NEW JERSEY BOARD OF PUBLIC UTILITIES

Adopted Amendments to the Energy Competition Standards

(Relating to the Repeal of the Public Utility Holding Company Act of 1935)

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

Docket No. AX07050309

BOARD OF PUBLIC UTILITIES

Energy Competition Standards

Adopted Amendments:	N.J.A.C. 14:4-4A.2 and 4A.3
Adopted New Rules:	N.J.A.C. 14:4-4A.4 to 4A.7
Proposed:	March 17, 2008 at 40 N.J.R. 1616
Adopted By:	The New Jersey Board of Public Utilities, Jeanne M. Fox, President, and Frederick F. Butler, Joseph L. Fiordaliso, Nicholas Asselta, and Elizabeth Randall, Commissioners.
Filed:	March , 2009, as R. 2009 d. , with substantive and technical changes not requiring additional public notice and comment under N.J.A.C. 1:30-6.3.
Authority:	N.J.S.A. 48:2-1 et seq., in particular 48:2-13; 48:2-16, 16.1 and 16.2; 48:2-23; 48:2-29.2; 48:2-37; 48:2-51.1; N.J.S.A. 48:3-7, 7.1, and 7.2; N.J.S.A. 48:3-9 and 10; and 48:3-49 et seq.
BPU Docket number:	AX07050309
Effective date:	April 6, 2009
Expiration date:	April 18, 2011

The New Jersey Board of Public Utilities (BPU or Board) is herein adopting amendments and new rules governing public utility holding companies, N.J.A.C. 14:4-

4A.2 to 4A.3, and N.J.A.C. 14:4-4A.4 to 4A.7. The proposed amendments and new rules were published in the New Jersey Register on March 17, 2008 at 40 N.J.R. 1616. The 60 day comment period on the proposal closed on May 16, 2008.

Summary of Hearing Officer's Recommendations and the Agency's Responses:

A public hearing was held on April 23, 2008 at the BPU in Newark. John Garvey from the Board's Division of Energy presided as hearing officer at the public hearing. After reviewing the testimony given at the public hearing and the written comments received during the comment period, Mr. Garvey recommended adopting the proposed rules with modifications to address the concerns raised by the public as described in the Summary of Public Comments and Agency Responses below. The Board accepted the hearing officer's recommendations. The transcript of the hearing is available for inspection in accordance with applicable law by contacting:

Kristi Izzo, Secretary
Board of Public Utilities
ATTN: BPU Docket Number AX07050309
Two Gateway Center
Newark, New Jersey 07102

Summary of Public Comments and Agency Responses:

The following persons timely submitted written and/or oral comments on the proposal.

1. Tamara L. Linde, Public Service Electric and Gas Company, on behalf of PSE&G; Atlantic City Electric Company; AGL Resources Inc. d/b/a Elizabethtown Gas; Jersey Central Power & Light; New Jersey Natural Gas; Rockland Electric Company; and South Jersey Gas Company (collectively, "Joint Utilities"); and
2. Philip J. Passanante, Atlantic City Electric Company (ACE).

General Comments

1. COMMENT: The Joint Utilities comment that the proposed rules are not necessary for two reasons: (i) many New Jersey utilities were never subject to Securities and Exchange Commission (SEC) regulations implementing the Public Utility Holding Company Act of 1935 (PUHCA) so there is no regulatory gap to fill; and (ii) the Board has broad existing authority to fully regulate New Jersey electric and gas public utilities. Furthermore, the Federal Energy Regulatory Commission (FERC) has adopted regulations pursuant to the Energy Policy Act of 2005, 42 U.S.C. §15801 et seq. (EPACT), and a provision of the Public Utility Holding Company Act of 2005 (PUHCA 2005), that preserve the exemptions previously bestowed upon utility holding companies under the SEC's PUHCA regulations.

