of supply, where the generating unit or units are not so documented, shall be ascribed the default values for fuel mix or emissions characteristics;
2. The electricity supplier shall demonstrate its sources of electric supply, either from owned resources or through acquisitions in the wholesale market. The supplier shall be required to show that over a course of a given year its sources of supply were sufficient to meet its retail load for each of its products and for any wholesale sales it has made. The supplier shall also be able to demonstrate that no electricity has been double counted; and
3. The weighted average of the fuel mix and emissions disclosed for all products sold by an electricity supplier (both products for which an environmental claim is made and product(s) based on the remainder of the supplier's portfolio) shall correspond to the average fuel mix and emissions of the supplier's wholesale portfolio, minus the supplier's wholesale sales, or to the default fuel mix and emissions.

(g) All electricity suppliers shall be required to disclose in the standard format authorized by the Board the amount of electricity saved as a result of their investment in energy efficiency measures in New Jersey, including an indication that no electricity has been saved if the supplier has not made any such investments. Electricity savings that result from energy efficiency programs subsidized by the State-mandated Societal Benefits Charge authorized under N.J.S.A 48:3-60 may not be included in the electricity savings disclosed to retail customers. In order to be eligible to claim the savings, electricity suppliers shall document electricity savings resulting from efficiency measures or by retiring NOx allowances allocated under the State's NOx budget program on the basis of implementation of energy efficiency measures. (See N.J.A.C. 14:8-3.4(a)4 on energy

efficiency information.) Electricity suppliers may also claim credit for energy efficiency by purchasing and retiring DER credits or allowances created through energy efficiency measures implemented by another company. Emission credits and allowances shall be translated into electricity savings based on the MWH savings reported in the documentation for the generation of the emission credits for the claim of the allowances.

#### **14:8-3.7 Disclosure information updating and reporting requirements**

(a) Each electricity supplier (except for suppliers of new products) will be required to update and distribute the environmental information on its label(s) semi-annually. The disclosure shall be based on data reflecting the product sold during the most recent 12-month period. Suppliers relying on historical information for disclosure shall be required to provide updated labels on April 1 and October 1. This information shall be based on four quarters' information, but recognizing that some period is needed for information gathering and processing, a three month lag will be allowed between the date that disclosure of an updated label is required and the last day of the period on which the label is based. For example, an updated label issued on April 1, 2000, shall be based on data reflecting the generation of power provided from January 1 through December 31, 1999. An updated label issued on October 1, 2000 shall be based on data reflecting the generation of power from July 1, 1999 to June 30, 2000. An updated label issued on April 1, 2001, shall be based on data reflecting the generation of power provided between January 1, 2000, and December 31, 2001.

(b) Suppliers of basic generation service shall provide environmental information to basic generation customers according to the schedule set forth in the preceding paragraph and in Appendix H.

(c) Each electricity supplier of a new product for which an environmental claim is made shall be required to update its label after a 12-month period for which power was supplied to the customer. However, suppliers of new products shall distribute the label to their customers semi-annually, as set forth in Appendix H, whether making an environmental claim for the product or using the default label.

(d) A supplier that does not differentiate the electricity it supplies into distinct products on the basis of environmental characteristics shall disclose the same information on fuel mix, emissions and support of energy efficiency for all the electricity it sells. An electricity supplier that does create distinct products on the basis of environmental characteristics shall follow the rules for product differentiation set forth in N.J.A.C. 14:8-3.6(f) to develop different labels for different products, and shall document that the weighted average of all its products is consistent with the supplier's overall portfolio of electricity used to meet its total retail load.

(e) The electricity supplier shall develop the environmental information for the existing product's disclosure label by determining the fuel mix and emissions associated with the electric generating resources it relied on in the most recent four quarters to meet the retail load resulting from sales of that product. The supplier will base its calculation of

this environmental information upon: actual information associated with generation from which the fuel use and emissions characteristics are readily known by the supplier; and default fuel mix and emission characteristics associated with generation from which fuel use and emissions characteristics are not readily known by the supplier. For existing products, the use of default values shall only be allowed for energy that is purchased from the spot market or wholesale electricity purchases only if and as long as contractual information that can trace the energy to its originating system or unit is not available.

#### **14:8-3.8 Environmental disclosure distribution**

(a) Electricity suppliers will be required to disclose environmental information, in the uniform label format approved by the Board, to all prospective retail customers prior to signing them as customers. This does not apply in the case of a customer being returned to basic generation service provided by the local distribution company. Customers returned to basic generation service shall receive the next scheduled semi-annual report, as well as all subsequent reports. In addition, electricity suppliers shall include disclosure labels in: semi-annual mailings to all retail customers; all product-specific direct mail marketing materials or if a supplier offers only one product, in all direct mail marketing materials; all marketing materials that include a solicitation seeking to have the recipient sign up as a retail customer or that include an opportunity to enter into a contract, including those that are accessible to retail customers via computer; and any statement of terms and conditions sent to retail customers following sign-up.

1. Electricity suppliers shall be required to disclose that environmental information is available to the customer if electricity suppliers advertise in print advertisements such as newspapers published in New Jersey or newspapers that permit the purchase of advertising space for distribution in New Jersey in which a specific product is advertised. For specified products advertised, electricity suppliers shall indicate in all such materials that environmental information is available upon request, which, at a minimum, includes the environmental information provided in the standard label attached hereto as Appendices A, B, or C, and shall provide a toll-free telephone number through which retail customers can access this information, in addition to any mailing address or Internet website address.
2. In other marketing efforts (for example, broadcast, telemarketing) in which a specific product is advertised or offered, electricity suppliers shall inform retail customers that environmental information on the advertised products is available which, at a minimum, includes the environmental information provided in the standard label attached hereto as Appendices A, B or C, and shall provide a toll-free telephone number. If the electric power supplier or generation service provider maintains an Internet website, then the Internet address shall be provided.

