

FOCUS - 1 of 5 DOCUMENTS

NEW JERSEY REGISTER

Copyright © 2005 by the New Jersey Office of Administrative Law

VOLUME 37, ISSUE 20

ISSUE DATE: OCTOBER 17, 2005

**RULE PROPOSALS**

**PUBLIC UTILITIES**

**BOARD OF PUBLIC UTILITIES**

*37 N.J.R. 3911(a)*

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

**Proposed New Rules: *N.J.A.C. 14:4-1, 2.3, 2.4, 2.5, 2.7, and 5; and 14:8-1***

**Proposed Repeals: *N.J.A.C. 14:4-1.3, 1.5 and 2***

**Proposed Recodifications with Amendments: *N.J.A.C. 14:4-1.1 as 2.1, 1.2 as 2.2, and 1.6 as 2.8; 14:4-3 and 14:4-7; 14:4-4 as 14:8-3; 14:4-5 as 14:4-3; 14:4-8 as 14:8-2; and 14:4-9 as 14:8-4***

Click here to view Interested Persons Statement

**Energy Competition Standards; Renewable Energy and Energy Efficiency**

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

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

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

BPU Docket Number: EX05080733.

Proposal Number: PRN 2005-376.

A **public hearing** will be held on Tuesday, December 6, at 10:00 A.M. at:

Board Hearing Room  
New Jersey Board of Public Utilities  
Eighth Floor  
Two Gateway Center  
Newark, New Jersey 07102

Submit comments by December 16, 2005 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 a readoption with amendments of its Energy Competition Standards at *N.J.A.C. 14:4* (also called Chapter 4). These standards implement provisions of the Electric Discount Energy Competition Act (EDECA), *N.J.S.A. 48:3-49* et seq., and other statutory authority. The rules apply to electric power suppliers, gas suppliers, 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. Pursuant to *N.J.S.A. 52:14B-5.1c*, this chapter will expire on July 8, 2006.

The Board is readopting all of the subchapters in Chapter 4, but is relocating the subchapters dealing with renewable energy in a new Chapter 8. The subchapters that will remain in Chapter 4 are: anti-slamming, affiliate relations, licensing and registration, government energy aggregation programs, and retail choice consumer protection. The Board is proposing to reorganize the subchapters that will remain in Chapter 4, and to add a new subchapter to cover general applicability, scope, and definitions that will apply to all of Chapter 4.

Proposed new *N.J.A.C. 14:4-1* contains general provisions that apply to all of Chapter 4, and definitions of terms used in Chapter 4. The Board is proposing to remove from each subchapter all definitions of terms that are used in multiple subchapters, and to consolidate these common definitions in new Subchapter 1, *N.J.A.C. 14:4-1*.

The energy anti-slamming rules (existing *N.J.A.C. 14:4-1*, recodified on proposal at *N.J.A.C. 14:4-2*) are amended to reorganize and reword the subchapter for clarity while retaining its substance, and to include minor additional requirements. New provisions for enrolling customers through the internet are also proposed.

The affiliate relations rules (existing *N.J.A.C. 14:4-5*, recodified on proposal at *N.J.A.C. 14:4-3*) are proposed for readoption without substantive amendments, except for the removal of definitions that are relocated to new *N.J.A.C. 14:4-1.2*.

The energy licensing and registration rules (existing *N.J.A.C. 14:4-2*, proposed as *N.J.A.C. 14:4-5*) are repealed and new rules proposed to reorganize and reword the subchapter for clarity while retaining most of its substance. Changes are proposed that would remove the requirement for the submittal of marketing materials, and that would add a mandate that LDCs refuse to do business with unlicensed suppliers. In addition, the new rules require that the term of a surety bond be coequal with the term of the license, and clarify the consequences of allowing a license to lapse.

The government energy aggregation program rules (existing *N.J.A.C. 14:4-6*, not recodified on proposal) are proposed for readoption without substantive amendments, except for the removal of definitions that are relocated to new *N.J.A.C. 14:4-1.2*.

The retail choice consumer protection rules (existing *N.J.A.C. 14:4-3*, recodified on proposal at *N.J.A.C. 14:4-7*) are proposed for readoption without substantive amendments, except for the removal of definitions that are relocated to new *N.J.A.C. 14:4-1.2*.

The Board is proposing to relocate three subchapters from existing Chapter 4 to new Chapter 8, Renewable Energy and Energy Efficiency.

The renewable portfolio standards (RPS) rules (existing *N.J.A.C. 14:4-8*, recodified on proposal at *N.J.A.C. 14:8-2*)

are proposed for readoption with substantive amendments, including required renewable energy percentages for each year through 2020.

The environmental information disclosure rules (existing *N.J.A.C. 14:4-4*, recodified on proposal at *N.J.A.C. 14:8-3*) are proposed for readoption without substantive change, except for the deletion of definitions that are being relocated in proposed new *N.J.A.C. 14:4-1.2*, and amendments to an outdated provision containing an implementation schedule. The Board intends to propose major amendments to these rules in the near future, in order to simplify them and make compliance easier. However, the content of future amendments will be partially determined by the workings of PJM's Generation Attribute Tracking System (GATS), which is not yet operational. Therefore, at present the environmental information disclosure rules are being readopted with only the changes mentioned above.

The net metering and interconnection rules (existing *N.J.A.C. 14:4-9*, recodified on proposal at *N.J.A.C. 14:8-4*) are proposed for readoption without substantive amendments, except for the removal of definitions that are relocated to new *N.J.A.C. 14:4-1.2*.

In developing this proposal, the Board conducted various outreach activities. Most extensive outreach was conducted on the RPS subchapter, because that subchapter contains the most significant substantive changes. A public forum was held to discuss a December 2004 RPS Report issued by the Rutgers Center for Energy, Economic and Environmental Policy (CEEPP). CEEPP also invited independent experts to discuss and critique the report's assumptions, methodologies, and conclusions. In addition, two stakeholder meetings were held on extending and expanding the RPS percentage requirements beyond 2008. Finally, revisions and refinements were assigned to an ad hoc working group of the Renewable Energy Committee of the Clean Energy Council. Other subchapters, including the licensing and registration subchapter, were subject to less formal, internet-based stakeholder outreach. The feedback received was in some cases incorporated into this proposal. Input received on subchapters not proposed for amendment herein will be reviewed for possible use in future amendments.

As the Board has provided a 60-day comment period on these proposed readoption with amendments and new 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 1. Scope And Definitions**

Proposed new *N.J.A.C. 14:4-1.1* describes the regulated entities to which Chapter 4 applies, and refers the reader to other Board rules that may also apply to some of the entities regulated by Chapter 4. In addition, the section provides that the Board shall consider the actions of a contractor or other representative of any regulated entity to be the actions of the regulated entity.

Proposed new *N.J.A.C. 14:4-1.2* consolidates definitions of terms that are used in more than one subchapter of Chapter 4, to ensure consistency and eliminate redundancy. Where the same term is defined in more than one subchapter, the definition is moved into new *N.J.A.C. 14:4-1.2* and deleted from the other subchapters. Since many terms are used in both Chapter 4 and the renewable energy rules in Chapter 8, the definitions in proposed new *N.J.A.C. 14:4-1.2* will also apply to Chapter 8. In addition, proposed new Chapter 8 will include a new subchapter with definitions used only in Chapter 8. In addition to consolidating definitions that are used in Chapter 4, the proposed new rule add a cross reference to the definitions section for all utilities at *N.J.A.C. 14:3-1.1*, which also applies to Chapter 4.

Many of the definitions in proposed new *N.J.A.C. 14:4-1.2* are relocated from existing subchapters of Chapter 4. Most are relocated with no change. In a small number of cases, there are minor changes in wording proposed for clarity,

while the substance of the definitions remain unchanged. New definitions, and those to which substantive changes are proposed, are described below.

The definitions relocated without change include the following:

"Act"

"Advertising"

"Aggregator"

"Basic gas supply service"

"Basic generation service"

"Broker"

"Electric distribution company" or "EDC"

"Electric distribution system"

"Electric generation service"

"Electric power supplier"

"Electric public utility"

"End user"

"Energy agent"

"FERC"

"Gas public utility"

"Gas related service"

"Gas supplier"

"Gas supply service"

"Government aggregator"

"Private aggregator"

"kW," "kWh," "MW" and "therm"

"LDC" or "local distribution company"

"Marketer"

"Marketing"

"PJM region"

"Retail customer"

"Slamming"

"Third Party Supplier" or "TPS"

The proposed definitions that are new or have been substantively changed are described below.

A new definition is proposed for "clean power marketer" or "CPM," for use in provisions added to the licensing and registration subchapter (proposed *N.J.A.C. 14:4-5*) requiring licensing of CPMs.

The proposed new definition of "customer information" is an amalgam of the existing definitions of "customer information" (found in existing *N.J.A.C. 14:4-3.2* and *5.2*) and "individual proprietary information" (found in existing *N.J.A.C. 14:4-3.2* and *5.2*). Since the two existing defined terms have the same meaning, the term "customer information" is used in proposed new language in this proposal. However, since "individual proprietary information" appears in some of the subchapters that are not being amended, both definitions are retained for the present. As each subchapter is amended, the term "customer information" will eventually replace "individual proprietary information."

A new definition of "EDECA" is proposed. Since the term "Act" is not specific and could cause confusion, the term "EDECA" is used in proposed new language. As each subchapter is amended, the term "EDECA" will eventually replace "Act." However, since "Act" appears in some of the subchapters that are not being amended, both definitions are retained for the present.

The definition of "electric related service" is an amalgam of the definitions of the term from several subchapters. Minor differences in the definitions are reconciled, and the definition is reworded slightly for clarity.

A new term is proposed: "energy consultant." An energy consultant is a type of energy agent, who meets additional Board requirements and is consequently authorized to obtain electronic access to certain customer information held by an LDC.

The definition of "optional service" is clarified to indicate that an optional service is either a gas related service or an electric related service.

The proposed definition of "person" is expanded to match the definition of this term in the definitions section, *N.J.A.C. 14:3-1.1*, of *N.J.A.C. 14:3*, All Utilities.

The proposed definition of "PJM Interconnection" is clarified, but is substantively the same as existing definitions.

A new definition is proposed for "PJM Environmental Services." This is a subsidiary of PJM Interconnection, which is involved in administering the GATS tracking system for renewable energy certificates.

The definition of "private aggregator" is reworded for clarity, but contains the substance of the existing definition of the term.

Additional detail is added to the definition of "ratepayer advocate." As of January 17, 2006, the Office of the Ratepayer Advocate will become part of the Department of the Public Advocate.

The definition of "retail sales" that is found in existing Subchapter 3 is deleted because it is not used in these rules.

A new definition is proposed for the term "retail." This term is used throughout the chapter, and several terms that include the word are defined, but the word itself is not defined in the existing rules.

The definition of the term "retail choice" or "retail competition" (found in existing *N.J.A.C. 14:4-8.2*) is amended to

delete the alternate term "retail choice" because this alternate term is used only in the heading of the retail choice consumer protection subchapter, so no definition is needed. The remainder of the definition is relocated to *N.J.A.C. 14:4-1.2* with minor rewording for clarity but no change in substance.

A new definition is proposed for "retail customer," to replace the existing definition in the existing environmental information disclosure rules, *N.J.A.C. 14:4-4*. The new definition is more precise and accurate.

The definition of "transmission and distribution system" is proposed for deletion because it is no longer used in Chapter 4.

A new definition is proposed for "wholesale customer," to clarify the distinction between retail and wholesale customers.

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

Existing *N.J.A.C. 14:4-1*, which contains anti-slamming rules for electric power suppliers and natural gas suppliers, is proposed to be recodified as *N.J.A.C. 14:4-2*, and amended. Anti-slamming rules protect consumers from unauthorized switches away from their chosen electric power or natural gas suppliers. These rules set forth the requirements by which TPSs and LDCs must abide when switching customers. The 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.

The subchapter is reorganized for easier understanding, and many provisions are deleted and replaced with rephrased and clarified versions of the same provisions. However, very little of the substance of the existing anti-slamming subchapter has been changed. Each section as proposed is described below, with any substantive changes from the existing provision noted.

*N.J.A.C. 14:4-2.1* contains the substance of existing *N.J.A.C. 14:4-1.1*, and 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 is reorganized and rephrased for clarity, and is amended to enumerate 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 added.

*N.J.A.C. 14:4-2.2* is recodified from existing *N.J.A.C. 14:4-1.2*, and includes definitions of terms that are used in Subchapter 2. Many basic terms (for example: "Board," "customer," "end user," and "public utility"), and terms used in more than one subchapter of Chapter 4, are being deleted from this subchapter and relocated in *N.J.A.C. 14:4-1.2* to reduce redundancy, and cross-references are added to guide the reader to the definitions. However, a number of terms defined in this section are unique to this subchapter and therefore are proposed for readoption without amendment. In addition, definitions are added for the terms "authorized TPS" and "subject customer." Additional detail and minor clarifications are proposed to the definitions of "change order" and "slamming," and the definition of "slamming" is moved to *N.J.A.C. 14:4-1.2*.

Proposed new *N.J.A.C. 14:4-2.3* contains the substance of existing *N.J.A.C. 14:4-1.3*, proposed for repeal and requires the submittal of a change order before a TPS or LDC may switch a customer's electric power or natural gas supplier. 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. Additional detail is provided to the verification requirements, enumerating the verification methods that may be used.

N.J.A.C. 14:4-2.4 is a new section, which 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. EX941205854 et al. and GX99030121 et al. Once these rules are adopted, they will supersede the Board order. 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, incorporated by reference, which provides 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 contains the substance of existing N.J.A.C. 14:4-1.3(d) which 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 contains the substance of existing N.J.A.C. 14:4-1.6(g), which requires each LDC to submit a quarterly report to the Board's Division of Customer Assistance, listing any slamming complaints they have received.

N.J.A.C. 14:4-2.6 is the recodification of, and contains the substance of, existing N.J.A.C. 14:4-1.4. This section requires any bill submitted to a customer to contain the name and telephone number of each TPS or LDC for which the billing is provided. The amendments add cross references to other existing Board rules concerning billing.

Proposed new N.J.A.C. 14:4-2.7 contains the substance of existing N.J.A.C. 14:4-1.5, proposed for repeal. This section requires the LDC to notify a customer of any change order that the LDC receives from a TPS, which pertains to that customer.

N.J.A.C. 14:4-2.8 is the recodification of, and contains the substance of, existing N.J.A.C. 14:4-1.6, except for N.J.A.C. 14:4-1.6(g) which is relocated to proposed N.J.A.C. 14:4-2.5 as described above. This section 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 is being amended to require the TPS to produce the documentation required under N.J.A.C. 14:4-2.3(c) within 10 days after a request from the customer or the Board.

N.J.A.C. 14:4-2.9 is the recodification of, and contains the substance of, existing N.J.A.C. 14:4-1.7. This section 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 section is being amended to make 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**

Existing *N.J.A.C. 14:4-5*, which contains affiliate relations and fair competition rules for electric power suppliers and gas suppliers, is proposed to be readopted without substantive amendments, and recodified as *N.J.A.C. 14:4-3*. This subchapter implements statutory provisions at *N.J.S.A. 48:3-55*, 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 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.

The only amendments proposed to this subchapter are the recodification of the subchapter, the revision of cross-references to reflect the recodification of other subchapters, and the deletion of several definitions that are moved to proposed new *N.J.A.C. 14:4-1.2*.