RESPONSE: The Board's decision to adopt these rules is not only based upon PUHCA repeal, but is also predicated upon: (i) holding company abuse in the utility sector; and (ii) the need to provide an appropriate level of standardization and clarity with regard to Board oversight of public utility holding companies. The absence of PUHCA's oversight of registered companies, and its limited, indirect oversight of exempted companies, poses unnecessary risks to the State of New

Jersey and its electric and gas public utility ratepayers. Consequently, the rules further the Board's statutory mandate to ensure the provision of safe, adequate and proper service at just and reasonable rates, N.J.S.A. 48:2-1 et seq.

The Board's decision to promulgate these amendments and new rules is predicated upon recent actual experiences both nationally, where holding company abuses in the utility sector have been well-chronicled as a result of the Enron and WorldCom corporate scandals, and locally in New Jersey, where the Board was called on to address concerns regarding business practices of a holding company and affiliated nonregulated subsidiaries in order to protect the customers of a New Jersey public utility. In the Matter of the Focused Audit of Elizabethtown Gas Company, NUI Utilities, Inc. and NUI Corporation, BPU Docket Nos. GA03030213, GA02020099, GR03050423, GR02120945, GR02040245 and GR01110771 (April 26, 2004) (adopting a stipulation providing, among other things, for the return of $28 million plus interest to Elizabethtown Gas ratepayers). The Board also believes the rules provide a necessary and appropriate level of standardization and clarity to the Board, its Staff and the regulated community. This clarity will ensure that customers and the State of New Jersey as a whole are not harmed by electric and gas public utility membership in a holding company structure.

The rules are intended to address concerns about protecting the viability and integrity of New Jersey's public utilities from potential abuses arising from the public utility holding company system. Consequently, the new rules address utility corporate structure, utility relationships with its public utility holding company system, dividends, access to books and records, and diversification. The amendments and new rules will also preserve and further codify the Board's access to public utility and public utility holding company system books and records; establish ring-fencing protections to protect ratepayers as well as the State of New Jersey from public utility capital impairment; ensure that the Board retains appropriate supervision over service agreements entered into between an electric or gas public utility and its public utility holding company system; and establish protections against cross-subsidization by potentially separating the corporate boards of directors of the public utility and the public utility holding company system by requiring the independence of certain utility directors.

The Board agrees with the commenters that the Board possesses sufficient statutory powers to protect public utilities that are members of a public utility holding company. The rules implement these broad statutory powers and create more standardized policies across all electric and gas utilities owned by utility holding companies.

2. **COMMENT:** The Joint Utilities comment that the proposed rules should not be overly prescriptive with respect to the utilities' management and corporate governance practices. Otherwise, the proposed rules could have long-term adverse impacts on utility effectiveness and accountability.

RESPONSE: The Board takes note of the commenter's concerns; however, the Board believes that the rules as adopted reflect an appropriate balance between the need to establish preventive mechanisms against holding company abuses on the one hand, and the need for operational flexibility on the other.

N.J.A.C. 14:4-4A.4 Access to information

3. COMMENT: The Joint Utilities comment that they are concerned about the amount and nature of data that they will be required to report and disclose to the Board under the proposed rules. In particular, the Joint Utilities argue that reporting obligations are overly broad, burdensome and not sufficiently justified.

RESPONSE: The Board believes that there is a need to preserve and further codify the Board's access to public utility and public utility holding company system books and records. The Board carefully tailored the rules to require the minimum information necessary to ensure proper monitoring of public utility holding company activities.