(b) In April of each year, all New Jersey electric suppliers shall submit to the Board or the Program Administrator an annual report for the preceding calendar year (January through December) in accordance with guidelines established by the Board or the

Program Administrator. In its report, each electricity supplier shall, on an annual basis, disclose all of the electricity products it has offered for sale in New Jersey, including the weighted average emissions performance (expressed in lbs/MWh) for NO<sub>x</sub>, SO<sub>2</sub>, and CO<sub>2</sub> and the weighted average fuel mix of all products sold to retail customers in New Jersey. An electricity supplier's annual report shall also include information, including the weighted average emissions performance (expressed in lbs/MWh) for NO<sub>x</sub>, SO<sub>2</sub>, and CO<sub>2</sub> and the weighted average fuel mix of the generating resources owned by all affiliated companies in the Eastern Interconnection. The boundaries of the Eastern Interconnection are established by the North American Electric Reliability Corporation (NERC) and can be viewed on its website at NERC.com.

1. An electricity supplier shall also inform all its retail customers annually that such a report is available upon request and shall provide a toll-free telephone number through which retail customers can obtain this information. An electricity supplier shall also provide to all its retail customers the Internet site address maintained by the Board or Program Administrator as set forth in (c) below to allow customer Internet access to its annual report.

(c) The Program Administrator shall maintain an Internet site with information relevant to environmental disclosure. The Administrator shall see that the disclosure labels of all products supplied in New Jersey by all New Jersey registered electricity suppliers are posted on the site. The Internet site shall include other related information such as each supplier's annual report and whether each company has met its claims, and whether it has been fined or penalized by any State agency in relation to State disclosure requirements.

#### **14:8-3.9 Certification by an independent entity**

(a) Prior to distributing disclosure information to customers and annually thereafter, each supplier of an existing product shall obtain a certified verification of the environmental information to be disclosed from a certified public accountant (CPA) that is independent of such electricity supplier. Any electricity supplier of a new electricity product who makes a specific environmental claim on the product's disclosure label, including a claim of support for energy efficiency, shall, following the 12-month or longer period during which the claim is made, demonstrate that the claim was met within the allowable limits, and obtain a certified verification from an independent CPA that the demonstration is complete, accurate and true. Electricity suppliers of new electricity products who rely on the allowed default values for the initial 18-month period are not required to obtain verification or audit of the default emissions and fuel mix information.

(b) The CPA shall certify that the environmental information disclosed on the label has been properly determined, including that the supplier's wholesale portfolio information is based on an accurate calculation of the emissions of owned generation units and of units and/or systems for which the supplier has bilateral contracts; and that proper default values have been used for electricity obtained from wholesale electricity purchases and purchases through the spot market.

(c) Both for existing products and for verification that the product environmental claims have been met, the electricity supplier shall be required to file the CPA's certified verification with the Board or Program Administrator. Power purchase contracts do not need to be provided to the Board as supporting documentation, unless specifically requested by the Board or Program Administrator.

#### **14:8-3.10 Verification and penalties**

(a) Until a Program Administrator is able to execute its function, the Board will be responsible for periodically auditing compliance with environmental disclosure requirements, including the proper development and distribution of disclosure labels. When the Program Administrator is in place, it shall provide reports of such audits to the Board, the NJDEP, the Office of the Ratepayer Advocate, and the Division of Consumer Affairs, for their review. The Board shall set up a dispute resolution process through which electricity suppliers can obtain a review of the Program Administrator's calculations and findings.

1. Electricity suppliers that have made prospective claims shall provide to the Board or Program Administrator in their semiannual report a demonstration either that appropriate progress has been made toward meeting the claim or, after the end of the year, that the electricity provided met the environmental claims made. Following the 12-month period for which the claim was made, electricity suppliers shall have their demonstrations reviewed, verified, and certified by an independent CPA, prior to their submittals to the Board or Program Administrator. Actions taken by the Program Administrator or the Board to address a supplier's failure to meet environmental claims shall not be confidential.
2. With respect to prospective claims, while electricity suppliers shall be allowed a full calendar year to meet an environmental claim, they shall report on their progress to the Program Administrator quarterly. To do this, electricity suppliers shall "close the books" on each product after each three-month period and calculate the extent to which it has met the environmental claims for the product. This assessment shall be done with a simple average. For example, to demonstrate progress toward meeting a fuel mix claim, an electricity supplier that has provided electricity in the first two quarters based on purchases of natural gas to meet 20 percent and 30 percent, respectively, of its retail load for a particular product would average these percentages to show that it is on target to create an annual product consisting of 25 percent natural gas.
3. If the Program Administrator determines that any supplier has failed to meet its obligations, including its obligation to meet its environmental claims over the calendar year, the Program Administrator shall refer the matter to the Board for further action.

(b) The Program Administrator shall refer violations of disclosure requirements to the Board for their consideration and possible proceedings before the Board, the Office of Administrative Law, the Division of Consumer Affairs, or other venue. Where applicable and appropriate, the Board shall consult the Attorney General, the NJDEP, the Division of Consumer Affairs, and the Office of Ratepayer Advocate, in respect to these

referrals.

1. Any party determined by the Board, after notice and hearing, to have violated any provision of these standards relating to environmental disclosure shall be subject to any one or more of the following penalties consistent with provisions of P.L. 1999, c.23:
  - i. Suspension or revocation of the electric power supplier's license;
  - ii. Financial penalties as permitted by law; and
  - iii. Prohibition on accepting new customers.
2. In determining the appropriate sanction, the Board shall consider the following criteria and any other factors deemed appropriate and material to the supplier's failure to comply:
  - i. The good faith efforts, if any, of the entity charged in attempting to achieve compliance;
  - ii. The gravity of the violation or failure to comply with the requirements of this chapter;
  - iii. The number of past violations of this chapter and/or other Board rules by the entity charged; and
  - iv. The appropriateness of the sanction or fine to the size of the company charged.

**APPENDIX A Label Based On Actual Generation Data**

See accompanying PDF file.

**APPENDIX B Label For New Product Based On An Environmental Claim**

See accompanying PDF file.

**APPENDIX C Label For New Product Based On Default Information**

See accompanying PDF file.