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

N.J.A.C. 14:4-3.2 sets forth definitions used in this subchapter. Many basic terms (for example: "Board," "customer," "end user," and "public utility") are already defined in the definitions section, *N.J.A.C. 14:3-1.1*, of *N.J.A.C. 14:3* (All Utilities), which applies to Chapter 4. Therefore, these basic terms are being deleted from this subchapter to reduce redundancy, and cross-references are added to guide the reader to the definitions. Terms that are defined and used in other subchapters in Chapter 4 are deleted from this subchapter and relocated to proposed new *N.J.A.C. 14:4-1.2*. However, a number of terms defined in existing N.J.A.C. 14:4-5.2 are unique to this subchapter and therefore are proposed for readoption without change. These are "affiliate," "affiliated," "category," "competitive service," "comprehensive resource analysis," "cross-subsidization," "cross-subsidy," "Dth," "EBB," "existing products and/or services," "fully allocated cost," "functional separation," "individual proprietary information," "joint purchase," "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." Finally, the definition of "long term" is deleted because it is no longer used in the rules.

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

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

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

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 recordkeeping, reporting, and prior Board approval for each competitive product or service. Finally, the section sets forth actions the Board will take in case of a violation of the section.

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

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

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

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 is reserved.**

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

Existing *N.J.A.C. 14:4-2*, which contains licensing and registration rules for electric power suppliers and gas suppliers, is proposed to be repealed and replaced with new subchapter *N.J.A.C. 14:4-5*. The new subchapter contains much of the same substance as the existing subchapter, but significant additions and deletions are proposed, which are described below.

Following is a section-by-section summary of the proposed new rules:

Proposed new N.J.A.C. 14:4-5.1 contains the substance of existing N.J.A.C. 14:4-2.1, which sets forth the entities regulated under the subchapter. Three new entities are regulated under these proposed new rules. 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. Finally, clean power marketers are added 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 expands upon the information in existing N.J.A.C. 14:4-2.1, by adding more detail on 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 substance of the existing confidentiality provisions at N.J.A.C. 14:4-2.9 are relocated into proposed new N.J.A.C. 14:4-5.1.

Existing N.J.A.C. 14:4-2.2, which contains definitions, is proposed for repeal. All of the definitions are relocated to proposed new N.J.A.C. 14:4-1.2, which contains definitions that apply to all of Chapter 4, with one exception. The definition of "energy consumer" is being deleted because it is no longer used in the chapter.

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. The proposed section contains much of the substance of existing N.J.A.C. 14:4-2.6, except that clean power marketers are also subject to the section. In addition, provisions addressing Board review of applications have been relocated into proposed N.J.A.C. 14:4-5.4, which addresses Board application processing procedures, and provisions for application fees have been relocated into proposed new N.J.A.C. 14:4-5.12, which consolidates the fee provisions of the subchapter.

Proposed N.J.A.C. 14:4-5.2 also contains several provisions that are relocated from existing N.J.A.C. 14:4-2.6. These include the 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. Finally, all of the requirements in paragraphs (f)1 through 4 are rephrased and expanded to provide more clarity and detail.

Provisions at existing N.J.A.C. 14:4-2.6(e), providing for modification of the amount of the surety bond required for a license, are not proposed for reoption. In the Board's experience with the rules, these provisions have virtually never been used.

Proposed new N.J.A.C. 14:4-5.3 sets forth the required contents of an application for a license. This section includes the substance of provisions found in existing N.J.A.C. 14:4-2.5. 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 broad 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 contains provisions found in the existing rules at N.J.A.C. 14:4-2.3, some of which are expanded by the addition of more detail for clarity. In addition, provisions requiring that the applicant notify the Board of a material change during the pendency of the application are added, as is a requirement for a surety bond in the amount of \$ 25,000 for a clean power marketer license. The option for a provisional license, found in existing N.J.A.C. 14:4-2.3, has not been proposed for reoption. The Board believes that provisional licenses are no longer needed because application processing times have improved and are likely to continue to do so due to some of the improvements in this proposal. A new provision is added 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. This section contains much of the substance of existing N.J.A.C. 14:4-2.6. However, rather than listing specific gas heating value and purity standards, as is done in existing N.J.A.C. 14:4-2.6(c)1, 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 recordkeeping requirements found in the existing rules at N.J.A.C. 14:4-2.6. 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 reoption as the Board has found that is unnecessary, and stakeholder input indicates that it is burdensome.

Proposed new N.J.A.C. 14:4-5.6, which explains what happens if a license or its surety bond expires, contains the substance of several provisions in existing N.J.A.C. 14:4-2.4. The proposed new section adds considerable detail regarding the exact implications of a license expiration, and 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, contains the substance of several provisions in existing N.J.A.C. 14:4-2.4. The proposed new section sets forth the required contents of an application for renewal. As with the proposed new section regarding application for an initial license, this proposed new rule 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. Renewal application fees are simplified and consolidated with other fees at proposed N.J.A.C. 14:4-5.12. Finally, a new provision requires that the licensee provide a copy of the renewal to LDCs within 10 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, contains the substance of existing N.J.A.C. 14:4-2.7(a) and (b). As with the proposed new sections regarding applications for an initial license and license renewal, this proposed new rule 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 new requirement that a registrant notify the Board of any material change in the structure or operation of the business. Proposed new (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, which provides for registration renewals, contains the substance of existing N.J.A.C. 14:4-2.7(c) and (d), with some additional clarifying detail.

Proposed N.J.A.C. 14:4-5.10 contains new provisions that prohibit 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.

All of the fee provisions in existing *N.J.A.C. 14:4-2* are consolidated in proposed new N.J.A.C. 14:5-12, and displayed in table form for easier understanding. The existing rules require an initial license application fee, followed by an additional fee at the time of license issuance. However, the Board has found that virtually all applicants submit both fees at once with submittal of the application. Therefore, the proposed section requires both fees with the submittal of the application, but the fee that previously was required upon issuance of the license is refundable if the license is

denied. In addition, a provision is added explaining the fee and surety bond requirements for a single application for more than one license.

Existing N.J.A.C. 14:4-2.9, which addresses confidentiality, is proposed for repeal, as its substance is proposed for relocation at N.J.A.C. 14:4-5.1(l).

Proposed new N.J.A.C. 14:4-5.13, which address enforcement, contains the substance of existing N.J.A.C. 14:4-2.10. In addition, the new section adds detail concerning 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**

Existing *N.J.A.C. 14:4-6*, which contains provisions for the establishment and operation of government energy aggregation programs, is proposed to be readopted with minor administrative amendments.

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;
- 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.

There is no need to make substantive changes to the government energy aggregation rules at this time. There has been no municipality or county that has passed an ordinance or resolution authorizing a government aggregation program. The Board believes the current rules are sufficient. Therefore, the only changes proposed to this subchapter are the recodification of the subchapter, the revision of cross-references to reflect the recodification of other subchapters, and the deletion of several definitions that are moved to proposed new N.J.A.C. 14:4-1, which contains definitions used in multiple subchapters of chapter 4.

The following is a section-by-section summary of Subchapter 6 as proposed for readoption:

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. Several definitions are proposed to be deleted from this subchapter and relocated to new N.J.A.C. 14:4-1, which contains definitions that apply to all of Chapter 4. The relocated terms are those that are used in more than one subchapter of Chapter 4. This consolidation of definitions will ensure consistency of terms across the subchapters in Chapter 4, and will reduce redundancy.

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**

Existing *N.J.A.C. 14:4-3* 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. The subchapter is proposed to be readopted without substantive amendment, and recodified as *N.J.A.C. 14:4-7*. The only amendments proposed to this subchapter are the recodification of the subchapter, the revision of cross-references to reflect the recodification of other subchapters, and the deletion of several definitions that are moved to proposed new *N.J.A.C. 14:4-1.2*, which contains definitions used in multiple subchapters of chapter 4.

Following is a section-by-section summary of Subchapter 3 as proposed for readoption:

N.J.A.C. 14:4-7.1 (recodified from N.J.A.C. 14:4-3.1) sets forth the scope of the subchapter and the parties regulated.

N.J.A.C. 14:4-7.2 (recodified from N.J.A.C. 14:4-3.2) sets forth definitions used in this subchapter. Many basic terms (for example: "Act," "Board," "electric power supplier," and "customer") are also defined in the definitions section, *N.J.A.C. 14:3-1.1*, of *N.J.A.C. 14:3*, All Utilities, which applies to Chapter 4. Therefore, these basic terms are being deleted from this subchapter to reduce redundancy, and cross-references are added to guide the reader to the definitions. Terms that are defined and used in other subchapters in Chapter 4 are deleted from this subchapter and relocated to proposed new *N.J.A.C. 14:4-1.2*. Three terms defined in existing N.J.A.C. 14:4-3.2 are unique to this subchapter and are proposed for reoption without amendment. These are "FTC," "retail sales" and "redlining."

N.J.A.C. 14:4-7.3 (recodified from N.J.A.C. 14:4-3.3) 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 (recodified from N.J.A.C. 14:4-3.4) 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 (recodified from N.J.A.C. 14:4-3.5) sets forth requirements each TPS must follow regarding its income, security deposit, and credit requirements.

N.J.A.C. 14:4-7.6 (recodified from N.J.A.C. 14:4-3.6) contains the minimum requirements for the content and execution of a customer contract.

N.J.A.C. 14:4-7.7 (recodified from N.J.A.C. 14:4-3.7) sets forth requirements for the content and clarity of customer bills.

N.J.A.C. 14:4-7.8 (recodified from N.J.A.C. 14:4-3.8) prohibits disclosure of customer information except under certain conditions.

N.J.A.C. 14:4-7.9 (recodified from N.J.A.C. 14:4-3.9) sets forth requirements for TPS complaint handling.

N.J.A.C. 14:4-7.10 (recodified from N.J.A.C. 14:4-3.10) provides for termination of a customer contract under certain conditions.

## **Chapter 8. Renewable Energy and Energy Efficiency**

The Board is proposing to create a new chapter in which to consolidate rules pertaining to renewable energy. Three existing subchapters from the energy competition standards at *N.J.A.C. 14:4* are being recodified in this new chapter, and a new subchapter is added. The three relocated subchapters are those governing renewable portfolio standards, environmental information disclosure requirements, and net metering and interconnection standards. The new subchapter includes general provisions and definitions for the new chapter.

### **Subchapter 1. Renewable Energy General Provisions And Definitions**

Proposed new N.J.A.C. 14:8-1 includes an overview of the applicability of Chapter 8, and definitions that are used in more than one subchapter in Chapter 8.

### **Subchapter 2. Renewable Portfolio Standards**

The renewable portfolio standards (RPS) rules, at proposed N.J.A.C. 14:8-2 (recodified from N.J.A.C. 14:4-8), implement provisions of EDECA that require each electric power supplier or basic generation service provider that sells electricity to retail customers in New Jersey to include in its electric energy portfolio a percentage of electricity generated from renewable energy sources. A company's energy portfolio is the combined energy generated or supplied

by that company.

The most significant amendment proposed implements the April 2003 Renewable Energy Task Force recommendation that the renewable energy percentage requirement be increased to 20 percent of a company's energy portfolio by 2020. Upon receiving the recommendation, the BPU engaged the Center for Energy, Economic and Environmental Policy (CEEEP) at Rutgers University to conduct an economic impact analysis on the proposal. In December 2004, the CEEEP released its report (RPS Report) on the recommended 20 percent RPS requirement. The report examined, and where possible quantified, the incremental costs and benefits of the recommended 20 percent requirement over the existing requirement of 4 percent by 2008. As part of the analysis, CEEEP enlisted the participation of the Rutgers Economic Advisory Services, and formed an interdisciplinary team to perform this analysis.

The analysis in the RPS Report examined several different scenarios regarding expected fuel prices and expected technological improvements. Based on the New Jersey Renewable Energy Market Assessment report, released in August 2004 for the BPU by CEEEP, the expected scenario or base case assumed increasing real fossil fuel prices and expected technology improvements that would lead to reductions in the actual cost of renewable energy sources. There is a large degree of uncertainty in attempting to quantify the benefits of the recommended 20 percent RPS requirement. Those benefits are primarily but not exclusively avoided environmental costs. Despite the difficulty of quantifying them, it is clear that these benefits are as real as the costs.

The RPS Report found that, when compared to a scenario in which the existing RPS requirements are extended out to 2020, the recommended 20 percent RPS would raise electricity prices approximately 3.7 percent by the year 2020, but would have a negligible impact on the growth of New Jersey's economy. New Jersey's economy would not be negatively affected by the electricity price increase because the price increase will be offset by other effects of the 20 percent requirement. First, under the recommended 20 percent RPS, approximately 11,700 new jobs are expected by 2020. Second, the recommended 20 percent RPS would cause natural gas prices to edge slightly downward for New Jersey consumers by reducing the use of this fuel in power generation. Finally, the recommended 20 percent RPS would increase energy reliability for New Jersey consumers by providing electricity from customer-generators when grid power is not available, and may also reduce expenditures on transmission and distribution in the State. Under a worst-case scenario in which additional cost reductions do not occur at their historical rate, the recommended 20 percent RPS could raise electricity prices by up to 24 percent by 2020 and could have a measurable, negative impact on the State's economy, lowering real gross state product 0.145 percent.

The recommended 20 percent RPS will reduce emissions of many pollutants in the region. Based on accepted methods of estimating the costs of air pollution, illustrative calculations suggest that the avoided costs that would result from a recommended 20 percent RPS are in the range of several hundred million dollars by 2020. Further detail on the calculation underlying the final report can be found in the RPS report on the Board's website at: <http://www.bpu.state.nj.us/reports/EIAreport.pdf>.

On February 22, 2005, CEEEP hosted a forum with two panels of experts discussing the December 2004 RPS Report. CEEEP invited independent experts on this topic to discuss and critique the report's assumptions, methodologies, and conclusions. The forum was open to all interested parties and provided stakeholders and the public an opportunity to participate and contribute to the discussion.

Following the forum, the BPU's Office of Clean Energy requested that CEEEP hold two stakeholder meetings to inform the process by which the Office of Clean Energy will develop the regulations to extend the RPS beyond 2008 to 20 percent in 2020 for Class 1 renewables. Specific stakeholders were invited to participate in a facilitated discussion amongst themselves and representatives from the Office of Clean Energy. The public was also given an opportunity to provide comment at the end of each meeting. Based on the stakeholder input, further revisions and refinements were assigned to an ad hoc working group of the Renewable Energy Committee of the Clean Energy Council.

Below is a section-by-section description of the rules proposed for readoption with amendments recodified as

## N.J.A.C. 14:8-2:

Proposed *N.J.A.C. 14:8-2.1*, which describes the entities and activities regulated under the subchapter, is recodified from existing N.J.A.C. 14:4-8.1, with no change in substance. Cross references are corrected to reflect recodification of other provisions.

Proposed *N.J.A.C. 14:8-2.2* contains definitions found in existing N.J.A.C. 14:4-8.2. The proposal removes several definitions that are used in multiple subchapters or chapters from this section and places them in the appropriate location. These definitions are now located in either *N.J.A.C. 14:3-1.1*, *14:4-1.2* or *14:8-1.2*. In addition, minor clarifications have been proposed to the definitions of "attribute," "Generation Attribute Tracking System" or "GATS" and "Renewable Energy Certificate" or "REC." New definitions are proposed for "resource recovery facility" and "voluntary clean electricity market" or "voluntary clean electricity program."