4. COMMENT: The Joint Utilities comment that additional confidentiality protections are required under the proposed rules. Although the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-3, has a process in place for protecting commercially sensitive information, under this process the Board does not rule on confidentiality until a member of the public requests to review the document, and it is entirely within the purview of the Board at that time to rule that the document should not be treated in a confidential manner. The Joint Utilities further comment that in In re Solid Waste Utility Customer Lists, 106 N.J. 508 (1987), the Supreme Court of New Jersey set forth the obligation of the Board to maintain customer lists in locked cabinets, and to require Board employees to sign an appropriate record when obtaining access to the lists. However, the proposed rules have no provisions restricting disclosure of commercial and financial information that is far more sensitive to the utilities than customer lists. The Joint Utilities add that the Board's obligation to maintain the confidentiality of information flows also from the State Constitution and Federal statutory law, 42 U.S.C. § 16453(c). The Joint Utilities note that the Federal Energy Regulatory Commission's (FERC) Advanced Notice of Proposed Rulemaking entitled "Wholesale Competition in Regions with Organized Electricity Markets," imposes certain confidentiality obligations on market monitoring units with regard to referrals to the FERC of suspected tariff and rule violations.

RESPONSE: The Board believes that the regulatory procedures to determine and protect confidential information under the Board's OPRA rules at N.J.A.C. 14:1-12 are sufficient to address the commenter's concerns and are consistent with Federal and State confidentiality standards. The commenter notes that the OPRA rules do not require the Board to rule on confidentiality until a request for disclosure is received. However, the Board must treat the information as confidential unless and until the Board makes a "final confidentiality determination" allowing for disclosure pursuant to N.J.A.C. 14:1-12.6(b) and 12.9. The commenter also states that the decision to treat submitted information as confidential is "entirely within the purview of the Board." The confidentiality determination for information received by the Board is governed by standards found in OPRA, the Board's OPRA rules, and various executive orders governing confidentiality determinations by State agencies. Furthermore, any confidentiality determination is based on the information submitted by the party claiming confidentiality pursuant to N.J.A.C. 14:1-12.3 and 12.8. The party claiming confidentiality has the opportunity to include: previous

confidentiality determinations by the Board, other Federal or state agencies or courts; specific confidentiality rules; statutory standards; orders and documents applicable to the relevant documentation upon which a confidentiality claim is made. The section cited by the commenter, 42 U.S.C. §16453(c), provides that trade secrets and sensitive commercial information will be subject to appropriate safeguards against "unwarranted disclosure to the public." No blanket grant of confidentiality is given. Should the referenced FERC rulemaking be adopted, FERC Dockets AD07-7 and RM07-9 reported at 73 FR 12576, it could be submitted under the Board's procedures described above in support of the request for nondisclosure. As to specific measures taken to protect confidential information, the Board will take appropriate measures to protect information claimed to be confidential.

5. **COMMENT:** The Joint Utilities comment that the proposed rules on access to information are not necessary to protect customer interests because: (i) PUHCA imposed only very limited filing requirements; and (ii) the Board already has broad authority to obtain information relating to the utilities that it regulates.
RESPONSE: The aim of the amendments and new rules is not only to fill the gaps left by the repeal of PUHCA but to address the challenges posed by recent cases of public holding company abuse such as those involving Enron, WorldCom, and New Jersey's Elizabethtown Gas utility. To prevent abuses and to protect the public interest by taking measures as early as possible, it is necessary to establish a broader and more regular flow of information between the Board and the public utility holding companies.

6. **COMMENT:** With regard to new access to FERC information, the Joint Utilities believe that the language of the proposed rules is so broad that it could require disclosure of information that has nothing to do with the business of the regulated utility. Accordingly, the Joint Utilities suggest a narrowing of the scope of N.J.A.C. 14:4-4A.4 (b) to track the language of Section 1265 of EPACT entitled "State Access to Books and Records." This Section allows state commissions with jurisdiction over public utilities in a holding company system, to request in writing to the holding company or any associate company or affiliate, to produce for inspection books, accounts, memoranda, and other records that: (1) have been identified in reasonable detail in a proceeding before the state commission; (2) the state commission determines are relevant to costs incurred by such public utility company; and (3) are necessary for the effective discharge of the responsibilities of the state commission with respect to such proceeding.
RESPONSE: The Board's rules aim at establishing a regular flow of communication with public utility holding companies that is not necessarily linked to existing proceedings. This regular communication flow would allow the Board to adequately monitor potential abuses, and take preventive measures instead of having to address abuses after they occur. Additionally, Section 1265.d of EPACT clearly contemplates the possibility of additional state information requirements: "Nothing in this section shall preempt applicable State law concerning the provision of books, accounts, memoranda, and other records, or in any way limit the rights of any State to obtain books, accounts, memoranda, and other records under any

other Federal law, contract, or otherwise." For these reasons, the commenter's suggested change has not been made upon adoption.