**APPENDIX D (Reserved)**

**APPENDIX E**

Definitions of Fuel Types

Coal	Coal--Steam Turbine Pumped Storage Hydro Powered by Coal
Gas	Natural Gas--Steam Turbine Natural Gas--Simple Combustion Turbine Natural Gas--Combined Cycle Combustion Turbine LPG Pumped Storage Hydro Powered by Gas



Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on April 16, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

Hydro	Pondage Hydro Run-of-River Hydro
Nuclear	Boiling & Pressurized Water Reactors Pumped Storage Hydro Powered by Nuclear
Oil	Oil--Steam Turbine Oil--Simple Combustion Turbine Oil--Combined Cycle Combustion Turbine Diesel No. 2 Heating Oil Jet Fuel Gasoline Kerosene Pumped Storage Hydro Powered by Oil
Solar	Photovoltaics Fuel Cells Powered by Photovoltaics
Wind	Wind Turbines
Captured Methane Gas	Landfill Gas Sewage Gas Agricultural Waste Digesters Fuel Cells Powered by Methane
Biomass	Urban Wood Waste Pallet Waste Construction and Demolition Municipal Solid Waste Wood Mill Residue Wood Primary Wood Products Industries Secondary Wood Products Industries Harvested Wood Site Conversion Waste Wood Sivicultural Waste Wood Agricultural Residue Sustainable Yield Wood
Geothermal	Geothermal
Solid Waste Incineration	Municipal Solid Waste Tire Waste
Wave/Tidal Action	Wave/Tidal Action

## APPENDIX F

### Benchmark and Default Values

#### I. Default Values for the "Energy Source" Section of the Label

Coal	49%
Gas	7%
Hydroelectric (large)	2%
Nuclear	34%
Oil	6%
Renewable Energy Sources:	
Captured methane gas	0%
Fuel Cells	0%
Geothermal	0%
Hydroelectric (small)	0%
Solar	0%
Solid waste	2%
Wind	0%
Wood or other biomass	0%
<b>TOTAL</b>	<b>100%</b>

#### II. Benchmarks and Defaults for "Air Emissions" Section of the Label

	BENCHMARKS (pounds per megawatt-hour)	DEFAULTS (pounds per megawatt-hour)
CO2	1,213	1,525
NOx	3.0	4.6
SO2	2.5	9.9

### APPENDIX G (Reserved)

### APPENDIX H

#### Label Update and Distribution Timing Requirements

##### NEW PRODUCT LABEL (CLAIM OR DEFAULT)

	Date of label update	Reporting period on label	Distribution to customer

Initial prospective label	Commencement of marketing	12 month period for which power will first be provided in New Jersey	Commencement of marketing & six months after power is first provided
First historical label	3 months after the end of the 12 month period	The same time period used on the prospective label (above)	3 months after the end of the 12 month period
Future historical labels	Semiannually		

## **SUBCHAPTER 4. NET METERING AND INTERCONNECTION STANDARDS FOR CLASS I RENEWABLE ENERGY SYSTEMS**

### **14:8-4.1 Scope**

(a) This subchapter sets forth net metering requirements that apply to electric power suppliers, basic generation service providers and electric distribution companies, as defined at N.J.A.C. 14:4-1.2, which have residential or small commercial customers who generate electricity using class I renewable energy.

(b) This subchapter also sets forth requirements for the interconnection of customer-generator facilities, including those that generate class I renewable energy, with electric distribution systems, as those terms are defined at N.J.A.C. 14:4-1.2 and N.J.A.C. 14:8-1.2.

### **14:8-4.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1 and in 14:8-1.2.

"Annualized period" means a period of 12 consecutive monthly billing periods. A customer-generator's first annualized period begins on the first day of the first full monthly billing period after which the customer-generator's facility is interconnected and is generating electricity.

"Applicant" means a person who has filed an application to interconnect a customer-generator facility to an electric distribution system.

"Area network" means a type of electric distribution system served by multiple transformers interconnected in an electrical network circuit, which is generally used in large metropolitan areas that are densely populated, in order to provide high reliability of

service. This term has the same meaning as the term "secondary grid network" as defined in IEEE standard 1547 Section 4.1.4 (published July 2003), as amended and supplemented, which is incorporated herein by reference. IEEE standard 1547 can be obtained through the IEEE website at [www.ieee.org](http://www.ieee.org).

"Avoided cost of wholesale power" means the average locational marginal price of energy in the applicable utility's transmission zone. This cost can be obtained through the website maintained by PJM Interconnection at [www.pjm.com](http://www.pjm.com).

"Customer-generator" means a residential or small commercial customer that generates electricity, on the customer's side of the meter.

"Customer-generator facility" means the equipment used by a customer-generator to generate, manage, and monitor electricity. A customer-generator facility typically includes an electric generator and/or an equipment package.

"Equipment package" means a group of components connecting an electric generator with an electric distribution system, and includes all interface equipment including switchgear, inverters, or other interface devices. An equipment package may include an integrated generator or electric source.

"Fault current" means electrical current that flows through a circuit and is produced by an electrical fault, such as to ground, double-phase to ground, three-phase to ground, phase-to-phase, and three-phase. A fault current is several times larger in magnitude than the current that normally flows through a circuit.

"Good utility practice" has the same meaning as assigned to this term in the Amended and Restated Operating Agreement of PJM Interconnection (October 2003), as amended and supplemented, which is incorporated herein by reference. The Operating Agreement can be obtained on the PJM Interconnection website at [www.pjm.com](http://www.pjm.com). As of October 4, 2004, the Operating Agreement defines this term as "a practice, method, policy, or action engaged in and/or accepted by a significant portion of the electric industry in a region, which a reasonable utility official would expect, in light of the facts reasonably discernable at the time, to accomplish the desired result reliably, safely and expeditiously."

"IEEE standards" means the standards published by the Institute of Electrical and Electronic Engineers, available at [www.ieee.org](http://www.ieee.org).

"Interconnection agreement" means an agreement between a customer-generator and an EDC, which governs the connection of the customer-generator facility to the electric distribution system, as well as the ongoing operation of the customer-generator facility after it is connected to the system. An interconnection agreement shall follow the standard form agreement developed by the Board and posted on the Board's website at [www.bpu.state.nj.us](http://www.bpu.state.nj.us).

“Point of common coupling” has the same meaning as assigned to this term in IEEE Standard 1547 Section 3.0 (published July 2003), as amended and supplemented, which is incorporated herein by reference. IEEE standard 1547 can be obtained through the IEEE website at [www.ieee.org](http://www.ieee.org). As of October 4, 2004, IEEE Standard 1547 Section 3.0 defined this term as "the point in the interconnection of a customer-generator facility with an electric distribution system at which the harmonic limits are applied."