Existing N.J.A.C. 14:4-8.4, which sets forth conditions that are specific to the solar electric generation requirements, is recodified at *N.J.A.C. 14:8-2.4*. The proposed provision contains most of the substance of N.J.A.C. 14:4-8.4, with some changes.

Proposed *N.J.A.C. 14:8-2.3* (recodified from N.J.A.C. 14:4-8.3) sets forth the minimum percentage of renewable energy required under the subchapter. The section is amended to include the RPS percentages through May 31, 2021. Since the Board has now authorized the use of class I and class II renewable energy RECs through the GATS, administered by PJM EIS, this section has been amended to provide that a supplier/provider may meet the requirements of this subchapter by submitting RECs, and that in fact a supplier/provider may no longer satisfy the RPS requirements through the direct supply of renewable energy. Proposed new *N.J.A.C. 14:8-2.3(i)* contains the substance of existing N.J.A.C. 14:4-8.4(c), which prohibits use of the same renewable energy to meet more than one of various types of mandates. The provision has been amended to delete references to direct supply of energy because that is no longer an option for complying with the RPS requirements.

Amendments are proposed to *N.J.A.C. 14:8-2.4(a)* (recodified from N.J.A.C. 14:4-8.4(a)) to remove references to direct supply of energy, since RECs are now required for compliance. Existing N.J.A.C. 14:4-8.4(c), which prohibits the use of the same renewable energy to meet certain mandates, is relocated to proposed new *N.J.A.C. 14:8-2.3(j)* and amended as described above.

*N.J.A.C. 14:8-2.5* (recodified from N.J.A.C. 14:4-8.5) sets forth the types of energy that qualify as class I renewable energy, and a requirement for a biomass sustainability determination from the New Jersey Department of Environmental Protection. The section also sets forth the procedure for obtaining the DEP determination, and other information submittal requirements. The section is proposed for readoption without change, except for the correction of cross references, removal of references to direct supply of solar electric generation, and the deletion of N.J.A.C. 14:8-4.5(b)8 and 9. Under these paragraphs, projects that were not intended to be classified as Class I renewable energy under EDECA (such as a combined heat and power source) may have been able to qualify for Class I renewable energy.

Proposed *N.J.A.C. 14:8-2.6* (recodified from existing N.J.A.C. 14:4-8.6) is proposed for readoption without amendment, except for the correction of cross references. The section sets forth the types of energy that qualify as class II renewable energy, the procedure for obtaining an environmental compliance determination from the New Jersey Department of Environmental Protection, and information submittal requirements to document that energy is in fact class II renewable energy.

Proposed *N.J.A.C. 14:8-2.7* (recodified from N.J.A.C. 14:4-8.7) is proposed for readoption with minor amendments. The section sets forth requirements that apply to class I and II renewable energy. Cross references are corrected, and existing N.J.A.C. 14:4-8.7(d) is deleted because it is redundant with proposed *N.J.A.C. 14:8-2.3(i)*.

Proposed *N.J.A.C. 14:8-2.8* (recodified from N.J.A.C. 14:4-8.8) introduces the concept of RECs, and specifies the conditions under which a REC can be used for compliance with the subchapter. Minor clarifications are proposed. A

new requirement is proposed to require that solar RECs and class I RECs that are based on energy generated by a customer-generator on the customer-generator's premises (commonly known as "behind the meter" energy) must be issued by the Board or its designee, and the customer-generator facility must be eligible for net metering. Class I and class II RECs that are not based on customer-generator energy must be issued by PJM-EIS through GATS.

Proposed *N.J.A.C. 14:8-2.9* (recodified from N.J.A.C. 14:4-8.9) provides for the Board to issue solar RECs and class I RECs based on energy generated by a customer-generator on the customer-generator's premises, commonly known as "behind the meter" RECs. The section sets forth requirements for the amount of energy per REC, the basic contents of a REC, and other general information regarding RECs. Minor clarifications are proposed, and, throughout the section, amendments are proposed to add the option for the Board or its designee to issue class I RECs as well as solar RECs. Proposed new *N.J.A.C. 14:8-2.9(l)* clarifies that the customer-generator is the owner of the renewable attributes of the energy it generates unless an express contract says otherwise.

Proposed *N.J.A.C. 14:8-2.10* (recodified from existing N.J.A.C. 14:4-8.10) introduces the concept of the alternative compliance payment (ACP) and solar alternative compliance payment (SACP). These are payments that a supplier/provider may make in lieu of complying with the percentage requirements at *N.J.A.C. 14:8-2.3*. The section provides for an advisory committee to make recommendations to the Board in determining and adjusting the amount of the ACP and SACP, and requires the Board to use the payment money to fund additional renewable energy projects. The section is proposed for reoption without amendment, except for the updating of cross references.

Proposed *N.J.A.C. 14:8-2.11* (recodified from existing N.J.A.C. 14:4-8.11) sets forth requirements for recordkeeping and reporting, and for documenting compliance with the subchapter. The section is being readopted with corrected cross references, and references to direct supply of energy are deleted. A new requirement is added, for accounting information issued by PJM-EIS that must be contained in the annual report.

Proposed *N.J.A.C. 14:8-2.12* (recodified from N.J.A.C. 14:4-8.12) addresses the Board's remedies in the case of a violation of the subchapter. The heading of the section has been changed from "Penalties" to "Enforcement" to reflect the fact that, in addition to penalties, the Board has other enforcement options.

### **Subchapter 3. Environmental Information Disclosure**

Existing *N.J.A.C. 14:4-4*, which contains environmental information disclosure requirements for electric power suppliers and BGS providers, is proposed to be readopted with a minor substantive amendment (concerning an outdated implementation schedule), and recodified as N.J.A.C. 14:8-3. 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 last amended the environmental information disclosure rules, and the Board has gained experience with the rules through implementing them. Accordingly, the Board is planning amendments to these rules. 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 readopting the environmental information disclosure rules without substantive amendment, but plans to amend them in the near future, after GATS is completed and its impact becomes clear. Therefore, there are only four amendments proposed to this subchapter at this time:

1. The recodification of the subchapter;
2. The revision of the outdated implementation schedule provisions at N.J.A.C. 14:8-3.2;
3. The deletion of several definitions and relocation of some definitions to proposed new *N.J.A.C. 14:8-1.2*, which contains definitions used in multiple subchapters of Chapter 8; and

4. The revision of cross-references to reflect the recodification of other subchapters.

Following is a section-by-section summary of the rules proposed for readoption recodified as *N.J.A.C. 14:4-3*:

*N.J.A.C. 14:8-3.1* (recodified from *N.J.A.C. 14:4-4.1*) sets forth the scope of the subchapter, including the parties regulated and the basic requirements.

*N.J.A.C. 14:8-3.2* (recodified from *N.J.A.C. 14:4-4.2*) sets forth the schedule for implementation of the environmental disclosure program. This section is amended to reflect the passage of time since its adoption.

*N.J.A.C. 14:8-3.3* (recodified from *N.J.A.C. 14:4-4.3*) sets forth definitions used in this subchapter. Many basic terms (for example: "Board," "customer," "end user," and "public utility") are deleted because they are already defined in *N.J.A.C. 14:3-1.1* (All Utilities), which applies to Chapter 8. Several definitions that are used in more than one subchapter of Chapter 8 are proposed to be relocated in proposed new *N.J.A.C. 14:8-1.2*. In addition, the definition of "electricity supplier" is revised to refer to the definition of "electric power supplier," as the two terms have the same meaning; and the definition of the term "residual control area average" is proposed for deletion because it is not used in the rules.

*N.J.A.C. 14:8-3.4* (recodified from *N.J.A.C. 14:4-4.4*) 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.

*N.J.A.C. 14:8-3.5* (recodified from *N.J.A.C. 14:4-4.5*) 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.

*N.J.A.C. 14:8-3.6* (recodified from *N.J.A.C. 14:4-4.6*) sets forth requirements for disclosure based on the source from which the supplier obtained the energy, for example, owned generation, electricity purchased through various types of contracts, electricity purchased through the spot market, etc.

*N.J.A.C. 14:8-3.7* (recodified from *N.J.A.C. 14:4-4.7*) contains requirements for the timing of environmental disclosures, and the period of time which each disclosure must cover.

*N.J.A.C. 14:8-3.8* (recodified from *N.J.A.C. 14:4-4.8*) addresses to whom the environmental information must be disclosed, requires annual reporting, and requires that the electric power supplier maintain an internet website.

*N.J.A.C. 14:8-3.9* (recodified from *N.J.A.C. 14:4-4.9*) requires that the environmental information be certified prior to distribution to customers, by an independent CPA.

*N.J.A.C. 14:8-3.10* (recodified from *N.J.A.C. 14:4-4.10*) provides for compliance audits to be presented to the Board, and for penalties in the case of a violation of the subchapter.

#### **Subchapter 4. Net Metering and Interconnection Standards for Class I Renewable Energy Systems**

Existing *N.J.A.C. 14:4-9*, which contains net metering and interconnection rules for class I renewable energy systems, is proposed to be readopted with no change in substance, and recodified as *N.J.A.C. 14:8-4*. 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 Board is proposing to readopt the net metering and interconnection rules without substantive amendment. As

mentioned above, the Board is proposing to reorganize existing Chapter 4 and split it into two separate chapters - one addressing EDECA issues and the other renewable energy issues. Thus, the net metering and interconnection rules are proposed for recodification in new Chapter 8 as N.J.A.C. 14:8-4. In addition, numerous definitions are proposed to be deleted from the subchapter and consolidated in proposed new *N.J.A.C. 14:8-1.2*. Finally, cross-references in the net metering and interconnection rules are revised to reflect the recodification of other subchapters.

The following is a section-by-section summary of the rules proposed for readoption recodified as N.J.A.C. 14:8-4:

N.J.A.C. 14:8-4.1 (recodified from existing N.J.A.C. 14:4-9.1) sets forth the scope of the net metering and interconnection rules.

N.J.A.C. 14:8-4.2 (recodified from existing N.J.A.C. 14:4-9.2) contains definitions of terms used in the subchapter. Several definitions are proposed to be deleted from this subchapter and relocated to new *N.J.A.C. 14:8-1.2*, which contains definitions that apply to all of Chapter 8. The relocated terms are those that are used in more than one subchapter of Chapter 8. This consolidation of definitions will ensure consistency of terms across the subchapters in Chapter 8, and will reduce redundancy.

N.J.A.C. 14:8-4.3 (recodified from existing N.J.A.C. 14:4-9.3) 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 (recodified from existing N.J.A.C. 14:4-9.4) sets forth the requirements for meters and metering.

N.J.A.C. 14:8-4.5 (recodified from existing N.J.A.C. 14:4-9.5) sets forth the application procedures and requirements for interconnection.

N.J.A.C. 14:8-4.6 (recodified from existing N.J.A.C. 14:4-9.6) sets forth the standards for the certification of customer-generator facilities.

N.J.A.C. 14:8-4.7 (recodified from existing N.J.A.C. 14:4-9.7) 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 (recodified from existing N.J.A.C. 14:4-9.8) sets forth the standards and procedure to be used in a level 2 interconnection review.

N.J.A.C. 14:8-4.9 (recodified from existing N.J.A.C. 14:4-9.9) 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 (recodified from existing N.J.A.C. 14:4-9.10) sets forth the interconnection fees.

N.J.A.C. 14:8-4.11 (recodified from existing N.J.A.C. 14:4-9.11) sets forth the requirements to be followed after the approval of an interconnection.

### **Social Impact**

The readoption 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. The readoption of Chapter 4 will continue programs that ensure that New Jersey citizens and businesses have greater access to adequate and affordable energy. The clarifying amendments proposed as part of this readoption will have a beneficial social impact in that they clarify existing provisions and make them more accessible to a broad spectrum of the public.

The readoption of the Board's anti-slamming rules (recodified through this proposal from N.J.A.C. 14:4-1 to 14:4-2) 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 readoption of the Board's affiliate relations rules (recodified through this proposal from *N.J.A.C. 14:4-5* to 14:4-3) 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 readoption 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 readoption of the Board's licensing and registration rules for energy suppliers (recodified through this proposal from *N.J.A.C. 14:4-2* to 14:4-5) 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 readoption 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 readoption of the Board's consumer protection rules (recodified through this proposal from *N.J.A.C. 14:4-2* to 14:4-7) 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 proposed readoption with amendments of the Renewable Portfolio Standards rule is expected to have a positive social impact for New Jersey, because it will help reduce air pollution and will help stimulate more investment in renewable energy. The rule will reduce air pollutant emissions from power plants, which adversely affect health and welfare. There are many and substantial health and environmental effects due to air emissions from power plants, and the atmospheric concentration of emissions are (with the exception of carbon dioxide) geographically specific. Illustrative calculations using generic environmental externality adders indicate that in 2020 the environmental benefits of the recommended 20 percent RPS will be in the range of several hundred million dollars.

Power plants emit air, water, and solid waste. The largest reductions in emissions due to the RPS rules are anticipated to occur in air pollution. In New Jersey, roughly seven percent of air toxics come from major point sources, which include factories and power plants. Over 2,000 pounds of mercury are emitted into the air each year in New Jersey from various sources, including coal-fired power plants and municipal solid waste incinerators and scrap meters. Air pollution also has a negative effect on biodiversity, climate change, and forest ecosystems, for example through greenhouse gases and acid rain. Global benefits of the RPS rules include carbon sequestration and biodiversity conservation.

Air pollution damages buildings and structures, and degrades the cultural heritage of the past century. Air pollution damages materials such as zinc, copper, and stone, as well as organic materials. Reduced visibility due to air pollution affects some of the country's most scenic areas. US EPA estimates that in national parks in the eastern United States, average visual range has decreased from 90 miles to 15 to 25 miles. The RPS rules will help reduce the emissions that cause these negative social impacts.

The readoption of the environmental information disclosure rules (recodified through this proposal from *N.J.A.C. 14:4-4* to 14:8-3) 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 (recodified through this proposal from *N.J.A.C. 14:4-8* to 14:8-4) 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 readoption of the energy anti-slamming rules (at proposed *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 readoption of the affiliate relations rules (at proposed *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 readoption of the licensing and registration rules (at proposed *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 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 readoption of the consumer protection standards (recodified through this proposal from *N.J.A.C. 14:4-2* to 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 economic impact of the readoption of the RPS rules with amendments is set forth in detail in the Summary discussion of N.J.A.C. 14:8-2 above.

The readoption of the environmental information disclosure rules (recodified through this proposal from *N.J.A.C. 14:4-4* to 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 readoption of the net metering and interconnection rules (at proposed 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 readoption 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.

Measuring the economic impact of the proposed readoption with amendments of the renewable portfolio energy standards is difficult. To accomplish this task, the Board engaged the Center for Energy, Economic and Environmental Policy (CEEPP) at Rutgers University to conduct an economic impact analysis on the proposal. The CEEPP released the Economic Impact Analysis of New Jersey's 20 percent Renewable Portfolio Standard report on December 8, 2004. The RPS Report analysis found that under the expected case assumptions, the recommended 20 percent RPS requirement, as compared to the existing RPS percentage requirement, would raise electricity prices approximately 3.7 percent in the year 2020 and would have no measurable impact on the growth of the New Jersey economy. This excludes any positive economic impact due to additional economic activity stemming from the recommended 20 percent RPS, as well as the benefits from avoiding environmental impacts from air emissions. If reductions in renewable technology costs do not occur, the increase in the RPS to 20 percent by 2020 increases the prices of electricity by 2.9 percent in 2010 and by 24.1 percent in 2020. By 2020, real gross State product would be 0.145 percent lower than it would be if the RPS were not increased.