7. **COMMENT:** With regard to new requirements to notify and provide copies of reports and documents relating to any investigation or audit conducted by FERC, another Federal agency or state agency, the Joint Utilities suggest sections N.J.A.C. 14:4-4A.4(c) and (d) be deleted or significantly narrowed in scope so that:
   - the requirement to notify the Board and provide copies of resulting reports only applies to audits/investigations that may have a material impact on the regulated public utility;
   - the requirement to notify the Board only applies where the regulated public utility receives direct notice of the audit/investigation; and
   - the requirement to notify the Board and provide copies of resulting reports excludes audits and investigations that are treated in a confidential manner under Federal and/or state law.

   RESPONSE: The Board believes that restricting the scope of N.J.A.C. 14:4-4A.4 (c) and (d) in the manner suggested by the commenter would undermine the purpose of the rules. Information on FERC audits and investigations is essential for the Board to conduct appropriate monitoring. Moreover, the rules already include much of what the commenter proposes: N.J.A.C. 14:4-4A.4(c) requires the utility or holding company to first receive "notice" of the investigation or audit before any reporting requirements are triggered, and N.J.A.C. 14:4-4A.4(d) requires that additional reporting requirements are triggered only if the investigation or audit could "reasonably be expected to have a material impact on the financial condition or operations of the electric or gas public utility or its public utility holding company system." Consequently, the rules are narrowly tailored and reasonably structured so as to minimize any unnecessary or burdensome reporting requirements. With regard to the third point, audits and investigations, if confidential, would be protected from disclosure under OPRA, and therefore excluding such audits or investigations is unnecessary.

8. **COMMENT:** With regard to new information access requirements to Federal tax filings and returns, the Joint Utilities suggest eliminating the requirement for a holding company to provide taxable income/loss information for each subsidiary as part of its summary data submission. The Joint Utilities comment that the Board has never needed all this information before, even as part of a base rate proceeding. Moreover, the Joint Utilities argue that the proposed rules do not address issues of confidentiality of tax returns as protected under the 1986 Internal Revenue Code. The Internal Revenue Code expressly states that tax returns and return information are to be treated as confidential, and may only be disclosed in a Federal or state judicial or administrative proceeding.

   RESPONSE: The Board believes that eliminating the requirement to provide taxable income/loss information would undermine the purpose of the rules. Information on taxable income/loss is essential for the Board to conduct appropriate monitoring. Furthermore, as explained in the response to comment 4, the Board's confidentiality determination regarding tax returns and other matters will be based

on the information submitted by the utilities, including possible statutory or legal standards applicable to certain types of documents.

N.J.A.C. 14:4-4A.5 Service agreements

9. COMMENT: The Joint Utilities believe that the proposed rules are unduly burdensome with regard to service company agreements, and may impose unnecessary restrictions on the ability of centralized service companies to provide maximum value to their affiliated public utilities and holding company systems.

RESPONSE: The Board takes note of the commenter's concerns; however, the Board believes that the restrictions established under N.J.A.C. 14:4-4A.5 are necessary to ensure fair allocation of costs to ratepayers in service agreements between an electric or gas public utility and an affiliate in its public utility holding company system. Moreover, the rules are not unduly burdensome. Many of the requirements are either already required under existing Board policies, or they are narrowly tailored to achieve the necessary Board oversight of service agreements and related cost allocations.