“Small commercial customer” means a non-residential electrical customer with less than 10 MW of peak demand, as determined by the most recently measured annual peak demand on the customer’s demand meter, or by the peak load contribution for the customer as submitted by the EDC to the PJM RTO for load planning purposes.

“Spot network” has the same meaning as assigned to the term under IEEE Standard 1547 Section 4.1.4, (published July 2003), as amended and supplemented, which is incorporated herein by reference. IEEE standard 1547 can be obtained through the IEEE website at [www.ieee.org](http://www.ieee.org). As of October 4, 2004, IEEE Standard 1547 defined "spot network" as "a type of electric distribution system that uses two or more inter-tied transformers to supply an electrical network circuit." A spot network is generally used to supply power to a single customer or a small group of customers.

#### **14:8-4.3 Net metering general provisions**

(a) All Electric Distribution Companies (EDC) and supplier/providers, as defined at N.J.A.C. 14:4-1.2 and 14:8-1.2 respectively, shall offer net metering to their residential and small commercial customers, as defined at N.J.A.C. 14:8-4.2, that generate electricity, on the customer's side of the meter, using class I renewable energy sources, provided that the generating capacity of the customer-generator's facility does not exceed two megawatts, and does not exceed the amount of electricity supplied by the electric power supplier or basic generation service provider to the customer over an annualized period.

(b) The EDC shall develop a tariff providing for net metering. Each supplier/provider and EDC shall make net metering available to eligible customer-generators on a first-come, first-served basis.

(c) If, in a given monthly billing period, a customer-generator supplies more electricity to the electric distribution system than the EDC or supplier/provider delivers to the customer-generator, the EDC and supplier/provider shall credit the customer-generator for the excess. To do this, the EDC or supplier/provider shall reduce the customer-generator's bill for the next monthly billing period to compensate for the excess electricity from the customer-generator in the previous billing period.

(d) The EDC and supplier/provider shall carry over credit earned under (c) above from monthly billing period to monthly billing period, and the credit shall accumulate until the end of the annualized period, as defined at N.J.A.C. 14:8-4.2.

(e) At the end of each annualized period, the supplier/provider shall compensate the customer-generator for any excess kilowatt hours generated, at the electric power supplier's or basic generation service provider's avoided cost of wholesale power, as defined at N.J.A.C. 14:8-4.2.

(f) If a customer-generator switches electric suppliers, the electric power supplier or basic generation service provider with whom service is terminating shall treat the end of the service period as if it were the end of the annualized period.

(g) Each supplier/provider or EDC shall submit an annual net metering report to the Board. The report shall be submitted by June 30th of each year, and shall include the following information for the one-year period ending May 31st of that year:

1. The total number of customer-generator facilities;
2. The total estimated rated generating capacity of its net metering customer-generators;
3. The total estimated net kilowatt-hours received from customer-generators; and
4. The total estimated amount of energy produced by the customer-generators, which shall be calculated in accordance with customary industry standards.

(h) A customer-generator that is eligible for net metering owns the renewable attributes of the electricity it generates unless there is a contract with an express provision that assigns ownership of the renewable attributes.

(i) A customer-generator that owns renewable attributes may trade or sell the attributes to another person, or may apply to the Board in accordance with N.J.A.C. 14:8-2.9 for issuance of Solar Renewable Energy Certificates, or SRECS, based on solar electric generation. Once the PJM's Generation Attribute Tracking System (GATS), or another tracking system approved by the Board, is operational, the owner of renewable attributes may apply for issuance of class I renewable energy RECs. If RECs or SRECs are issued, the customer-generator or other recipient of the RECs or SRECs may trade or sell the REC or SREC, or may trade or sell the REC or SREC through an aggregator, or through a trading program authorized by the Board.

(j) A supplier/provider or EDC shall provide net metering at non-discriminatory rates that are identical, with respect to rate structure, retail rate components, and any monthly charges, to the rates that a customer-generator would be charged if not a customer-generator, except that a supplier/provider or EDC may use a special load profile for the customer-generator, which incorporates the customer-generator's real time generation, provided the special load profile is approved by the Board.

(k) A supplier/provider or EDC shall not charge a customer-generator any fee or charge; or require additional equipment, insurance or any other requirement; unless the fee, charge, or other requirement is specifically authorized under this subchapter, or the fee would apply to other customers that are not customer-generators.

(l) Nothing in this subchapter shall abrogate any person's obligation to comply with all

applicable Federal or State laws, or rules or regulations.

#### **14:8-4.4 Meters and metering**

(a) A customer-generator facility used for net metering shall be equipped with metering equipment that can measure the flow of electricity in both directions at the same rate. This is typically accomplished through use of a single bi-directional meter.

(b) A customer-generator may choose to use an existing electric revenue meter if the following criteria are met:

1. The meter is capable of measuring the flow of electricity both into and out of the customer-generator's facility at the same rate; and
2. The meter is accurate to within plus or minus five percent when measuring electricity flowing from the customer-generator facility to the electric distribution system.

(c) If the customer-generator's existing electric revenue meter does not meet the requirements at (b) above, the EDC shall install a new revenue meter for the customer-generator, at the company's expense. Any subsequent revenue meter change necessitated by the customer-generator, whether because of a decision to stop net metering or for any other reason, shall be paid for by the customer-generator.

(d) The electric distribution company shall not require more than one meter per customer-generator. However, an additional meter may be installed under either of the following circumstances:

1. The electric distribution company may install an additional meter at its own expense if the customer-generator consents; or
2. The customer-generator may request that the EDC install a meter, in addition to the revenue meter addressed in (c) above, at the customer-generator's expense. In such a case, the EDC shall charge the customer-generator no more than the actual cost of the meter and its installation.

#### **14:8-4.5 General interconnection provisions**

(a) Each EDC shall provide the following three review procedures for applications for interconnection of customer-generator facilities:

1. Level 1 – an EDC shall use this review procedure for all applications to connect inverter-based customer-generator facilities, which have a power rating of 10 kW or less, and which meet the certification requirements at N.J.A.C. 14:8-4.6. Level 1 interconnection review procedures are set forth at N.J.A.C. 14:8-4.7;
2. Level 2 – an EDC shall use this review procedure for applications to connect customer-generator facilities with a power rating of 2 MW or less, which meet the certification requirements at N.J.A.C. 14:8-4.6. Level 2 interconnection review procedures are set forth at N.J.A.C. 14:8-4.8; and
3. Level 3 – an EDC shall use this review procedure for applications to connect customer-generator facilities with a power rating of 2 MW or less, which do not

qualify for either the level 1 or level 2 interconnection review procedures. Level 3 interconnection review procedures are set forth at N.J.A.C. 14:8-4.9.