The recommended 20 percent RPS would also reduce the incremental demand for natural gas, causing downward pressure on its price. Each one percent reduction in national demand of natural gas leads to a long-term reduction in average natural gas wellhead prices of 0.75 percent to 2.5 percent, and some studies predict even larger reductions.

The increase in renewable generation stimulated by the RPS rules will also reduce costs related to the environmental impact of non-renewable power generation. There is extensive literature that uses a wide range of approaches to quantify the environmental impacts of generating electricity. This literature provides a broad array of estimates of economic impacts. The majority of new power plants in the region and in New Jersey are fired by natural gas and the recommended 20 percent RPS will produce environmental benefits by reducing the need to operate these plants. The resulting dollar savings are estimated to be \$ 12 million in 2010, \$ 110 million in 2015, and \$ 330 million in

2020 (in 2004). These calculations are based on non state-specific estimates of the benefits of avoiding natural gas fired generation, and not on a specific New Jersey analysis. Additional detail on the calculation of economic impacts of the RPS rules can be found in the RPS Report on the Board's website at <http://www.bpu.state.nj.us/reports/EIAreport.pdf>.

### **Federal Standards Analysis**

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, renewable portfolio standards, 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 proposed readoption.

The affiliate relations rules are not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporate or refers to Federal law, Federal standards, or Federal requirements. The Federal Public Utility Holding Company Act (PUHCA), which regulates public utility holding companies, will be repealed in February 2006. However, there is a new Federal law, "The Energy Policy Act of 2005" that governs affiliate transactions, service agreements, and access to the books and records of public utility holding companies. While the Board's affiliate relations rules are more specific than the new 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." To the extent that the specificity of the Board's rules renders them more stringent, the Board believes such stringency is justified by the potential for abuse of a public utility by a holding company or other affiliate, as amply demonstrated by recent events in the public utility industry.

Regarding the net metering and interconnection rules at N.J.A.C. 14:8-4, the Federal Regulatory Energy Commission (FERC) recently amended *18 CFR 35.28(f)* to include regulations that are comparable to those in the net metering and interconnection subchapter. However, the FERC regulations are still subject to rehearing and are not yet effective. The Board will carefully review the FERC regulations once they are complete, to ensure consistency. Should the FERC rules become final, N.J.A.C. 14:8-4.3(1) ensures that the Board's net metering and interconnection rules will not conflict with the FERC rules.

### **Jobs Impact**

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

The Board does not anticipate that the proposed readoption with amendments of the provisions relocated into proposed new 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 rules have been in effect 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 and the RPS rules stimulate construction of more renewable energy

generation in New Jersey, this proposed readoption will increase jobs for the designers, builders, and installers of renewable energy equipment.

The Board anticipates that the proposed readoption with amendments of the Renewable Portfolio Standards rules will have a positive impact on jobs in New Jersey. The results of the initial R/ECON(TM) Input-Output model (I-O) analysis contained in the RPS report show that the addition of 636 MWs of photovoltaic facilities and 4,864 MWs of wind power in New Jersey from 2005 to 2020 would add an average of 10 jobs a year to the industry job base, while adding an average of about 5,700 jobs a year to total employment. The increase in total jobs would be about 750 in 2005 and 2006, rising to about 11,500 in 2020. In 2020, these jobs would support \$ 191 million in annual total wealth, including \$ 142 million in job earnings and \$ 12.9 million in State and local tax revenues in year 2000 dollars.

If New Jersey implements economic incentives to attract renewable energy equipment manufacturers and other related employers to New Jersey, the total annual economic impacts of the RPS rules from installation and maintenance of renewable energy systems would be about 11,700 jobs by 2020. The jobs would annually support nearly \$ 1 billion in gross product for the State, which would include about \$ 700 million in job earnings and \$ 77 million in State and local government tax revenue. If one assumes that 50 percent of the products are shipped out-of-State, the number of jobs created by 2020 would increase by nearly 80 percent, to 20,750 jobs; and the annual gross product associated with those jobs would increase by more than 60 percent to \$ 1.6 billion. Annual earnings and State and local tax revenues would be about \$ 1.1 billion and \$ 111 million, respectively.

Again, if reductions in renewable technology costs do not occur, employment in the State would decrease. In this unlikely scenario, the number of jobs in the economy would be 2,000 (0.042 percent) less in 2020 than if the RPS were not increased.

### **Agriculture Industry Impact**

Neither the readoption with amendments 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.

The Board anticipates that the proposed readoption with amendments of the Renewable Energy Portfolio Standards rules will have a positive impact on the agriculture industry in New Jersey. This is because air pollution has a negative impact on agricultural productivity, especially crop yields. Furthermore, the increased frequency and duration of hot dry weather resulting from global warming will negatively affect agriculture. In addition, air pollution negatively impacts commercial and recreational fishing, and may impact aquaculture operations. Finally, air pollution harms forests and can affect the timber industry and other forest products operations. The RPS rules, by decreasing air pollution, will help to prevent these negative effects. In addition, many farmers earn extra income by renting space in their fields for locating wind power installations.

### **Regulatory Flexibility Analysis**

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

Some of the TPSs affected by the readoption with amendments of the anti-slamming rules may qualify as small businesses. The rules will impose some recordkeeping, reporting and other compliance requirements on these small businesses, in that this readoption will continue the requirement that TPSs use certain procedures for switching customers, and for verifying the accuracy of customer switches. The proposed amendments will not add to the existing compliance requirements and in fact will make the rules easier to comply with by allowing enrollments to be accomplished over the internet. The compliance requirements of these rules are justified by the magnitude of the slamming problem that occurred prior to the adoption of anti-slamming rules. Furthermore, unauthorized switching is no less of a problem when perpetrated by a small TPS than a large one. Therefore, the Board has not provided special provisions for small businesses.

The affiliate relations rules apply only to regulated electric and gas public utilities and their public utility holding companies, none of which qualify as a small business under the New Jersey Regulatory Flexibility Act.

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

The government energy aggregation rules will govern municipalities, counties and TPSs. Some of the TPSs who bid to supply energy or are selected to supply energy under an aggregation program may qualify as small businesses. In the event that a small business TPS is selected, that TPS will have to comply with the same rules as a larger TPS. This will include keeping records of the customers in the program and complying with all terms of the contract during formation and execution of the program. However, 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* for readoption require TPSs to adhere to minimum requirements regarding marketing, advertising, contracts, and billing. It is not anticipated that any entity would find it necessary to engage any professional services to comply with these rules. These rules are important to ensure that energy suppliers provide consumers with complete and accurate information regarding the energy they offer and provide. Furthermore, the rules would have the same impact upon all entities that enter the New Jersey market. Accordingly, the Board has not provided special provisions for small businesses.

The proposed readoption with amendments of the Renewable Portfolio Standards rule will have little impact on small businesses. The Renewable Portfolio Standards apply only to utilities and third party electric suppliers. Therefore, any third party electric supplier that is a small business would have to comply with this subchapter. *N.J.A.C. 14:8-2.3* requires each supplier/provider to ensure that the electricity it sells in each reporting year satisfies a required renewable portfolio. *N.J.A.C. 14:8-2.11* requires each supplier/provider to demonstrate compliance with rule by submitting an annual report to the Board. These annual reports are necessary so that the Board can assure that the percentage requirements of the rule are being implemented. Without this information, it is not possible to implement the Governor's recommendation of 20 percent renewable energy by the year 2020. Such reporting requirements are necessary and not so burdensome as to require differing standards for small businesses.

The environmental information disclosure rules impose some compliance requirements, in that the preparation and distribution of the environmental disclosure labels requires some effort and expenditure. 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. Furthermore, 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. Finally, 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 nearing completion, and the Board anticipates amending the environmental disclosure rules to accommodate the new tracking system as soon as it is completed.

The proposed readoption of the rules governing net metering and interconnection 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 readoption will continue provisions that systematize and simplify 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 readoption with amendments of Chapters 4 and 8 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 rules proposed for readoption with amendments, 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 readoption with amendments of the Renewable Energy Portfolio Standards and 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. 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 rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 14:4*.

**Full text** of the proposed repeals may be found in the New Jersey Administrative Code at *N.J.A.C. 14:4-1.3, 1.5 and 2*.

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

## CHAPTER 4

### ENERGY COMPETITION [STANDARDS]

#### SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

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

(a) **This chapter applies to various regulated entities involved in the supply of electricity and natural gas, as set forth at (b) through (e) below. If more than one subchapter applies to a given type of entity, the entity shall comply with the requirements in all applicable subchapters.**

(b) **This chapter applies to the following, as these terms are defined at *N.J.A.C. 14:4-1.2*:**

- 1. Electric public utilities;**
- 2. Electric power suppliers;**
- 3. Gas public utilities;**
- 4. Gas suppliers;**
- 5. Energy agents, including energy consultants;**
- 6. Government aggregators;**
- 7. Private aggregators;**
- 8. Public utility holding companies (PUHCs); and**
- 9. BGS providers.**

(c) **Additional provisions that may apply to the entities listed at (b) above can be found in the Board's rules on renewable energy at *N.J.A.C. 14:8*.**

(d) **In addition to the requirements in this chapter, the regulated entities subject to this chapter are also subject to Board orders and other Board rules, including, but not limited to:**

- 1. *N.J.A.C. 14:3*, All Utilities, which applies to electric public utilities and gas public utilities, as well as other regulated entities;**
- 2. *N.J.A.C. 14:5*, Electric Service, which applies to electric public utilities;**
- 3. *N.J.A.C. 14:6*, Gas Service, which applies to gas public utilities;**
- 4. *N.J.A.C. 14:12*, Demand Side Management, which applies to electric public utilities and gas public utilities;**

and

5. *N.J.A.C. 14:29*, Energy Emergency, which applies to electric public utilities and gas public utilities.

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

#### 14:4-1.2 Definitions

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

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

"Advertising" means the activity of attracting public attention to a product, service, or business, etc., as through announcements in print, radio, television, telemarketing, electronically, internet, etc.

"Aggregator" means a government aggregator or a private aggregator, as those terms are defined herein.

"Basic gas supply service" or "BGSS" means gas supply service that is provided to any customer that has not chosen an alternative gas supplier, whether or not the customer has received offers as to competitive supply options; including, but not limited to, any customer that cannot obtain such service from a gas supplier for any reason, including non-payment for services. Basic gas supply service is not a competitive service and shall be fully regulated by the Board.

"Basic generation service" or "BGS" means electric generation service that is provided to any customer that has not chosen an electric power supplier, as defined herein, whether or not the customer has received offers for competitive supply options; including, but not limited to, any customer that cannot obtain such service from an electric power supplier for any reason, including non-payment for services. Basic generation service is not a competitive service and shall be fully regulated by the Board.

"Board" means the New Jersey Board of Public Utilities.

"Broker" means a duly licensed electric power supplier that assumes the contractual and legal responsibility for the sale of electric generation service, transmission or other services to retail customers, but does not take title to any of the power sold, or a duly licensed gas supplier that assumes the contractual and legal obligations to provide gas supply service to retail customers, but does not take title to the gas.

"Btu" means British thermal unit, a standard unit of energy. One Btu is equal to the amount of heat required to raise the temperature of one pound of liquid water by one degree Fahrenheit at its maximum density, which occurs at a temperature of 39.1 degrees Fahrenheit.

"Clean power marketer" or "CPM" means a person who purchases and retires Renewable Energy Certificates (RECs) on behalf of a subscribing customer for an agreed-upon price that is added onto the customer's utility bill.

"Customer" means the person identified in the account records of a regulated entity as the person responsible for payment of the bill for utility service or another regulated service. A customer may or may not be an end user, as defined in this section.

**"Customer information"** means information specific to a particular customer, which a regulated entity has acquired or developed in the course of providing services as authorized under this chapter. This term includes, but is not limited to, a customer's name, address, telephone number, usage habits or history, peak demand and payment history.

**"EDECA"** means the Electric Discount and Energy Competition Act, *N.J.S.A. 48:3-49* et seq.

**"Electric distribution company" or "EDC"** means an electric public utility, as defined herein. An EDC cannot be an electric power supplier, but may provide basic generation service.

**"Electric distribution system"** means that portion of an electric system which delivers electricity from transformation points on the transmission system to points of connection at a customer's premises. An electric distribution system generally carries less than 69 kilovolts of electricity.

**"Electric generation service"** means the provision of retail electric energy and capacity which is generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto.

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

**"Electric public utility"** means a public utility, as that term is defined in *N.J.S.A. 48:2-13*, that transmits and distributes electricity to end users in New Jersey. An electric public utility does not take title to the electricity that it distributes.

**"Electric related service"** means a service that is directly related to the consumption of electricity by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises; the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user's premises; the provision of energy consumption management, analysis, and information management; and billing and bill payment services, as authorized by the Board.

**"End user"** means a person who receives or consumes electricity, gas, telephone, water or wastewater service. An end user may or may not be a customer, as defined herein.

**"Energy agent"** means a person that is registered with the Board pursuant to *N.J.A.C. 14:4-5*, and is thereby authorized to 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, but does not take title to the electric or gas sold.

**"Energy consultant"** means an energy agent that is registered with the Board pursuant to *N.J.A.C. 14:4-5.11*, and is thereby authorized to receive certain customer information from an LDC through electronic data interchange (EDI).

**"FERC"** means the Federal Energy Regulatory Commission or any successor agency.

"Gas public utility" means a public utility, as that term is defined in *N.J.S.A. 48:2-13*, that distributes gas to end users in New Jersey.

"Gas related service" means a service that is directly related to the consumption of gas by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises; the maintenance, repair or replacement of appliances or other energy-consuming devices at the end user's premises, and the provision of energy consumption management, analysis, and information management; and billing and bill payment services, as authorized by the Board.

"Gas supplier" means a person that is licensed by the Board under EDECA to offer or provide gas supply service to retail customers. This term includes, but is not limited to, marketers and brokers, as defined herein. A non-public utility affiliate of a public utility holding company may be a gas supplier, but a gas public utility or its subsidiary is not a gas supplier. If a gas public utility is not part of a holding company legal structure, a related competitive business segment of that gas public utility may be a gas supplier, provided that related competitive business segment is structurally separated from the gas public utility, and provided that the interactions between the gas public utility and the related competitive business segment are subject to the affiliate relations standards at *N.J.A.C. 14:4-3*.

"Gas supply service" means the provision to customers of the retail commodity of gas, but does not include any regulated distribution service.

"Government aggregator" means an entity that meets both of the following criteria:

1. The entity 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.; or is the New Jersey School Boards Association; and

2. The entity enters into a contract with another government aggregator or with a TPS, as those terms are defined herein, to purchase electric generation service, electric related service, gas supply service, and/or gas related service for one or more of the following purposes:

i. For the government aggregator's own use;

ii. For the use of other government aggregators; and/or

iii. If the government aggregator is a municipality or county, for use by residential or non-residential customers, as defined herein, within its geographic boundaries.

A government aggregator does not take title to the energy involved in the aggregation program.