10. COMMENT: With regard to new information requirements related to public utility holding companies exempted from filing Form 60 with FERC, the Joint Utilities suggest that the Board: (i) eliminate from section N.J.A.C. 14:4-4A.4 (j) the requirement that companies file the data that is contained in FERC Form 60 Schedule XVII; and (ii) replace it with the data required to be provided under N.J.A.C. 14:4-4A.4 (k)(i.e., an analysis of billings for each shared service and an analysis comparing the direct and indirect charges for subsidiaries and non-subsidiaries). Such an approach would be less burdensome and would still furnish relevant data to the Board with respect to the relationship between the centralized service company and the utility and its holding company system.

RESPONSE: The Board considers that the information requirements for service contracts between a New Jersey public utility and a subsidiary of its holding company under N.J.A.C. 14:4-4A.4(j) must be more stringent than the information requirements for service contracts between a New Jersey public utility and another entity not linked to the public holding company under N.J.A.C. 14:4-4A.4(k). The risk of abuse is clearly higher in the case of service agreements with subsidiary companies than in the case of service agreements with third parties.

11. COMMENT: With regard to new information access requirements related to modifications to approved services agreements, the Joint Utilities suggest that the Board narrow the scope of subsection N.J.A.C. 14:4-4A.5(b) and require notification only for "material" modifications. The Joint Utilities support the use of the 5 per cent test at N.J.A.C. 14:4-4A.5(c) as an appropriate proxy for determining materiality for purposes of Board notification.

RESPONSE: The Board considers any modification of a service agreement to be pertinent to its oversight responsibilities, not just those that are material or represent a greater than 5% change. Therefore, the Board rejects the Joint Utilities' suggested modification.

12. **COMMENT:** With regard to new requirements related to capitalization, expense, and depreciation policies, and rate of return, the Joint Utilities suggest that the Board modify N.J.A.C. 14:4-4A.5(f) so the section only applies to assets purchased by the service company solely for the benefit of the regulated utility.
RESPONSE: The Board believes that restricting the scope of N.J.A.C. 14:4-4A.5(f) in the manner suggested by the commenter would undermine the purpose of the rule. The commenter's proposal will provide an incentive for service companies to claim that all assets are shared, so the application of stricter public utilities' capitalization, expense, depreciation policies and rate of return rules is avoided.

13. **COMMENT:** With regard to the new restrictions on public utility purchases from affiliated service companies, the Joint Utilities request that section N.J.A.C. 14:4-4A.5(g) be amended to define the phrase "more advantageous terms," and to do so in a manner such that price alone does not determine the outcome.
RESPONSE: The Board believes that the public utility should have the flexibility to determine what constitutes "more advantageous terms" on a case-by-case-basis. It would not be feasible for the Board to provide an exhaustive list of all the possible factors that may be relevant to determining what constitutes "more advantageous terms" when assessing competing offers. However, N.J.A.C. 14:4-4A.5(g) already provides a non-exhaustive list of factors that shall be taken into account, including but not limited to: price; qualifications of the alternative provider; contract terms; quality of the product or service provided; and efficiency, timeliness and convenience of delivery.

N.J.A.C. 14:4-4A.6 Structural separation

14. **COMMENT:** The Joint Utilities suggest adding to N.J.A.C. 14:4-4A.6(b) the phrase below to clarify the situation of those public holding companies that have no outstanding security issues: "For an electric or gas public utility without outstanding securities, the requirement to maintain a separate credit rating shall apply only to the extent that a NRSRO is willing to provide a credit rating of such utility without outstanding securities."
RESPONSE: The Board agrees that it would be impossible for an electric or gas public utility without outstanding securities to comply with this provision. Such a scenario was contemplated in the proposed rule, and there was an implicit assumption that the utility would have outstanding securities before triggering the requirements proposed. Nevertheless, to ensure that no ambiguity exists, the rule has been modified upon adoption to address this issue in accordance with the commenter's suggestion.