(b) Each EDC shall designate an employee or office from which an applicant can obtain basic application forms and information through an informal process. On request, this employee or office shall provide all relevant forms, documents, and technical requirements for submittal of a complete application for interconnection review under this section, as well as specific information necessary to contact the EDC representatives assigned to review the application.

(c) Upon request, the EDC shall meet with an applicant who qualifies for level 2 or level 3 interconnection review, to assist them in preparing the application.

(d) An application for interconnection review shall be submitted on a standard form, available from the EDC and posted on the Board's website at [www.bpu.state.nj.us](http://www.bpu.state.nj.us). The application form will require the following types of information:

1. Basic information regarding the applicant and the electricity supplier(s) involved;
2. Information regarding the type and specifications of the customer-generator facility;
3. Information regarding the contractor who will install the customer-generator facility;
4. Certifications and agreements regarding utility access to the customer-generator's property, emergency procedures, liability, compliance with electrical codes, proper operation and maintenance, receipt of basic information; and
5. Other similar information as needed to determine the compliance of a particular applicant with this chapter.

(e) An EDC shall not be responsible for the cost of determining the rating of equipment owned by a customer-generator, or of equipment owned by other local customers.

(f) The provisions of this subchapter that apply to interconnection are primarily intended for customer-generator facilities that are eligible for net metering; that is, renewable generation facilities with a capacity for no greater than two megawatts, which generate electricity for retail transactions. However, these provisions may be used for review of other interconnections at the discretion of the EDC.

(g) If the interconnection of a customer-generator facility is subject to interconnection requirements of FERC or PJM, the provisions of this subchapter that apply to interconnection apply to that facility only to the extent that they do not conflict with the interconnection requirements of FERC or PJM.

(h) If an applicant for interconnection disagrees with an EDC's determination of fact or need regarding matters covered in this subchapter, or if any person has a complaint regarding matters covered in this subchapter, the applicant or other person may file an informal complaint with the Board under N.J.A.C. 14:1-5.13, or may file a petition with the Board under N.J.A.C. 14:1-5.



#### **14:8-4.6 Certification of customer-generator facilities**

(a) In order to qualify for the level 1 and the level 2 interconnection review procedures described at N.J.A.C. 14:8-4.7 and 4.8, a customer-generator facility must be certified as complying with the following standards, as applicable:

1. IEEE 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems (published July 2003), as amended or supplemented, and which is incorporated by reference herein. IEEE Standard 1547 can be obtained through the IEEE website at [www.ieee.org](http://www.ieee.org); and
2. UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems (January 2001), as amended or supplemented, which is incorporated by reference herein. UL 1741 can be obtained through the Underwriters Laboratories website at [www.ul.com](http://www.ul.com).

(b) An equipment package shall be considered certified for interconnected operation if it has been submitted by a manufacturer to a nationally recognized testing and certification laboratory, and has been tested and listed by the laboratory for continuous interactive operation with an electric distribution system in compliance with the applicable codes and standards listed in (a) above.

(c) If the equipment package has been tested and listed in accordance with this section as an integrated package, which includes a generator or other electric source, the equipment package shall be deemed certified, and the EDC shall not require further design review, testing or additional equipment.

(d) If the equipment package includes only the interface components (switchgear, inverters, or other interface devices), an interconnection applicant shall show that the generator or other electric source being utilized with the equipment package is compatible with the equipment package and consistent with the testing and listing specified for the package. If the generator or electric source being utilized with the equipment package is consistent with the testing and listing performed by the nationally recognized testing and certification laboratory, the equipment package shall be deemed certified, and the EDC shall not require further design review, testing or additional equipment.

(e) A certified equipment package does not include equipment provided by the EDC.

#### **14:8-4.7 Level 1 interconnection review**

(a) Each EDC shall adopt a level 1 interconnection review procedure. The EDC shall use the level 1 review procedure only for an application to interconnect a customer-generator facility that meets all of the following criteria:

1. The facility is inverter-based;
2. The facility has a capacity of 10 kW or less; and
3. The facility has been certified in accordance with N.J.A.C. 14:8-4.6.

(b) For a customer-generator facility described at (a) above, the EDC shall approve interconnection under the level 1 interconnection review procedure if all of the applicable requirements at (c) through (g) below are met. An EDC shall not impose additional requirements not specifically authorized under this section.

(c) The aggregate generation capacity on the distribution circuit to which the customer-generator facility will interconnect, including the capacity of the customer-generator facility, shall not contribute more than 10 percent to the distribution circuit's maximum fault current at the point on the high voltage (primary) level that is nearest the proposed point of common coupling.

(d) A customer-generator facility's point of common coupling shall not be on a transmission line, a spot network, or an area network.

(e) If a customer-generator facility is to be connected to a radial distribution circuit, the aggregate generation capacity connected to the circuit, including that of the customer-generator facility, shall not exceed 10 percent (15 percent for solar electric generation) of the circuit's total annual peak load, as most recently measured at the substation.

(f) If a customer-generator facility is to be connected to a single-phase shared secondary, the aggregate generation capacity connected to the shared secondary, including the customer-generator facility, shall not exceed 20 kilovolt-amperes (kVA).

(g) If a single-phase customer-generator facility is to be connected to a transformer center tap neutral of a 240 volt service, the addition of the customer-generator facility shall not create an imbalance between the two sides of the 240 volt service of more than 20 percent of nameplate rating of the service transformer.

(h) An applicant shall submit an application for level 1 interconnection review on a standard form, available from the EDC and posted on the Board's website at [www.bpu.state.nj.us](http://www.bpu.state.nj.us). See N.J.A.C. 14:8-4.5(d). An applicant may choose to simultaneously submit an EDC's standard form interconnection agreement executed by the applicant.