"kW" means kilowatts, a unit of power representing 1,000 watts. A kW equals 1/1000 of a MW, as defined herein.

"kWh" means kilowatt-hours, or 1,000 watt-hours.

"LDC" or "local distribution company" means an electric public utility or a gas public utility, as those terms are defined herein.

"Marketer" means a duly licensed electric power supplier that takes title to electric energy and capacity,

transmission and other services from electric power generators and other wholesale suppliers and then assumes the contractual and legal obligation to provide electric generation service, and/or transmission or other services, to a retail customer or customers, or a duly licensed gas supplier that takes title to gas and then assumes the contractual and legal obligation to provide gas supply service to a customer or customers.

"Marketing" means a direct solicitation by a TPS to an individual customer for the purpose of persuading a customer to enter into an agreement for the purchase of electric generation service, gas supply service, electric related service and/or gas related service. This term includes direct mailings, telemarketing, internet websites, and in-person solicitation. Advertising is distinguished from marketing by the fact that advertising targets the general public or a group of persons, whereas marketing targets an individual potential customer.

"MW" means megawatts, a unit of power representing 1,000,000 watts. A megawatt equals 1,000 kW.

"Optional service" means an electric related service or a gas related service, as those terms are defined in this section.

"Person" means an individual, firm, joint venture, partnership, copartnership, corporation, association, State, county, municipality, public agency or authority, bi-state or interstate agency or authority, public utility, regulated entity, cable television company, cooperation association, or joint stock association, trust, limited liability company, governmental entity, or other legal entity, and includes any trustee, receiver, assignee, or personal representative thereof.

"PJM Interconnection, L.L.C." or "PJM" means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, as defined in this section. Additional information regarding PJM and its subsidiaries can be found at <http://www.pjm-eis.com/index.html>.

"PJM Environmental Information Services" or "PJM-EIS," means the wholly-owned subsidiary of PJM Technologies, Inc., which is in turn a wholly owned subsidiary of PJM Interconnection, L.L.C. PJM Environmental Information Services provides environmental and emissions attributes reporting and tracking services to its subscribers in support of renewable portfolio standards and other information disclosure requirements that may be implemented by government agencies.

"PJM region" means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection, as defined in this section. The PJM region is described in the Amended and Restated Operating Agreement of PJM Interconnection, which is incorporated herein by reference, as amended and supplemented. The Operating Agreement can be obtained on the PJM Interconnection website at [www.pjm.com](http://www.pjm.com), or by writing to PJM Interconnection, Legal Department, 955 Jefferson Avenue, Norristown, PA, 19403.

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

"Ratepayer Advocate" or "RPA" means the Division of Ratepayer Advocate in the Department of the Public Advocate or any successor agency.

"Retail" means the sale of energy to, or the purchase of energy by, one or more end users, regardless of whether the delivery of the energy will be through infrastructure owned or operated by the seller.

"Retail competition" means both of the following:

**1. The ability of retail customers to purchase electric generation service from an electric power supplier, or to choose basic generation service; and**

**2. The ability of any electric power supplier, upon meeting basic licensing requirements, to offer electric generation service to retail customers.**

**"Retail customer"** means a customer, as defined in this section, that purchases energy for its own use, or for use by other end users whose relationship with the customer is not an arms-length energy purchase transaction. This term includes government or private aggregator, as well as its customers.

**"Slamming"** means switching a customer from one TPS or LDC (for electric generation service or gas supply service) to another TPS or LDC, without obtaining authorization from the customer in accordance with this subchapter.

**"Third party supplier" or "TPS"** means an electric power supplier or a gas supplier as those terms are defined in this section.

**"Therm"** means 100,000 Btus.

**"Wholesale customer"** means a customer, as defined herein, that is not a retail customer, as defined herein.

#### SUBCHAPTER [1.] 2. [INTERIM] ENERGY ANTI-SLAMMING [STANDARDS]

##### 14:4-[1.1] 2.1 Scope

(a) [The following standards are] **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.*

[These standards also apply to the unauthorized switch of a customer away from basic generation service or basic gas supply service provided by an authorized electric or natural gas utility.]

(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 any of the following situations:**

**1. A switch from one TPS to another TPS;**

**2. A switch from an LDC to a TPS; or**

**3. A switch from a TPS to an LDC, if such a switch is not authorized in the terms of service between the end user and the TPS.**

(d) **In soliciting customers, and in switching customers from one TPS or LDC to another, 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-[1.2] 2.2 Definitions

The following words and terms, when used in [these standards] **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.**

"Act" refers to the "Electric Discount and Energy Discount and Energy Competition Act," (P.L. 1999, c.23).

"Board" means the New Jersey Board of Public Utilities or its successor agency.]

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

["Change Order" means a request made by an electric power supplier or a natural gas supplier to an LDC to have the supplier of record of a customer changed.]

**"Change order" means a request, submitted by a TPS or LDC to a customer's current provider of electric generation service or gas supply service, 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 or an LDC.**

...

["Customer" means any person that is an end user and is connected to any part of the transmission and distribution system within an electric public utility's service territory or a gas public utility's service territory within this State.

"Electric power supplier" means a person that is duly licensed pursuant to the provisions of the Act to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers, and includes load serving entities, marketers and brokers that offer or provide electric generation service to retail customers. The term excludes an electric public utility that provides electric generation service only as a basic generation service pursuant to section 9 of the act.

"Electric public utility" means a public utility, as that term is defined in *R.S. 48:2-13*, that transmits and distributes electricity to end users within this State.

"Gas public utility" means a public utility, as that term is defined in *R.S. 48:2-13*, that distributes gas to end users within this State.

"Gas supplier" means a person that is duly licensed pursuant to the provisions of the act to offer and assume the contractual and legal obligation to or provide gas supply service to retail customers, and includes, but is not limited to, marketers and brokers. A non-public utility affiliate of a public utility holding company may be a gas supplier, but a gas public utility or any subsidiary of a gas utility is not a gas supplier. In the event that a gas public utility is not part of a holding company legal structure, a related competitive business segment of that gas public utility may be a gas supplier, provided that related competitive business segment is structurally separated from the gas public utility, and provided that the interactions between the gas public utility and the related competitive business segment are subject to the affiliate relations standards adopted by the Board pursuant to subsection k. of section 10 of the Act.

"Local Distribution Company (LDC)" means an electric public utility or a gas public utility.

"Marketer" means a duly licensed electric power supplier that takes title to electric energy and capacity, transmission and other services from electric power generators and other wholesale suppliers and then assumes contractual and legal obligation to provide electric generation service, and may include transmission and other services, to an end-use retail customer or customers, or a duly licensed gas supplier that takes title to gas and then assumes the contractual and legal

obligation to provide gas supply service to an end-use customer or customers.

"Slamming" means an unauthorized change in a customer's electric power supplier or gas supplier.]

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

["Third Party Supplier (TPS)" means an electric power supplier or a gas supplier as those terms are defined herein, or a person acting on behalf of such suppliers.]

**14:4-[1.3] 2.3 Change order required for switch**

**(a) No TPS or LDC shall submit a change order to an LDC or another TPS, 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, in a Board approved format. Information on EDI may be found at the Board's website at <http://www.bpu.state.nj.us/home/EDIdocuments.shtml>; and**

**2. 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; and**

**vi. Indicate the account number of the LDC and the type of service to be switched;**

**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; and
  - 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 or LDC shall submit a separate change order for each service, even if the same TPS or LDC 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 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.

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

(a) A TPS or LDC may use electronic methods to sign up customers or obtain authorization to switch a customer from one TPS or LDC in accordance with this section.

(b) If a TPS or LDC uses electronic methods to sign up 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 herein by reference 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 or switching shall maintain a website that includes, at a minimum, the following:

1. A statement that the customer, by using electronic signup 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 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:**
    - i. The customer has the authority to 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 or a switch in its TPS or LDC;**
  - 4. The environmental disclosure information for the service being purchased, 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 the customer's acceptance in a retrievable format.**
- (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.**
- (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. 14:4-6.10. If a contract for a customer enrolled via the internet is terminated, the TPS or LDC shall provide a cancellation number to the customer.**

**(a) All change orders and records of customer authorization of switches shall be retained by the TPS for a minimum of three years.**

**(b) Each LDC shall submit a quarterly report to the Board, 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-[1.4] 2.6 TPS [billing] and LDC information required on customer bills**

[In addition to all other information required to be included in the customer's bill pursuant to regulations and/or Board Order, any] **Any** bill submitted to a customer by or on behalf of [gas supplier or an electric power supplier] **a TPS** shall contain the name and telephone number of each [party] **TPS or LDC** for which the billing is provided, **and shall meet all applicable requirements of the energy choice consumer protection rules at N.J.A.C. 14:4-6.7 and the rules for all utilities at N.J.A.C. 14:3-7.9.** [, the name and telephone number of each billing aggregator acting on behalf of a customer's TPS, the LDC's emergency phone number and any other information deemed appropriate by the Board, as well as the name, address and telephone number of the Board of Public Utilities at (973) 648-2350 and 1-800-624-0241.]

**14:4-2.7 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) Upon a verbal or written request from a subject customer, the LDC shall provide the subject customer with a copy or printout of their change order. The LDC shall provide this copy in a manner mutually agreed upon between the LDC and the subject customer, including, without limitation, by U.S. mail, e-mail, or fax.**

**(d) The LDC shall execute all TPS change orders that comply with this subchapter as soon as possible and without unreasonable delay.**

**14:4-[1.6] 2.8 [Unauthorized service termination and transfer (slamming)] Slamming complaints and investigation**

[(a) In construing and enforcing the provisions of these standards, the act of any person, firm or corporation, acting as an agent or representative acting on behalf of a TPS or electric or gas public utility shall be deemed to be the act of that TPS, gas or electric public utility.

**(b) In the event a customer notifies the Board that slamming has allegedly occurred the supply portion of the bill that relates to the alleged slamming shall be considered in dispute pursuant to N.J.A.C. 14:3-7.13.**

**(c) Any TPS, gas or electric public utility that fails to comply with the procedures prescribed in these standards and collects charges, directly or indirectly, for electric power supply or gas supply services from a customer, as a result of its or its agent's, unauthorized activity, shall be liable to the customer's properly authorized TPS, electric public utility or gas public utility in an amount equal to all charges paid by such customer after such violation, as well as for additional amounts as prescribed by regulation and/or Board Order, in accordance with such procedures as the Board may**

proscribe. The remedies provided in this subsection are in addition to any other remedies available by law.

(d) In addition to any other penalties that might be imposed by the Board, a party found guilty of an unauthorized customer switch may also be liable for any direct costs incurred, as determined by the Board, by the duly authorized supplier and/or its LDC as a result of the unauthorized switch.]

**(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 customer's charges for actual energy used 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 10 business days of a request by the customer or the Board.**

(e) [A customer that has been found to have been the subject of an unauthorized switch] **If the Board finds that a customer has been slammed, the customer** shall not be liable to its authorized [supplier and/or] TPS or its LDC for any [more] charges [than] **in excess of those** the customer would have been liable for had the [unauthorized switch] **slamming** not occurred.

[(f) If the customer cannot resolve or correct an unauthorized switch, the customer may file a complaint with the Board.

(g) Beginning January 15, 2000, each electric public utility and gas public utility shall submit a quarterly report to the Board, Division of Customer Relations, containing all slamming complaints received, indicating the customer's name, address, telephone number, type of service, and the name of the TPS that requested the alleged unauthorized switch of the customer's electric power or gas supplier.]

**(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 10 business days after a request by the customer or the Board.**

#### 14:4-[1.7] **2.9** Enforcement

[(a) The Board may investigate upon its own initiative or upon complaint, any allegation of a violation of these standards.]

**(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 or LDC which that person represents.**

(b) Any party determined by the Board, after notice and hearing, to have violated any [provisions of these standards relating to changes in a customer's electric or gas supplier] **provision of this subchapter** shall be subject to [any] one or more of the [penalties permitted by the Act, including] **following:**

1. Suspension or revocation of the TPS's authority to conduct business in [the State] **New Jersey**; [and]

2. Financial penalties as permitted by law[.] ; **and**

### 3. Any and all other remedies authorized by law.

[(c) All monies recovered from an administrative penalty imposed pursuant to this section shall be paid into the State Treasury to the credit of the General Fund.]

[(d)] (c) In considering [the] violations of [the Act and/or the Board's Standards and Rules] **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.**

(Agency Note: *N.J.A.C. 14:4-3* is proposed for recodification with amendments as *N.J.A.C. 14:4-7*.)

## SUBCHAPTER [5] 3 AFFILIATE RELATIONS [, FAIR COMPETITION AND ACCOUNTING STANDARDS AND RELATED REPORTING REQUIREMENTS]

### [14:4-5.1] 14:4-3.1 Scope

(a) These standards shall apply as follows:

1. N.J.A.C. 14:4-[5.3] **3.3** through [5.5] **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, as defined herein;

2. N.J.A.C. 14:4-[5.6] **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-[5.7]**3.7** through [5.9]**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)-(c) (No change.)

### 14:4-[5.2] 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 *14:4-1.2*.**

["Act" means the "Electric Discount and Energy Competition Act" (P.L. 1999, c.23), *N.J.S.A. 48:3-49* et seq.]

...

["Board" means the New Jersey Board of Public Utilities or any successor agency.]

...

["Customer" means any person that is an end user and is connected to any part of the transmission and distribution system within an electric public utility's service territory or a gas public utility's service territory within this State.

"Customer information" means information data regarding a utility customer which the electric and/or gas public utility learned, acquired or developed while in the business of providing electric and/or gas public utility services.]

...

["Electric public utility" means a public utility, as that term is defined in *N.J.S.A. 48:2-13*, that transmits and distributes electricity to end users within this State.

"Electric related service" means a service that is directly related to the consumption of electricity by an end user, including, but not limited to, the installation of CRA measures at the end user's premises, the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services.]

...

["FERC" means the Federal Energy Regulatory Commission or any successor agency.]

...

["Gas public utility" means a public utility, as that term is defined in *N.J.S.A. 48:2-13*, that distributes gas to end users within this State.

"Gas related service" means a service that is directly related to the consumption of gas by an end user, including, but not limited to, the installation of CRA measures at the end user's premises, the maintenance, repair or replacement of appliances or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services.]

...

["kW" means kilowatts or 1,000 watts.

"kWh" means kilowatt-hours or 1,000 watt-hours.

"Long term" means a transaction in excess of 31 days.]

...

["Person" means an individual, partnership, corporation, association, trust, limited liability company, governmental entity or other legal entity.]

...

["Ratepayer Advocate" or "RA" means the Division of Ratepayer Advocate or any successor agency.]

...

["Slamming" means the unauthorized change of a consumer's electric power supplier or gas supplier.]

...

["Therm" means 100,000 BTUs.

"Transmission and distribution system" means any facility or equipment that is used for the transmission, distribution and/or delivery of electricity or natural gas to the end-use customers including, but not limited to, the land, structures, meters, lines, pipes, switches and all other appurtenances thereof and thereto, owned or controlled by the electric and/or gas public utility, or local distribution company (LDC), respectively within this State.]

14:4-[5.3] **3.3** Nondiscrimination

(a) (No change.)

(b) 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.-2. (No change.)