15. **COMMENT:** The Joint Utilities comment that although the summary of the proposed rules states that the rules on composition of utility boards of directors will only apply prospectively, there is nothing in N.J.A.C. 14:4-4A.6 to suggest this. The Joint Utilities suggest adding a sentence to N.J.A.C. 14:4-4A.6 expressly stating that the requirements in this section will not be applied to existing boards of directors.

RESPONSE: The rules include a "preexisting director" definition that incorporates the prospective application of this provision, and therefore the commenters' suggested change is not needed. All preexisting directors at the time the rules become effective are excluded, and therefore they automatically comply with the independence and New Jersey qualification standards until they are reelected or their term on the board of directors is otherwise renewed. The portion of the definition that describes this has been relocated upon adoption to N.J.A.C. 14:4-4A.6(a)(2).

16. **COMMENT:** ACE comments that the Board's proposed rules purport to supplant provisions of the New Jersey Corporate Code, which provides that corporations themselves have the power to determine the qualifications required for members of their boards of directors. Accordingly, ACE submits that in adopting N.J.A.C. 14:4-4A.6, the Board would be: (i) asserting its authority in a manner inconsistent with the New Jersey Corporate Code, N.J.S.A. 14A:6-1(1), N.J.S.A. 14A:5-24; and (ii) exceeding its authority under the New Jersey Public Utility Act, N.J.S.A. 48:1-1.
RESPONSE: The Board has not supplanted the Corporate Code. The provisions of N.J.A.C. 14:4-4A apply in addition to the statutes cited by the commenter, as long as they are not inconsistent with them. The proposed rule does not prevent corporations from determining who should serve on their boards, and allows the utility to certify that it cannot comply with these requirements. In addition, because the rules implement the authority and special obligations of the Board under N.J.S.A. 48, the rules prevail over general corporate legislation. The special circumstances of electric and gas public utilities create unique problems that require specific rules providing for careful regulatory oversight of public utility holding company systems.

N.J.A.C. 14:4-4A.7 Operational separation

17. **COMMENT:** The Joint Utilities suggest changing the language of section N.J.A.C. 14:4-4A.7 to expressly state that a secured credit rating is not a prerequisite for a company's participation in a money pool involving the electric or gas public utility.
RESPONSE: The Board has no intention of limiting the participation in a money pool to only those companies with secured credit ratings, although N.J.A.C. 14:4-4A.7(f)(4) makes clear that all borrowers in the money pool must have, at a minimum, investment grade credit ratings from all applicable NRSROs. In order to ensure that there is no ambiguity, the rule has been clarified accordingly upon adoption.

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 new rules and amendments adopted herein are necessary to replace the protections lost by the repeal of PUHCA, 15 U.S.C. §79a et seq., and to protect New Jersey ratepayers and the State of New Jersey as a whole from potential harm. PUHCA was enacted by Congress in the 1930s to regulate holding companies owning

electric or gas utilities. On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005, which repealed PUHCA effective in February 2006. PUHCA provided significant protections for the ratepayers of New Jersey. The Board believes that such protections should be continued at the State level. These new rules and amendments, however, 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 incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B, 22 through 24 do not require a Federal standards analysis for this adoption.

Full text of the adopted amendments and new rules follows (additions indicated in boldface with asterisk ***thus***; deletions indicated in brackets with asterisks ***[**thus**]***):

SUBCHAPTER 4. PUBLIC UTILITY HOLDING COMPANY STANDARDS

14:4-4A.2 Definitions

(a) (No change from proposal.)

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

"Aggregate Investment" means all amounts invested, or committed to be invested, in nonutility associates for which there is recourse, directly or indirectly, to the public utility holding company, excluding:

(1) The portion of the public utility holding company's book investment that is attributable to increases in retained earnings or to indebtedness issued by any subsidiary with respect to which there is no recourse directly or indirectly to the public utility holding company; and

(2) The amount invested in one nonutility associate by another nonutility associate.