(i) Within three business days after receiving an application for level 1 interconnection review, the EDC shall provide written or e-mail notice to the applicant that it received the application and whether the application is complete. If the application is incomplete, the written notice shall include a list of all of the information needed to complete the application.

(j) Within 10 business days after the EDC notifies the applicant that the application is complete under (i) above, the EDC shall notify the applicant that:

1. The customer-generator facility meets all of the criteria at (c) through (g) above that apply to the facility, and the interconnection will be finally approved upon completion of the process set forth at (k) through (o) below; or

2. The customer-generator facility has failed to meet one or more of the applicable criteria at (c) through (g) above, and the interconnection application is denied.

(k) If a customer-generator facility meets all of the applicable criteria at (c) through (g) above, the EDC shall, within three business days after sending the notice of approval under (j)1 above, do the following:

1. Notify the applicant if an EDC inspection of the customer-generator facility for compliance with this subchapter is required prior to starting operation of the facility; and
2. Execute and send to the applicant a level 1 interconnection agreement, unless:
  - i. The EDC does not require an interconnection agreement for customer-generator facilities that qualify for level 1 interconnection review; or
  - ii. The applicant has already submitted such an agreement with its application for interconnection, in accordance with (h) above.

(l) An applicant that receives an interconnection agreement under (k) above shall execute the agreement and return it to the EDC at least five business days prior to starting operation of the customer-generator facility (unless the EDC does not so require). The applicant shall indicate the anticipated start date for operation of the customer-generator facility. If the EDC requires an inspection of the customer-generator facility, the applicant shall not begin operating the facility until completion of the inspection.

(m) Upon receipt of the executed interconnection agreement from the customer-generator, and satisfactory completion of an inspection if required, the EDC shall approve the interconnection, conditioned on approval by the electrical code officials with jurisdiction over the interconnection.

(n) If an EDC does not notify a level 1 applicant in writing or by e-mail whether the interconnection is approved or denied within 20 business days after the receipt of an application, the interconnection shall be deemed approved. The 20 days shall begin on the date that the EDC sends the written or e-mail notice or application receipt required under (i) above.

(o) A customer-generator shall notify the EDC of the anticipated start date for operation of the customer-generator facility at least five days prior to starting operation, either through the submittal of the interconnection agreement or in a separate notice.

(p) If an application for level 1 interconnection review is denied because it does not meet one or more of the applicable requirements in this section, an applicant may resubmit the application under the level 2 or level 3 interconnection review procedure, as appropriate.

#### **14:8-4.8 Level 2 interconnection review**

(a) Each EDC shall adopt a level 2 interconnection review procedure. The EDC shall use the level 2 interconnection review procedure for an application to interconnect a customer-generator facility that meets both of the following criteria:

1. The facility has a capacity of 2 megawatts or less; and
2. The facility has been certified in accordance with N.J.A.C. 14:8-4.6.

(b) For a customer-generator facility described at (a) above, the EDC shall approve interconnection under the level 2 interconnection review procedure if all of the applicable requirements at (c) through (l) below are met. An EDC shall not impose additional requirements not specifically authorized under this section.

(c) The aggregate generation capacity on the distribution circuit to which the customer-generator facility will interconnect, including the capacity of the customer-generator facility, shall not cause any distribution protective equipment (including, but not limited to, substation breakers, fuse cutouts, and line reclosers), or customer equipment on the electric distribution system, to exceed 90 percent of the short circuit interrupting capability of the equipment. In addition, a customer-generator facility shall not be connected to a circuit that already exceeds 90 percent of the short circuit interrupting capability, prior to interconnection of the facility.

(d) If there are posted transient stability limits to generating units located in the general electrical vicinity of the proposed point of common coupling (for example, within three or four transmission voltage level busses), the aggregate generation capacity (including the customer-generator facility) connected to the distribution low voltage side of the substation transformer feeding the distribution circuit containing the point of common coupling shall not exceed 10 MW.

(e) The aggregate generation capacity connected to the distribution circuit, including the customer-generator facility, shall not contribute more than 10 percent to the distribution circuit's maximum fault current at the point on the high voltage (primary) level nearest the proposed point of common coupling.

(f) If a customer-generator facility is to be connected to a radial distribution circuit, the aggregate generation capacity connected to the electric distribution system by non-EDC sources, including the customer-generator facility, shall not exceed 10 percent (or 15 percent for solar electric generation) of the total circuit annual peak load. For the purposes of this paragraph, annual peak load shall be based on measurements taken over the 12 months previous to the submittal of the application, measured at the substation nearest to the customer-generator facility.

(g) If a customer-generator facility is to be connected to three-phase, three wire primary EDC distribution lines, a three-phase or single-phase generator shall be connected phase-to-phase.

(h) If a customer-generator facility is to be connected to three-phase, four wire primary EDC distribution lines, a three-phase or single phase generator shall be connected line-

to-neutral and shall be effectively grounded.

(i) If a customer-generator facility is to be connected to a single-phase shared secondary, the aggregate generation capacity on the shared secondary, including the customer-generator facility, shall not exceed 20 kilovolt-amperes (kVA).

(j) If a customer-generator facility is single-phase and is to be connected to a transformer center tap neutral of a 240 volt service, the addition of the customer-generator facility shall not create an imbalance between the two sides of the 240 volt service, which is greater than 20 percent of the nameplate rating of the service transformer.

(k) A customer-generator facility's point of common coupling shall not be on a transmission line.

(l) If a customer-generator facility's proposed point of common coupling is on a spot or area network, the interconnection shall meet all of the following requirements that apply, in addition to the requirements in (c) through (k) above:

1. For a customer-generator facility that will be connected to a spot network circuit, the aggregate generation capacity connected to that spot network from customer-generator facilities, including the customer-generator facility, shall not exceed five percent of the spot network's maximum load;
2. For a customer-generator facility that utilizes inverter based protective functions, which will be connected to an area network, the customer-generator facility, combined with other exporting customer-generator facilities on the load side of network protective devices, shall not exceed 10 percent of the minimum annual load on the network, or 500 kW, whichever is less. For the purposes of this paragraph, the percent of minimum load for solar electric generation customer-generator facility shall be calculated based on the minimum load occurring during an off-peak daylight period; and
3. For a customer-generator facility that will be connected to a spot or an area network that does not utilize inverter based protective functions, or for an inverter based customer-generator facility that does not meet the requirements of (l)1 or 2 above, the customer-generator facility shall utilize reverse power relays or other protection devices that ensure no export of power from the customer-generator facility, including inadvertent export (under fault conditions) that could adversely affect protective devices on the network.