3. As provided for in N.J.A.C. 14:4-[5.5(g) and (h)] **3.5(g) and (h)** (joint purchases), in N.J.A.C. 14:4-[5.5(i) and (j)] **3.5(i) and (j)** (corporate support) or N.J.A.C. 14:4-[5.6(a) through (f)] **3.6(a) through (f)** (competitive utility products and/or services), provided the transactions specified in N.J.A.C. 14:4-[5.6] **3.6** (competitive utility products and/or services) comply with all other applicable rules.

(c) 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 [subsection 5.4] **N.J.A.C. 14:4-3.4** [Joint purchases], [subsection 5.5] **N.J.A.C. 14:4-3.5** [Corporate support] and [subsection 6.1] **N.J.A.C. 14:4-3.6** [Competitive Utility Products and/or Services] [below], provided the transactions specified in N.J.A.C. 14:4-[5.6] **3.6**, Competitive utility products and/or services offered by a utility or related competitive business segments of a utility, comply with all other applicable rules.

1. (No change.)

(d)-(m) (No change.)

(n) Provided it is in compliance with these standards, and subject to the provisions of N.J.A.C. 14:4-[5.4(g)] **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.

(o)-(q) (No change.)

14:4-[5.4] **3.4** Information disclosure

(a) (No change.)

(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-[5.5(i) and (j)] **3.5(i) and (j)**.

2. (No change.)

(c)-(k) (No change.)

14:4-[5.5] **3.5** Separation

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

(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 permitted under this subsection or 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 these standards.

i. Prevention of unauthorized access to computer and information systems must 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-[5.7(b)] **3.7(b)**.

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

(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-[5.4] **3.4** and this section, respectively, set forth herein, as well as other applicable Board pricing and reporting requirements.

(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 these standards, 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-[5.7(a) through (e)] **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 these standards, and to ensure the electric and/or gas public utility is not utilizing joint corporate support services as a conduit to circumvent these standards.

(k)-(p) (No change.)

(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. (No change.)

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-[5.7(a) through (d)] **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 these standards.

(r)-(u) (No change.)

14:4-[5.6] **3.6** Competitive products and/or services offered by a utility or related competitive business segments of a utility

(a)-(w) (No change.)

(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-[5.9(b)] **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-[5.7(e) through (g)] **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 of these standards, the Board may take one or more of the following actions:

1.-5 (No change.)

14:4-[5.7] **3.7** Regulatory oversight

(a) (No change.)

(b) Said compliance plan shall demonstrate that there are adequate procedures in place to ensure compliance with these standards and shall include the electric and/or gas public utility's dispute resolution procedure pursuant to N.J.A.C. 14:4-[5.8(a)] **3.8(a)**.

1. (No change.)

(c)-(g) (No change.)

14:4-[5.8] **3.8** (No change in text.)

14:4-[5.9] **3.9** Violations and penalties

(a) If, as a result of an audit conducted pursuant to N.J.A.C. 14:4-[5.7(e) through (g)] **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-[5.3, 5.4, 5.5, 5.7 or 5.8] **3.3, 3.4, 3.5, 3.7 or 3.8** which are not substantial violations, 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-[5.7(e) through (g)] **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-[5.3, 5.4, 5.5, 5.7 or 5.8] **3.3, 3.4, 3.5, 3.7 or 3.8** which are substantial in nature, the Board is authorized to take some or all of the following actions:

1.-4. (No change.)

(Agency Note: *N.J.A.C. 14:4-4* and *5* are proposed to be recodified with amendments as *N.J.A.C. 14:8-3* and *14:4-3*, respectively.)

**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), as defined at *N.J.A.C. 14:4-1.2*.**

(b) A BGS provider, as defined at *N.J.A.C. 14:4-1.2*, 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 offer to provide, or assume the contractual and legal responsibility to provide, electric generation service for use by retail customers without first obtaining an electric power supplier license under this subchapter.

(e) A person shall not offer to provide, or assume the contractual and legal responsibility to provide, gas supply service for use by retail customers without first obtaining a gas supplier license under this subchapter.

(f) A person shall not offer to provide, or assume the contractual and legal responsibility to provide, renewable energy certificates, or RECs, as defined at *N.J.A.C. 14:8-1.2*, to a retail customer without first obtaining a clean power marketer license in accordance with this subchapter.

(g) 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.

(h) 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*.

(i) 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*.

(j) The licenses and registrations provided for under this subchapter are non-transferable.

(k) 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

(l) Except for sample contracts, and sales volumes and revenues sorted by customer class, 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.

(m) 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 this chapter 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. A 24-hour toll-free telephone answering service which allows customers to contact the applicant and leave a message;
2. An internet website and e-mail address through which Board staff and customers can contact the applicant;
3. 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
4. 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; and**
- 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, which are incorporated herein by reference, as amended and supplemented:**

- 1. All applicable reliability standards and requirements of the Federal Energy Regulatory Commission, the Board and any other applicable reliability standards or requirements issued by any state, regional, Federal or industry body with authority to establish such standards;**
- 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); and**
- 4. The National Fuel Gas Code, ANSI Z223.1/NFPA 54, published by the American National Standards Institute 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. Board staff may require that this information 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 the applicant or corporate officers, or similar matters;**
  - 9. Any releases necessary to authorize the BPU to 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 10 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 or applicants, in order to enable the Board to evaluate compliance with this subchapter, or to ensure compliance with State and/or Federal law; and**
  - 14. A certification, under oath, of truth and accuracy, signed by a corporate officer, partner, sole proprietor, or other appropriate legal representative of the applicant, attesting to the accuracy of the contents of the application, and to the fact that the sample contract and other material submitted as part of the application complies with this subchapter.**
- (c) The acceptance and/or approval of an application does not constitute a determination that all of the materials submitted as part of the application comply with this chapter.**

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

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

**(b) Within 60 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. 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) 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.

(i) 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) 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*.

(c) 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.**

**(d) 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).**

**(e) A licensee shall notify Board staff in writing within 30 days after any material change in the organizational structure or operation of a licensee's business.**

**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 45-day deadline in (b) above, based on extraordinary hardship.**

**(e) An LDC shall not do business with an electric power supplier, a gas supplier, or a clean power marketer that does not have a valid license, or does not have the required surety bond, except 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 (a) above, 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 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. Documentation that a notice has been sent, return receipt requested, to all LDCs in whose territory the licensee does business, stating that the renewal application has been submitted to the BPU;

8. Any other information necessary to enable Board staff to evaluate the licensee's continued compliance with the license being renewed, or with this subchapter;

9. 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. 14:4-3*; and

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

(e) 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.

(f) Once a license has been renewed, the licensee shall, within 10 days after the renewal is issued, provide a copy

of the renewal to all LDCs within whose territory the licensee provides service.

(g) If Board staff discover 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;
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 30 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 30-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) An LDC shall not accept, or contract for acceptance of, any 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;

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

3. Renewable energy certificates, or RECs, as defined at *N.J.A.C. 14:8-1.2*, for use in a clean power marketing program, as defined at *N.J.A.C. 14:4-1.2*.

(c) The prohibitions in this section shall apply to a person that has never obtained a license under this subchapter as well as to a former licensee whose 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 in the form of a surety bond; and
3. Documentation that the person maintains an office in New Jersey in accordance with N.J.A.C. 14:4-5.2(b).

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

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

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

different term if specified by the Board at the time of approval of the registration.

(f) An LDC shall provide a registered energy consultant with access to customer usage data through electronic data interchange in accordance with 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:

<TABLE>

	Electric Power Supplier License	Clean Power Marketer License	Gas Supplier License	Energy Agent Registration	Private Aggregator Registration
Initial Fee -	\$250.00	\$250.00	\$250. 00	\$500.00	\$500.00
Nonrefundable					
Initial Fee -	\$1,000.	\$1,000.	\$800.	\$0	\$0

refunded if license is denied	00	00	00		
Renewal Fee	\$500.00	\$500.00	\$400. 00	\$200.00	\$200.00

(b) If an applicant applies for more than one license, the applicant shall submit the application fees for both licenses. For example, the application fee for both an electric power supplier license and a clean power marketer license would be \$ 2,500; and the fee for both an electric power supplier license and a gas supplier license would be \$ 2,050. 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 these standards and other standards adopted by the Board; 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.

## 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:

1. Electric generation service, as defined at N.J.A.C. 14:4-[6.2] **1.2**;
2. Gas supply service, as defined at N.J.A.C. 14:4-[6.2] **1.2**;
3. Electric related service, as defined at N.J.A.C. 14:4-[6.2] **1.2**, including appliance repair; and/or
4. Gas related service, as defined at N.J.A.C. 14:4-[6.2] **1.2**, 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-[6.2] **1.2**.

(c) (No change.)

## 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-[4.3] **1.2 and 14:3-1.1** shall apply to this subchapter, unless the context clearly indicates otherwise.

...

["Basic gas supply service" (BGSS) means gas supply service that is provided to any customer that has not chosen an alternative gas supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any customer that cannot obtain such service for any reason, including non-payment for services. Basic gas supply service is not a competitive service and shall be fully regulated by the Board.

"Board" means the New Jersey Board of Public Utilities or any successor agency.

"Electric generation service" means the provision of retail electric energy and capacity, which is generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, and includes agreements and arrangements related to the provision of the retail electric energy and capacity.

"Electric public utility" has the meaning assigned to this term at *N.J.A.C. 14:4-1.2*. An electric public utility is a type of LDC, as defined herein.

"Electric related service" means a service that is directly related to the consumption of electricity by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises; the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user's premises; the provision of energy consumption measurement, analysis, and information management; billing and bill payment services, as authorized by the Board pursuant to N.J.S.A. 48:3-94a(4)(b).]

"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.

["Gas public utility" has the meaning assigned to this term at *N.J.A.C. 14:4-1.2*.

"Gas related service" means a service that is directly related to the consumption of gas by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises; the maintenance, repair or replacement of appliances or other energy-consuming devices at the end user's premises; the provision of energy consumption measurement, analysis, and information management; billing and bill payment services, as authorized by the Board pursuant to N.J.S.A. 48:3-94a(4)(b).

"Gas supplier" has the meaning assigned to this term at *N.J.A.C. 14:4-1.2*.

"Gas supply service" means the provision to customers of the retail commodity of gas, but does not include any regulated distribution service.

"Government aggregator" means an entity that meets both of the following criteria:

1. The entity 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.; or is the New Jersey School Boards Association; and
2. The entity enters into a contract with another government aggregator or with a TPS, as those terms are defined herein, to purchase electric generation service, electric related service, gas supply service, and/or gas related service for one or more of the following purposes:
  - i. For the government aggregator's own use;
  - ii. For the use of other government aggregators; and/or
  - iii. If the government aggregator is a municipality or county, for use by residential or non-residential customers, as defined herein, within its geographic boundaries.]

...

["Local distribution company" (LDC) means an electric public utility, a gas public utility, or both, as those terms are defined herein.]

...

"Option administrator" means the person, as defined at N.J.A.C. [14:4-2.2] **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.

["Third-party supplier" (TPS) has the meaning assigned to this term at *N.J.A.C. 14:4-1.2*.]

...

14:4-6.3 General provisions

(a) (No change.)

(b) Unless otherwise specified, any obligation of a government aggregator, TPS, or LDC under this chapter 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-[3]* 7, and the customer information requirements at (f) below.

(c)-(j) (No change.)

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

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

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

1. (No change.)

2. The pro rata value of the cost of compliance with the renewable energy portfolio standards at N.J.A.C. [14:4-8] **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) (No change.)

(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. [14:4-8.2] **14:8-1.2**, that exceeds the applicable percentage required under the renewable portfolio standards at [N.J.A.C. 14:4-8.3] **N.J.A.C. 14:8-2**; and

2. (No change.)

(h) (No change.)

#### 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.-9. (No change.)

10. Any provisions necessary to ensure compliance with the Board's consumer protection rules at *N.J.A.C. 14:4-[3]* 7;

11.-12. (No change.)

[SUBCHAPTER 7. (ReSERVED)]

## SUBCHAPTER [3.] 7. [INTERIM] RETAIL CHOICE CONSUMER PROTECTION [STANDARDS]

14:4-[3.1] 7.1 (No change in text.)

14:4-[3.2] 7.2 Definitions

The following words and terms, when used in [these standards] **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 *14:3-1.1* shall apply to this subchapter, unless the context clearly indicates otherwise:**

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

"Advertising" means the activity of attracting public attention to a product, service, or business, etc., as through announcements in print, radio, television, telemarketing, electronically, internet, etc.

"Basic gas supply service" means gas supply service that is provided to any customer that has not chosen an alternative gas supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any customer that cannot obtain such service for any reason, including non-payment for services. Basic gas supply service is not a competitive service and shall be fully regulated by the Board.

"Basic generation service (BGS)" means electric generation service that is provided, pursuant to section 9 of the Act, to any customer that has not chosen an alternative electric power supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any customer that cannot obtain such service from an electric power supplier for any reason, including non-payment for services. Basic generation service is not a competitive service and shall be fully regulated by the Board.

"Board" means the New Jersey Board of Public Utilities or any successor agency.

"Broker" means a duly licensed electric power supplier that assumes the contractual and legal responsibility for the sale of electric generation service, transmission or other services to end-use retail customers, but does not take title to any of the power sold, or a duly licensed gas supplier that assumes the contractual and legal obligation to provide gas supply service to end-use retail customers, but does not take title to the gas.

"CFR" means the Code of Federal Regulations.

"Customer" means any person that is connected to any part of the transmission and distribution system within a LDC's service territory within this State.

"Customer information" means individual proprietary information as defined below.

"Electric generation service" the provision of retail electric energy and capacity which is generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto.

"Electric power supplier" means a person or entity that is duly licensed pursuant to the provisions of the Act and pursuant to the Board's licensing standards promulgated pursuant thereto, to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers, and includes load serving entities, marketers and brokers that offer or provide electric generation service to retail customers. The term excludes an electric public utility that provides electric generation service only as a basic generation service pursuant to section 9 of the Act.

"Electric related service" means a service that is directly related to the consumption of electricity by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end-user's premises, and the provision of energy consumption management measurement and billing services.

"Energy agent" means a person that is duly registered pursuant to the provisions of this act, that arranges the sale of retail electricity or electric related services or retail gas supply or gas related services between government aggregators or private aggregators and electric power suppliers or gas suppliers, but does not take title to the electric or gas sold.]

...

["Gas related service" means a service that is directly related to the consumption of gas by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances or other energy-consuming devices at the end-user's premises, and the provision of energy consumption management measurement and billing services.

"Gas supplier" means a person that is duly licensed pursuant to the provisions of the Act and pursuant to the Board's licensing standards promulgated pursuant thereto, to offer and assume the contractual and legal responsibility to provide gas supply service to retail customers, and includes, but is not limited to, marketers and brokers. A non-public utility affiliate of a public utility holding company may be a gas supplier, but a gas public utility or any subsidiary of a gas utility is not a gas supplier. In the event that a gas public utility is not part of a holding company legal structure, a related competitive business segment of that gas public utility may be a gas supplier, provided that related competitive business segment is structurally separated from the gas public utility, and provided that the interactions between the gas public utility and the related competitive business segment are subject to the affiliate relations standards adopted by the board pursuant to subsection k of section 10 of the Act.

"Gas Supply Service" means the provision of the retail commodity of gas, but does not include any regulated distribution service.

"Individual proprietary information" or "customer information" means, but is not limited to, a customer's name, address, telephone number, electricity and/or gas usage, peak demand and payment history.