"Board of Directors New Jersey Qualification" means residency, employment and/or other significant ties with the State of New Jersey, as determined by the Board.

"Board of Directors Independence Qualification" means the New York Stock Exchange listing requirements pertaining to the independence of directors, as set forth in Section 303A.02(b) of the NYSE Listed Company Manual (www.nyse.com/regulation) and related NYSE rules (www.nyse.com/regulation/rules/1098571481177.html), as may be amended and supplemented from time to time, which are incorporated by reference herein.

"Board Staff" means the staff of the New Jersey Board of Public Utilities, or successor agency. Except as otherwise provided for, any information required to be provided to the Board Staff under this subchapter shall be provided at a time, location, and in a manner as determined by Board Staff. In addition, if immediate notification to Board Staff is required, electronic mail notification shall be submitted to the Board Secretary,

the Division of Audits, the Office of the Chief Economist, and the Division of Energy, or any successors.

"Money pool" means an inter-company lending arrangement whereby depository, surplus cash funds are loaned or borrowed by an electric or gas public utility or other utility within the public utility holding company system to meet short-term (under 365 days) operating cash requirements.

"Nonutility associate" means a subsidiary company, in a public utility holding company system, that is not an electric or gas public utility or utility associate. Examples of entities excluded from this definition include, but are not limited to:

1. Entities that are developing facilities that will engage in public utility or utility associate activities; and
2. Entities that are directly related and subordinate to, or that directly support, public utility or utility associate activities, including, but not limited to:
   a. Entities that provide fuel to generating plants;
   b. Entities created to facilitate tax advantages;
   c. Entities created to facilitate financing transactions;
   d. Captive insurance and other risk management entities; or
   e Entities that hold or manage emission allowances or other environmental allowances or credits.

"Preexisting director" means a director on the board of directors whose term commenced before {the effective date of this subchapter}. ***[A Preexisting Director shall be considered in compliance with the Board of Directors Independence Qualification and the Board of Directors New Jersey Qualification for purposes of determining the requirements of N.J.A.C. 14:4-4A.6(a).]*** A Preexisting Director's reelection to, or extension of term on, the board of directors after {the effective date of this subchapter} terminates the Preexisting Director designation for that director.

"Public utility holding company system'" means a public utility holding company, together with its subsidiary companies.

"Service agreement" means a contract or agreement whereby a public utility holding company or a subsidiary undertakes to sell, lease, or furnish any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service, information or data, or any goods, equipment, materials, supplies, appliances, or similar property, to an electric or gas public utility in the same public utility holding company system. Nothing herein shall be deemed to expand the Board's jurisdiction over service agreements beyond its existing jurisdiction under N.J.S.A. 48:3-7.1

"Subsidiary" or "subsidiary company" of a public utility holding company means:

1. Any company for which 10 percent or more of the outstanding voting securities of the company are directly or indirectly owned, controlled, or held with power to vote, by the public utility holding company; and

2. Any person over whose management or policies the public utility holding company has a controlling influence that is sufficient to make it necessary for the rate protection of utility customers that such person be subject to the obligations, duties, and liabilities imposed by this subchapter upon subsidiary companies of public utility holding companies. This shall apply regardless of whether the public utility holding company exercises its influence directly or indirectly, either alone or pursuant to an arrangement or understanding with one or more other persons. The Board shall make this determination after notice and opportunity for hearing.

"Voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

"Utility associate" means a subsidiary company, in a public utility holding company system, that directly or indirectly derives or will derive substantially all of its revenues (greater than 70%) from:

1. Producing, generating, transmitting, delivering, distributing, storing, selling, marketing, and/or furnishing natural gas, heating oil, electricity**,** propane, thermal energy and/or steam energy to wholesale and/or retail customers;
2. Gas and/or electricity related services including, but not limited to:
   i. Energy management services and demand side management activities;
   ii. Development and commercialization of electrotechnologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, clean coal technologies, and similar innovations;
   iii. Ownership, repair, maintenance, replacement, operation, sale, installation and servicing of refueling, recharging and conversion equipment and facilities relating to electric and compressed natural gas powered vehicles;
   iv. Sale of electric and gas appliances including equipment to promote new technologies, or new applications for existing technologies, that use gas or electricity and equipment that enables the use of gas or electricity as an alternate fuel and the installation and servicing thereof;
   v. Production, conversion, servicing, sale and distribution of
   (1) Thermal energy products and resources, such as process team, heat, hot water, chilled water, air conditioning, compressed air and similar products;
   (2) alternative fuels such as coal gasification facilities and other synthetic fuels technologies, hydrogen fuel, landfill gas recovery, refuse derived fuels, biomass derived fuels, ethanol, methanol, and other alternative fuels technologies; and
   (3) Renewable energy resources;
   vi. Sale of technical, operational, management and other similar kinds of services and expertise relating to distribution, transmission, and generation including engineering, development, design and rehabilitation, construction, maintenance and operation, fuel procurement, delivery and management and environmental licensing, testing and remediation;
   vii. Ownership, operation and servicing of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities, including activities related to nuclear fuels;

viii. Development and commercialization of technologies or processes that utilize coal waste or by-products as an integral component of such technology or process;
ix. Nuclear decommissioning trust activities;
x. Securitization activities, financing activities and tax advantaged transactions related to electric or gas public utility and utility associate activities;
xi. Development activities relating to other authorized electric or gas related activities or utility associate activities;
xii. Local community development investments relating to other authorized electric or gas related activities;
xiii. Revenues from sales of assets that were related to other authorized electric or gas related activities;
xiv. Captive insurance and other risk management activities;
xv. Holding and managing emission allowances or other environmental allowances or credits; or
xvi. Other utility related activities as determined on a case-by-case basis by the Board [and/or Board Staff];

3. Existing products and/or services and similar services provided by a subsidiary that is not a public utility; and/or
4. Shared services.

14:4-4A.6 Structural separation

(a) Commencing six months after {effective date of this subchapter}, an electric or gas public utility, having a board of directors comprised of more than one director, shall file all of the following in its annual report with the Board:

1. (No change from proposal.)
2. The name of each director that satisfies the Board of Directors Independence Qualification and/or the Board of Directors New Jersey Qualification, and a description of how the director so satisfies the Board of Directors New Jersey Qualification ***(a Preexisting Director, as defined at 14:4-4A.2, shall be considered in compliance with the Board of Directors Independence Qualification and the Board of Directors New Jersey Qualification for purposes of determining the requirements of N.J.A.C. 14:4-4A.6(a))***; and
3. (No change from proposal.)

(b) An electric or gas public utility shall maintain a distinct corporate identity, as evidenced by a separate corporate credit rating or a separate credit rating for its outstanding securities with a nationally recognized statistical rating organization (NRSRO). ***For an electric or gas public utility without outstanding securities, the requirement to maintain a separate credit rating shall apply only to the extent that a NRSRO provides or has provided a credit rating of such utility without outstanding securities.***

(c) - (d) (No change from proposal.)

14:4-4A.7 Operational separation

(a) - (g) (No change from proposal.)

(h) If a money pool ***[**participant's**]*** ***participant has a*** senior secured credit rating for its outstanding publicly-held securities ***, and that rating*** falls below any applicable NRSROs investment grade (for example, BBB- for S&P or Baa3 for Moody's), an electric or gas public utility shall by no later than the third business day thereafter demand repayment of any outstanding loans made through the money pool to such participant, and make no further loans to such participant through the money pool until further notice by the Board or until such participant's senior secured credit rating for the outstanding publicly-held securities is again investment grade.