(m) An applicant shall submit an application for level 2 interconnection review on a standard form, available from the EDC and posted on the Board's website at [www.bpu.state.nj.us](http://www.bpu.state.nj.us). See N.J.A.C. 14:4-9.5(d). An applicant may choose to simultaneously submit an EDC's standard form interconnection agreement executed by the applicant.

(n) Within three business days after receiving an application for level 2 interconnection review, the EDC shall provide written or e-mail notice to the applicant that it received the

application and whether the application is complete. If the application is incomplete, the written notice shall include a list of all of the information needed to complete the application.

(o) Within 15 business days after the EDC notifies the applicant that the application is complete under (n) above, the EDC shall perform an initial review of the proposed interconnection to determine whether the interconnection meets the applicable requirements at (c) through (l) above. During this initial review, the EDC may, at its own expense, conduct any studies or tests it deems necessary to evaluate the proposed interconnection. The initial review shall result in one of the following determinations:

1. The customer-generator facility meets the applicable requirements in (c) through (l) above. In this case, the EDC shall notify the applicant that the interconnection will be finally approved upon completion of the process set forth at (p) through (r) below. Within three business days after this notice, the EDC shall provide the applicant with an executable interconnection agreement;
2. The customer-generator facility has failed to meet one or more of the applicable requirements at (c) through (l) above, but the EDC has nevertheless determined that the customer-generator facility can be interconnected consistent with safety, reliability, and power quality. In this case, the EDC shall notify the applicant that the interconnection will be finally approved upon completion of the process set forth at (p) through (r) below. Within five business days after this notice, the EDC shall provide the applicant with an executable interconnection agreement;
3. The customer-generator facility has failed to meet one or more of the applicable requirements at (c) through (l) above, but the initial review indicates that additional review may enable the EDC to determine that the customer-generator facility can be interconnected consistent with safety, reliability, and power quality. In such a case, the EDC shall offer to perform additional review to determine whether minor modifications to the electric distribution system (for example, changing meters, fuses, or relay settings) would enable the interconnection to be made consistent with safety, reliability and power quality. The EDC shall provide to the applicant a nonbinding, good faith estimate of the costs of such additional review, and/or such minor modifications. The EDC shall undertake the additional review or modifications only after the applicant consents to pay for the review and/or modifications; or
4. The customer-generator facility has failed to meet one or more of the applicable requirements at (c) through (l) above, and the initial review indicates that additional review would not enable the EDC to determine that the customer-generator facility could be interconnected consistent with safety, reliability, and power quality. In such a case, the EDC shall notify the applicant that the interconnection application has been denied, and shall provide an explanation of the reason(s) for the denial, including a list of additional information and/or modifications to the customer-generator's facility, which would be required in order to obtain an approval under level 2 interconnection procedures.

(p) An applicant that receives an interconnection agreement under (o)1 or 2 above shall:

1. Execute the agreement and return it to the EDC at least 10 business days prior

to starting operation of the customer-generator facility (unless the EDC does not so require); and

2. Indicate to the EDC the anticipated start date for operation of the customer-generator facility.

(q) The EDC may require an EDC inspection of a customer-generator facility for compliance with this subchapter prior to operation, and may require and arrange for witness of commissioning tests as set forth in IEEE standard 1547 (published July 2003). The EDC shall schedule any inspections or tests under this section promptly and within a reasonable time after submittal of the application. The applicant shall not begin operating the customer-generator facility until after the inspection and testing is completed.

(r) For an applicant that receives an interconnection agreement under (p)1 or 2 above, approval of interconnected operation of the customer-generator facility shall be conditioned on all of the following occurring:

1. The interconnection has been approved by the electrical code official with jurisdiction over the interconnection;
2. Any EDC inspection and/or witnessing of commissioning tests arranged under (q) above are successfully completed; and
3. The planned start date provided by the applicant under (q) above has passed.

(s) If an application for level 2 interconnection review fails to meet requirements as described at (o)3 or 4 above, or is denied because it does not meet one or more of the other requirements in this section, the applicant may resubmit the application under the level 3 interconnection review procedure.

#### **14:8-4.9 Level 3 interconnection review**

(a) Each EDC shall adopt a level 3 interconnection review procedure. The EDC shall use the level 3 review procedure for an application to interconnect a customer-generator facility that has a capacity less than 2 megawatts and does not qualify for the level 1 or level 2 interconnection review procedures set forth at N.J.A.C. 14:8-4.7 and 4.8.

(b) The EDC shall conduct an initial review of the application and shall offer the applicant an opportunity to meet with EDC staff to discuss the application. At the meeting, the EDC shall provide pertinent information to the applicant, such as the available fault current at the proposed interconnection location, the existing peak loading on the lines in the general vicinity of the customer-generator facility, and the configuration of the distribution lines at the proposed point of common coupling.

(c) The EDC shall provide an impact study agreement to the applicant, which shall include a good faith cost estimate for an impact study to be performed by the EDC. An impact study is an engineering analysis of the probable impact of a customer-generator facility on the safety and reliability of the EDC's electric distribution system. An impact

study shall be conducted in accordance with good utility practice, as defined at N.J.A.C. 14:8-4.2, and shall:

1. Detail the impacts to the electric distribution system that would result if the customer-generator facility were interconnected without modifications to either the customer-generator facility or to the electric distribution system;
2. Identify any modifications to the EDC's electric distribution system that would be necessary to accommodate the proposed interconnection; and
3. Focus on power flows and utility protective devices, including control requirements.

(d) If the proposed interconnection may affect electric transmission or delivery systems other than that controlled by the EDC, operators of these other systems may require additional studies to determine the potential impact of the interconnection on these systems. If such additional studies are required, the EDC shall coordinate the studies but shall not be responsible for their timing. The applicant shall be responsible for the costs of any such additional studies required by another affected system. Such studies shall be conducted only after the applicant has provided written authorization.