"LDC" means local distribution company, referring to the electric and/or gas public utility responsible for distributing power and/or gas to retail customers on behalf of electric power suppliers and/or gas suppliers.

"Marketer" means a duly licensed electric power supplier that takes title to electric energy and capacity, transmission and other services from electric power generators and other wholesale suppliers and then assumes contractual and legal obligation to provide electric generation service, and may include transmission and other services, to an end-use retail customer or customers, or a duly licensed gas supplier that takes title to gas and then assumes the contractual and legal obligation to provide gas supply service to an end-use customer or customers.

"Marketing" means a direct solicitation by a TPS to an individual customer for the purpose of persuading a customer to enter into an agreement for the purchase of electric generation service, gas supply service, electric related service and/or gas related service, such direct solicitation to include direct mailings, telemarketing, internet websites and in-person solicitation.

"Optional services" means services other than electric generation service and/or gas supply service.

"Private aggregator" means a non-government aggregator that is a duly-organized business or non-profit organization authorized to do business in this State enters into a contract with a duly licensed electric power supplier for the purchase

of electric energy and capacity, or with a duly licensed gas supplier for the purchase of natural gas supply service, on behalf of multiple end-use customers by combining the loads of those customers.]

...

["Retail sales" means the bundled service provided by the LDC.

"Slamming" means the unauthorized change of a customer's electric power supplier or gas supplier.

"Third Party Supplier (TPS)" means an electric power supplier or a gas supplier as those terms are defined herein, or a person acting on behalf of such suppliers.

"Transmission and distribution system" means any facility or equipment that is used for the transmission, distribution and/or delivery of electricity or gas to the end-use customers including, but not limited to, the land, structures, meters, lines, pipes, switches, valves and all other appurtenances thereof and thereto, owned or controlled by the electric or gas public utility, or LDC, respectively.]

Recodify existing N.J.A.C. 14:4-3.3 through 3.10 as **14:4-7.3 through 7.10** (No change in text.)

(Agency Note: N.J.A.C. 14:4-8 and 9 are proposed for recodification with amendments as 14:8-2 and 4, respectively.)

## CHAPTER 8

### RENEWABLE ENERGY AND ENERGY EFFICIENCY

#### SUBCHAPTER 1. RENEWABLE ENERGY GENERAL PROVISIONS AND DEFINITIONS

##### 14:8-1.1 Applicability

(a) This chapter applies to the following, as these terms are defined at *N.J.A.C. 14:4-1.2* and *14:8-1.2*:

1. Electric public utilities, also known as EDCs;
2. Electric power suppliers;
3. BGS providers;
4. Renewable energy customer-generators; and
5. Clean power marketers.

##### 14:8-1.2 Definitions

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

"Class I renewable energy" means electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells powered by renewable fuels, geothermal technologies, wave or tidal action, and/or methane gas from landfills or a biomass facility, provided that the biomass is cultivated and harvested in a

sustainable manner. Types of class I renewable energy that qualify for use in meeting the requirements of this subchapter are set forth at *N.J.A.C. 14:8-2.5*.

"Class II renewable energy" means electric energy produced at a resource recovery facility or hydro power facility, provided that such facility is located where retail competition is permitted and provided further that the Commissioner of Environmental Protection has determined that such facility meets the highest environmental standards and minimizes any impacts to the environment and local communities. Types of class II renewable energy that qualify for use in meeting the requirements of this subchapter are set forth at *N.J.A.C. 14:8-2.6*.

"Fossil fuel" means natural gas, petroleum, coal, or any form, of solid, liquid, or gaseous fuel derived from such material.

"Net metering" means a system of metering electricity in which the EDC:

1. Credits a customer-generator at the full retail rate for each kilowatt-hour produced by a class I renewable energy system installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during an annualized period; and
2. Compensates the customer-generator at the end of the annualized period for any remaining credits, at a rate equal to the supplier/provider's avoided cost of wholesale power.

"NJDEP" means the New Jersey Department of Environmental Protection.

"Renewable energy" means class I renewable energy or class II renewable energy, as those terms are defined in this section.

"Societal benefits charge" or "SBC" means a charge imposed by an electric public utility, at a level determined by the Board, in accordance with *N.J.S.A. 48:3-60*.

"Solar electric generation" means creation of electricity using a system that employs solar radiation to produce energy that powers an electric generator. Solar electric generation includes technologies that utilize the photovoltaic effect. Solar electric generation is a type of class I renewable energy.

"Supplier/provider" means an electric power supplier or a basic generation service provider, as these terms are defined at *N.J.A.C. 14:4-1.2*.

## SUBCHAPTER [8.] 2. [INTERIM] RENEWABLE [ENERGY] PORTFOLIO STANDARDS

### [14:4-8.1] **14:8-2.1** Purpose and scope

(a) Each supplier/provider, as defined at N.J.A.C. [14:4-8.2] **14:8-1.2**, that sells electricity to retail customers in New Jersey, shall include in its electric energy portfolio electricity generated from renewable energy sources. This subchapter is designed to encourage the development of renewable sources of electricity and new, cleaner generation technology; minimize the environmental impact of air pollutant emissions from electric generation; reduce possible transport of emissions and minimize any adverse environmental impact from deregulation of energy generation.

(b) This subchapter governs the retail electricity sales of each supplier/provider, as defined in N.J.A.C. [14:4-8.2] **14:8-1.2**. This subchapter does not govern installed capacity obligations, as defined at N.J.A.C. [14:4-8.2] **14:8-2.2**.

(c) This subchapter does not apply to a private or government aggregator that contracts for electric generation service or

electric related services, either separately or bundled, for its own facilities or on behalf of other business and residential customers in this State. This subchapter does not apply to an energy agent, as defined at N.J.A.C. [14:4-8.2] **14:8-1.2**. A supplier/provider that is contractually obligated to sell electricity to an aggregator shall comply with this subchapter by including the amount sold to the aggregator as part of its energy portfolio.

[14:4-8.2] **14:8-2.2** Definitions

The following words and terms, when used in this subchapter, shall have the meanings given below, unless the context clearly indicates otherwise:

["Aggregator" means either of the following:

1. A government aggregator, as that term is defined in the Board's rules on government energy aggregation programs at *N.J.A.C. 14:4-6*; or
2. A private non-government entity that is a duly organized business or non-profit organization authorized to do business in New Jersey and that enters into a contract with a duly licensed electric power supplier for the purchase of electric energy and capacity, on behalf of multiple end-use customers by combining the loads of those customers.

A government or private aggregator, as well as its customers, shall be considered to be retail customers, as defined in this section.]

"Alternative compliance payment" or "ACP" means a payment of a certain dollar amount per megawatt hour, which a supplier/provider may submit in lieu of supplying the class I or class II renewable energy required under Table A in N.J.A.C. [14:4-8.3] **14:8-2.3**.

"Attribute" means a characteristic associated with electricity **generated using a particular renewable fuel**, such as its generation date, facility geographic location, unit vintage, emissions output, fuel, State program eligibility, or other characteristic that can be identified, accounted, and tracked.

["Basic generation service" means electric generation service that is provided to any customer that has not chosen an electric power supplier, as defined in this section, whether or not the customer has received offers for competitive supply options; including, but not limited to, any customer that cannot obtain such service from an electric power supplier for any reason, including non-payment for services. Basic generation service is not a competitive service and shall be fully regulated by the Board. An electric distribution company, as defined in this section, may provide basic generation service.]

...

["Board" means the New Jersey Board of Public Utilities or any successor agency.

"Broker" means a duly licensed electric power supplier that assumes the contractual and legal responsibility for the sale of electric generation service, transmission or other services to end-use retail customers, but does not take title to any of the power sold.

"Class I renewable energy" means electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells powered by renewable fuels, geothermal technologies, wave or tidal action, and/or methane gas from landfills or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner. Types of class I renewable energy that qualify for use in meeting the requirements of this subchapter are set forth at N.J.A.C. 14:4-8.5.

"Class II renewable energy" means electric energy produced at a resource recovery facility or hydro power facility, provided that such facility is located where retail competition is permitted and provided further that the Commissioner of Environmental Protection has determined that such facility meets the highest environmental standards and minimizes any impacts to the environment and local communities. Types of class II renewable energy that qualify for use in meeting the requirements of this subchapter are set forth at N.J.A.C. 14:4-8.6.

"Electric power supplier" means a person or entity that is duly licensed by the Board to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers. This term includes load serving entities, marketers and brokers that offer or provide electric generation service to retail customers. An electric power supplier may provide basic generation service, as defined herein. However, the term excludes an electric public utility that provides electric generation service only for the purpose of providing basic generation service, as defined herein.

"Energy" means electric energy measured in kilowatt hours (kWh).

"Energy agent" means a person that is duly registered by the Board to arrange the sale of retail electricity or electric related services between government aggregators or private aggregators and electric power suppliers, but does not take title to the electric sold.]

"Energy portfolio" means all of the electrical energy supplied by a particular electric power supplier or basic generation service provider to New Jersey retail customers.

"Fuel cell" means an electrochemical device that converts chemical energy in a hydrogen or hydrogen-rich fuel directly into electricity, without combustion.

**"Generation Attribute Tracking System" or "GATS [system]"** means the [Generation Attribute Tracking System that, as of April 19, 2004 is under development by] **environmental and emissions attributes tracking system for electric generation that is administered by PJM [Interconnection] Environmental Information Services.**

...

["Marketer" means a duly licensed electric power supplier that takes title to electric energy and capacity, transmission and other services from electric power generators and other wholesale suppliers and then assumes contractual and legal obligation to provide electric generation service, and may include transmission and other services, to an end-use retail customer or customers.

"Net metering" means the difference between the electricity generated on the customer's side of the meter using wind or solar photovoltaic systems and the amount of electricity supplied by the electric power supplier or basic generation service provider over an annualized period as determined by a meter which is allowed to run backwards.

"NJDEP" means the New Jersey Department of Environmental Protection.]

...

["PJM Interconnection" means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, as defined in this section.

"PJM region" means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection, as defined in this section. ("PJM" stands for Pennsylvania-Jersey-Maryland.) The PJM region is

described in the Amended and Restated Operating Agreement of PJM Interconnection, which is incorporated herein by reference, as amended and supplemented. The Operating Agreement can be obtained on the PJM Interconnection website at [www.pjm.com](http://www.pjm.com), or by writing to PJM Interconnection, Legal Department, 955 Jefferson Avenue, Norristown, PA, 19403. As of April 5, 2004, the PJM region includes all or parts of Delaware, Maryland, New Jersey, Ohio, Pennsylvania, Virginia, West Virginia, and the District of Columbia.]

"Qualified renewable energy" means electricity that may be used in complying with the minimum portfolio requirements set forth at N.J.A.C. [14:4-8.3] **14:8-2.3** for class I renewable energy, including solar electric generation requirements, and/or class II renewable energy. Provisions governing the types of energy that qualify as class I renewable energy, solar electric generation, and class II renewable energy, are set forth at N.J.A.C. [14:4-8.4, 8.5, and 8.6] **14:8-2.4, 2.5, and 2.6** respectively.

"Renewable Energy Certificate" or "REC" means a certificate representing the environmental benefits or attributes of one megawatt-hour of generation from a generating facility that meets the requirements of this subchapter. [There are three kinds of RECs - class] **Class I** RECs [, which] represent the environmental benefits or attributes of one megawatt-hour of class I renewable energy generation; class II RECs [, which] represent the environmental benefits or attributes of one megawatt-hour of class II renewable energy generation; and solar RECs [, which] represent the environmental benefits or attributes of one megawatt-hour of solar electric generation.

...

**"Resource recovery facility" means a solid waste facility that incinerates solid waste for the purposes of producing energy and recovering metals and other materials for reuse.**

["Retail choice" or "retail competition" means the ability of retail customers to purchase electric generation service from electric power suppliers, or to choose basic generation service, as defined in this section. This term also includes the ability of any electric power supplier, upon meeting basic licensing requirements, to offer electric generation service to retail customers.

"Retail customer" means any person that is an end user of electricity and is connected to any part of the transmission and distribution system within an electric public utility's service territory in New Jersey. This term includes an aggregator, as well as the customer of a private sector aggregator or government aggregator, but does not include a wholesale customer.

"Societal benefits charge" means a charge imposed by an electric public utility, at a level determined by the Board, in accordance with *N.J.S.A. 48:3-60*.]

"Solar alternative compliance payment" or "SACP" means a payment of a certain dollar amount per megawatt hour, which a supplier/provider may submit in lieu of complying with the solar electric generation requirements in Table A in N.J.A.C. [14:4-8.3] **14:8-2.3**.

["Solar electric generation" means creation of electricity using a system that employs solar radiation to produce energy that powers an electric generator. Solar electric generation includes technologies that utilize the photovoltaic effect. Solar electric generation is a type of class I renewable energy.]

"Solar REC" means a type of REC, as defined in this section, issued by the Board or its designee, which represents the environmental benefits or attributes of one megawatt-hour of solar electric generation, as defined in [this section] **N.J.A.C. 14:8-1.2**.

["Supplier/provider" means an electric power supplier or a basic generation service provider, as those terms are defined

in this section.]

...

**"Voluntary clean electricity market" or "voluntary clean electricity program" means any program, system, market or procedure through which retail electric customers may elect to purchase a class I (including solar) or class II renewable energy product on a voluntary basis. New Jersey's Voluntary Clean Power Choice Program is a voluntary clean electricity program.**

[14:4-8.3] **14:8-2.3** Minimum percentage of renewable energy required

(a) Each supplier/provider, as defined at N.J.A.C. [14:4-8.2] **14:8-1.2**, that sells electricity to retail customers in New Jersey, shall ensure that the electricity it sells each reporting year in New Jersey includes at least the minimum percentage of qualified renewable energy, as defined at N.J.A.C. [14:4-8.2] **14:8-2.2**, required for that reporting year from each category specified in Table A below, except as provided at [(j)] (i) below:

Table A

What Percentage Of Energy Supplied Must Be Renewable Energy?