(e) After the applicant has executed the impact study agreement and has paid the EDC the amount of the good faith estimate required under (c) above, the EDC shall conduct the impact study and shall notify the applicant of the results as follows:

1. If the impact study indicates that only insubstantial modifications to the EDC's electric distribution system are necessary to accommodate the proposed interconnection, the EDC shall send the applicant an interconnection agreement that details the scope of the necessary modifications and an estimate of their cost; or
2. If the impact study indicates that substantial modifications to the EDC's electric distribution system are necessary to accommodate the proposed interconnection, the EDC shall provide an estimate of the cost of the modifications, which shall be accurate to within plus or minus 25 percent. In addition, the EDC shall offer to conduct a facilities study at the applicant's expense, which will identify the types and cost of equipment needed to safely interconnect the applicant's customer-generator facility.

(f) If an applicant requests a facilities study under (e)2 above, the EDC shall provide a facilities study agreement. The facilities study agreement shall describe the work to be undertaken in the facilities study and shall include a good faith estimate of the cost to the applicant for completion of the study. Upon the execution by the applicant of the facilities study agreement, the EDC shall conduct a facilities study, which shall identify the facilities necessary to safely interconnect the customer-generator facility with the EDC's electric distribution system, the cost of those facilities, and the time required to build and install those facilities.

(g) Upon completion of a facilities study, the EDC shall provide the applicant with the results of the study and an executable interconnection agreement. The agreement shall list the conditions and facilities necessary for the customer-generator facility to safely



interconnect with the EDC's electric distribution system, the cost of those facilities, and the estimated time required to build and install those facilities.

(h) If the applicant wishes to interconnect, it shall execute the interconnection agreement, provide a deposit of not more than 50 percent of the cost of the facilities identified in the facilities study, complete installation of the customer-generator facility, and agree to pay the EDC the amount required for the facilities needed to interconnect as identified in the facilities study.

(i) Within 15 business days after notice from the applicant that the customer-generator facility has been installed, the EDC shall inspect the customer-generator facility and shall arrange to witness any commissioning tests required under IEEE Standard 1547. The EDC and the applicant shall select a date by mutual agreement for the EDC to witness commissioning tests.

(j) Provided that the customer-generator facility passes any required commissioning tests satisfactorily, the EDC shall notify the applicant in writing, within three business days after the tests, of one of the following:

1. The interconnection is approved and the customer-generator facility may begin operation; or
2. The facilities study identified necessary construction that has not been completed, the date upon which the construction will be completed and the date when the customer-generator facility may begin operation.

(k) If the commissioning tests are not satisfactory, the customer-generator shall repair or replace the unsatisfactory equipment and reschedule a commissioning test pursuant to (i) above.

(l) Each EDC shall include in any tariff or published procedures for level 3 interconnection review each element of an impact study, including a description of the review the EDC will undertake for each element. An impact study shall include the following elements, as applicable:

1. A load flow study;
2. A short-circuit study;
3. A circuit protection and coordination study;
4. The impact on the operation of the electric distribution system;
5. A stability study (and the conditions that would justify including this element in the impact study);
6. A voltage collapse study (and the conditions that would justify including this element in the impact study); and
7. Additional elements, if approved in writing by Board staff prior to the impact study.

#### **14:8-4.10 Interconnection fees**

- (a) An EDC or supplier/provider shall not charge an application or other fee to an applicant that requests level 1 interconnection review. However, if an application for level 1 interconnection review is denied because it does not meet the requirements for level 1 interconnection review, and the applicant resubmits the application under another review procedure in accordance with N.J.A.C. 14:8-4.7(p), the EDC may impose a fee for the resubmitted application, consistent with this section.
- (b) For a level 2 interconnection review, the EDC may charge fees of up to \$50 plus \$1 per kilowatt of the customer-generator facility's capacity, plus the cost of any minor modifications to the electric distribution system or additional review, if required under N.J.A.C. 14:8-4.8(o)3 or 4. Costs for such minor modifications or additional review shall be based on EDC estimates and shall be subject to case by case review by the Board or its designee. Costs for engineering work done as part of any additional review shall not exceed \$100 per hour.
- (c) For a level 3 interconnection review, the EDC may charge fees of up to \$100 plus \$2 per kilowatt of the customer-generator facility's capacity, as well as charges for actual time spent on any impact and/or facilities studies required under N.J.A.C. 14:8-4.9. Costs for engineering work done as part of an impact study or facilities study shall not exceed \$100 per hour. If the EDC must install facilities in order to accommodate the interconnection of the customer-generator facility, the cost of such facilities shall be the responsibility of the applicant.

#### **14:8-4.11 Requirements after approval of an interconnection**

- (a) An EDC shall not require an applicant whose facility meets the criteria for interconnection approval under the level 1 or level 2 interconnection review procedure required pursuant to N.J.A.C. 14:8-4.7 and N.J.A.C. 14:8-4.8, to install additional controls or external disconnect switches not included in the equipment package, to perform or pay for additional tests, or to purchase additional liability insurance, except if agreed to by the applicant.
- (b) An EDC shall not charge any fee or other charge for connecting to the EDC's equipment or for operation of a customer-generator facility for the purposes of net metering, except for the fees provided for under this subchapter.
- (c) Once a net metering interconnection has been approved under this subchapter, the EDC shall not require a customer-generator to test or perform maintenance on its facility except for the following:
1. An annual test in which the customer-generator's facility is disconnected from the electric distribution company's equipment to ensure that the inverter stops delivering power to the grid;
  2. Any manufacturer-recommended testing or maintenance; and
  3. Any post-installation testing necessary to ensure compliance with IEEE 1547 or to ensure safety.

*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on April 16, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

(d) When a customer-generator facility approved through a level 2 or level 3 review undergoes maintenance or testing in accordance with the requirements of this subchapter, the customer-generator shall retain written records documenting the maintenance and the results of testing. No recordkeeping is required for maintenance or testing performed on a customer-generator facility approved through a level 1 review.

(e) An EDC shall have the right to inspect a customer-generator's facility after interconnection approval is granted, at reasonable hours and with reasonable prior notice to the customer-generator. If the EDC discovers that the customer-generator's facility is not in compliance with the requirements of this subchapter, and the noncompliance adversely affects the safety or reliability of the electric distribution system, the EDC may require the customer-generator to disconnect the customer-generator facility until compliance is achieved.