<TABLE>

Reporting Year	Solar Electric Generation (solar RECs)	Class I Renewable Energy	Class II Renewable Energy	Total Renewable Energy
June 1, 2004 - May 31, 2005	0.01%	.74%	2.5%	3.25%
June 1, 2005 - May 31, 2006	0.017%	0.983%	2.5%	3.5%
June 1, 2006 - May 31, 2007	0.0393%	2.037%	2.5%	4.5763%
June 1, 2007 - May 31, 2008	0.0817%	2.924%	2.5%	5.5057%
June 1, 2008 - May 31, 2009	0.16%	3.84%	2.5%	6.5%
<b>June 1, 2009 - May 31, 2010</b>	<b>0.221%</b>	<b>4.685%</b>	<b>2.50%</b>	<b>7.406%</b>

37 N.J.R. 3911(a)

<b>June 1, 2010 - May 31, 2011</b>	<b>0.305%</b>	<b>5.492%</b>	<b>2.50%</b>	<b>8.297%</b>
<b>June 1, 2011 - May 31, 2012</b>	<b>0.394%</b>	<b>6.320%</b>	<b>2.50%</b>	<b>9.214%</b>
<b>June 1, 2012 - May 31, 2013</b>	<b>0.497%</b>	<b>7.143%</b>	<b>2.50%</b>	<b>10.14%</b>
<b>June 1, 2013 - May 31, 2014</b>	<b>0.621%</b>	<b>7.977%</b>	<b>2.50%</b>	<b>11.098%</b>
<b>June 1, 2014 - May 31, 2015</b>	<b>0.765%</b>	<b>8.807%</b>	<b>2.50%</b>	<b>12.072%</b>
<b>June 1, 2015 - May 31, 2016</b>	<b>0.928%</b>	<b>9.649%</b>	<b>2.50%</b>	<b>13.077%</b>
<b>June 1, 2016 - May 31, 2017</b>	<b>1.118%</b>	<b>10.485%</b>	<b>2.50%</b>	<b>14.103%</b>
<b>June 1, 2017 - May 31, 2018</b>	<b>1.333%</b>	<b>12.325%</b>	<b>2.50%</b>	<b>16.158%</b>
<b>June 1, 2018 - May 31, 2019</b>	<b>1.572%</b>	<b>14.175%</b>	<b>2.50%</b>	<b>18.247%</b>
<b>June 1, 2019 - May 31, 2020</b>	<b>1.836%</b>	<b>16.029%</b>	<b>2.50%</b>	<b>20.365%</b>
<b>June 1, 2020 - May 31, 2021</b>	<b>2.120%</b>	<b>17.880%</b>	<b>2.50%</b>	<b>22.5%</b>

(b) The Board shall adopt rules setting the minimum percentages of solar electric generation, class I renewable energy, and class II renewable energy required for reporting year [2009] **2022** and each subsequent reporting year. These

minimum percentages shall be no lower than those required for reporting year [2008] **2021** in Table A above. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.

(c) A supplier/provider shall meet the requirements for solar electric generation in Table A above through submittal of solar RECs, or through submittal of one or more SACPs, as those terms are defined at N.J.A.C. [14:4-8.2] **14:8-2.2**.

(d) A supplier/provider may [choose to] meet the class I and class II renewable energy requirements in Table A above [through supplying renewable energy] **by submitting RECs** in accordance with N.J.A.C. [14:4-8.8] **14:8-2.8**. [However, class I and II renewable energy RECs shall be used only after the Board has authorized such use by Board order.

(e) If a supplier/provider complies with this subchapter by directly supplying solar electric generation, class I renewable energy, and/or class II renewable energy to customers, the energy shall be supplied to customers during the reporting year.]

[(f)] **(e)** A supplier/provider may, in lieu of meeting the requirements in Table A above, comply with this subchapter by submitting the appropriate number of ACPs or SACPs, in accordance with N.J.A.C. [14:4-8.10] **14:8-2.10**.

[(g)] **(f)** The following shall apply to the type of energy, **and type of documentation**, used for compliance with each of the requirements in Table A above:

1. (No change.)

[2. Direct supply of solar electric generation may be used to meet class I or class II renewable energy requirements, but shall not be used to meet solar electric generation requirements;]

[3.] **2.** Class I [renewable energy] **RECs** may be used to meet class I renewable energy requirements or class II renewable energy requirements, but shall not be used to meet solar electric generation requirements; and

[4.] **3.** Class II [renewable energy] **RECs** shall be used only to meet class II renewable energy requirements, and shall not be used to meet solar electric generation requirements or class I renewable energy requirements.

[(h)] The percentage requirements in (a) through (g) above take effect on June 1, 2004. For the five month period starting January 1, 2004 and ending at the start of reporting year 2005 (June 1, 2004), the percentage requirements shall be as follows:

<TABLE>

Time period	Class I	Class I or II	Total
January 1, 2004 through May 31, 2004	0.75%	2.5%	3.25%

[(i)] **(g)** [Upon the Board's adoption of a tracking system for class I and II renewable energy, a] **A** supplier/provider shall [no longer be authorized to] **not** demonstrate compliance with this subchapter using direct supply of any type of renewable energy. All RPS compliance shall [thereafter] be submitted in the form of RECs.

[(j)] **(h)** If a supplier/provider participated in the Board's 2003 basic generation service (BGS) auction, and won the right to supply one or more 34-month tranches in that auction, the supplier/provider shall be subject to this subsection. For the portion of the supplier/provider's energy portfolio that is supplied pursuant to a 2003 BGS 34-month tranche, the provisions of this subchapter that were in effect on the date of the 2003 BGS auction shall apply, and the supplier/provider's RPS obligation shall not be determined under (a) above but instead shall be determined under Table B below. For all other energy in the supplier/provider's energy portfolio, which is not supplied pursuant to a 2003 BGS tranche the supplier/provider shall meet the percentage requirements of (a) above and all other requirements of this subchapter.

Table B

What Percentage Of Energy Supplied Pursuant To 2003 BGS Tranches Must Be Renewable Energy?

<TABLE>

Time Period	Class I	Class I or II	Total
[Through May 31, 2004	0.75%	2.5%	3.25%
June 1, 2004 through May 31, 2005	0.75%	2.5%	3.25%]
June 1, 2005 through May 31, 2006	1.0%	2.5%	3.5%
After May 31, 2006	See N.J.A.C. [14:4-8.3(a)] <b>14:8-2.3(a)</b> , Table A	See N.J.A.C. [14:4-8.3(a)] <b>14:8-2.3(a)</b> , Table A	See N.J.A.C. [14:4-8.3(a)] <b>14:8-2.3(a)</b> , Table A

**(i) The same renewable energy shall not be used for more than one of the following:**

**1. Creation of a solar REC under *N.J.A.C. 14:8-2.9*;**

**2. Creation of a REC under *N.J.A.C. 14:8-2.8* or *2.9*; or**

**3. Creation of a REC, or of any other type of attribute or credit, under authority other than *N.J.A.C. 14:8-2.9* such as another state's renewable energy standards or any voluntary clean electricity market or voluntary clean electricity program.**

[14:4-8.4] **14:8-2.4** Compliance with solar electric generation requirements

(a) The requirements in Table A [of] **in** N.J.A.C. [14:4-8.3] **14:8-2.3** for solar electric generation shall be met through the submittal of solar RECs, as defined at N.J.A.C. [14:4-8.2] **14:8-2.2**; or submittal of SACPs in accordance with N.J.A.C. [14:4-8.10] **14:8-2.10**. [Direct supply of solar electric generation may be used to meet class I or class II renewable energy requirements, but shall not be used to meet the solar electric generation requirements in Table A.]

(b) A supplier/provider shall not use a solar REC that has been used to satisfy another state's renewable energy requirements, **or used for any other purpose, market or program**, for compliance with the requirements at N.J.A.C. [14:4-8.3] **14:8-2.3** for solar electric generation.

[(c) The same renewable energy shall not be used for more than one of the following:

1. Creation of a REC under N.J.A.C. 14:4-8.9 ;
2. Direct supply to customers for compliance with any of the requirements in this subchapter;
3. Direct supply to customers for compliance with another state's renewable energy standards; or
4. Creation of a REC or other type of attribute or credit, for use in complying with another state's renewable energy requirements.]

[14:4-8.5] **14:8-2.5** Compliance with class I renewable energy requirements

(a) (No change.)

(b) The following qualify as class I renewable energy for the purposes of this subchapter, with no prior approval required:

1. Solar electric generation[, either] in the form of solar RECs [or as direct supply to customers];
- 2.-3. (No change.)
4. Electricity that is geothermal energy, as defined in N.J.A.C. [14:4-8.2] **14:8-2.2**;
5. (No change.)
6. Electricity generated by a fuel cell powered by methanol, ethanol, landfill gas, digester gas, biomass gas, or other renewable fuel. Electricity generated by a fuel cell powered by a fossil fuel shall not qualify as class I renewable energy for the purposes of this subchapter; **and**
7. Electricity generated by the combustion of gas from the anaerobic digestion of food waste and sewage sludge at a biomass generating facility[;].
- [8. Electricity generated through a class I renewable energy project funded by the societal benefits charge, as defined at N.J.A.C. 14:4-8.2; and
9. Electricity generated through a project funded through the Board's Clean Energy Program.]

(c) (No change.)

(d) Electricity produced through combustion of the following types of biomass shall qualify as class I renewable energy, provided that the NJDEP provides Board staff with a biomass sustainability determination for the biomass in accordance with (f) and (g) below:

1. A bioenergy crop, as defined at N.J.A.C. [14:4-8.2] **14:8-2.2**, including wood produced at a biomass energy plantation;

2. Wood from the thinning or trimming of trees and/or from a forest floor, provided that the wood is not old-growth timber, as defined at N.J.A.C. [14:4-8.2] **14:8-2.2**; and that the wood is unadulterated by non-cellulose substances or material;

3. (No change.)

4. Either of the following types of wood, provided that the wood is unadulterated by non-cellulose substances or material:

i. (No change.)

ii. Wood shavings and/or scrap from a lumberyard or a paper mill, excluding black liquor, as defined at N.J.A.C. [14:4-8.2] **14:8-2.2**.

(e)-(g) (No change.)

(h) If a biomass sustainability determination is required for class I renewable energy used to comply with this subchapter, the supplier/provider shall submit the determination as part of the annual report required under N.J.A.C. [14:4-8.11] **14:8-2.11**, or the biomass facility operator shall submit the determination by September 1 of each year. If the determination is not submitted annually, the energy shall not qualify for use to comply with this subchapter, and the supplier/provider shall submit RECs or ACPs to make up the shortfall. A determination submitted to board staff after the due date of the annual report shall not be accepted, and the electricity shall not be counted towards the supplier/provider's compliance with this subchapter.

(i) (No change.)

(j) If a generating facility that uses biomass is covered by a NJDEP biomass sustainability determination, and there is a change in the operation of the facility or in the composition of the biomass used as fuel, including in its cultivation and harvesting, any supplier/provider that intends to rely on the facility in the following year for RPS compliance shall do one of the following:

1. Submit a new application for a biomass sustainability determination to the Board. The new application shall be submitted as part of the annual report required under N.J.A.C. [14:4-8.11] **14:8-2.11**; or

2. Ensure that the biomass facility operator submits a new determination within 30 days after the change is made, and no later than the date upon which the annual report is due under N.J.A.C. [14:4-8.11] **14:8-2.11**.

(k) (No change.)

(l) Electricity produced through combustion of the following substances shall not qualify as class I renewable energy for the purposes of this subchapter:

1.-5. (No change.)

6. Old-growth timber, as defined at N.J.A.C. [14:4-8.2] **14:8-2.2**; and

7. (No change.)

[14:4-8.6] **14:8-2.6** Compliance with class II renewable energy requirements

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

(c) Electricity generated by a resource recovery facility located outside of New Jersey shall qualify as class II renewable energy if both of the following criteria are met:

1. The facility is located in a state with retail competition, as defined at N.J.A.C. 14:4-[8.2] **1.2**; and

2. (No change.)

(d)-(h) (No change.)

(i) In addition to the other types of energy that qualify as class II renewable energy under this section, any energy that qualifies as class I renewable energy under N.J.A.C. [14:4-8.4] **14:8-2.4** may be used to satisfy the requirements for class II renewable energy.

[14:4-8.7] **14:8-2.7** Requirements that apply to both class I and class II renewable energy

(a) To qualify as class I or class II renewable energy for the purposes of this subchapter, energy shall meet the requirements in N.J.A.C. [14:4-8.5 and 8.6] **14:8-2.5 and 2.6**, and in addition shall meet the requirements of this section.

(b) To qualify as class I or class II renewable energy for the purposes of this subchapter, energy shall be generated within or delivered into the PJM region, as defined in N.J.A.C. [14:4-8.2] **14:4-1.2**. Energy shall be considered delivered into the PJM region if it complies with the energy delivery rules established by PJM Interconnection.

(c) (No change.)

[(d) A supplier/provider shall not use energy used to satisfy another state's renewable energy portfolio requirements for compliance with class I or class II renewable energy requirements at N.J.A.C. 14:4-8.3.]

[14:4-8.8] **14:8-2.8** Renewable Energy Certificates (RECs)

(a) A supplier/provider may [choose to] submit one or more Renewable Energy Certificates, or RECs, as defined in N.J.A.C. [14:4-8.2] **14:8-2.2**, [in lieu of supplying] **to meet** the percentage of renewable energy required under Table A in N.J.A.C. [14:4-8.3] **14:8-2.3**. A supplier/provider that wishes to use RECs to comply with this subchapter shall meet the requirements of this section.

(b) [If a supplier/provider complies with this subchapter by submitting RECs, the] **All RECs used for compliance with this subchapter** shall be based on energy that was generated during the reporting year for which the REC is submitted, in accordance with N.J.A.C. [14:4-8.9] **14:8-2.9**. [, except for a REC issued prior to June 1, 2004. A REC issued prior to June 1, 2004 may be used for compliance with the requirements for the reporting year ending June 1, 2005.]

[(c) Until issuance of a Board order that specifies otherwise, the only RECs that may be used to comply with this

subchapter are solar RECs issued by the Board or its designee in accordance with N.J.A.C. 14:4-8.9. The Board may issue an order approving use of class I and class II RECs issued by PJM Interconnection or another entity for compliance with this subchapter.]

**(c) A REC used for compliance with this subchapter shall be issued by the Board or its designee, or by PJM-EIS through GATS, as follows:**

**1. A solar REC or class I REC that is based on electricity generated on a customer-generator's premises shall be issued by the Board or its designee in accordance with N.J.A.C. 14:8-2.9;**

**2. A class I REC that is not based on electricity generated on a customer-generator's premises shall be issued by PJM-EIS through GATS; and**

**3. A class II REC shall be issued by PJM-EIS through GATS.**

**(d) A supplier/provider shall not use a REC that is based on electricity generated on a customer-generator's premises to comply with this subchapter unless the customer-generator facility is eligible for net metering under N.J.A.C. 14:8-3.**

[(d)] (e) (No change in text.)

[14:4-8.9] **14:8-2.9** Board issuance of [solar] RECs

(a) The Board or its designee shall issue solar RECs **and class I RECs based on electricity generated by a customer-generator on the customer-generator's premises** for use in complying with this subchapter, in accordance with this section. The Board may, after public notice, issue an order discontinuing Board issuance of [solar] **such** RECs and/or approving use of [solar] **such** RECs issued by PJM Interconnection or another entity for compliance with this subchapter.

[(b)] (b) The Board or its designee shall issue solar RECs only for solar electric generation that takes place after March 1, 2004.]

[(c)] (b) In measuring generation in order to determine the number of [solar] RECs to issue, the Board or its designee shall accept either of the following measurement methods, as applicable:

1. (No change.)

2. For a solar **electricity** system with a capacity of less than 10 kilowatts, annual engineering estimates and/or monitoring protocols approved by the Board. [The Board shall post acceptable] **Acceptable** estimation methodologies and monitoring protocols **are located on the Board's** [on its] website at [www.bpu.state.nj.us, by July 18, 2004] **www.njcleanenergy.com. This method is not applicable for class I RECs.**

[(d)] (c) The Board or its designee shall issue [solar] RECs in whole units, each representing the environmental attributes of one megawatt-hour of [solar] electric generation.

[(e)] (d) To qualify for issuance of a [solar] REC, [solar] electric generation shall be produced by a generating facility that is interconnected with an electric distribution system, as defined at N.J.A.C. [14:4-9.2] **14:8-2.2**, that supplies New Jersey. The Board may waive this requirement by Board order if the Board adopts a joint or regional REC tracking system, and determines that such waiver would facilitate participation in the system.

[(f)] To use solar electric generation to comply with the solar electric generation requirements at N.J.A.C. 14:4-8.3, a REC must be issued for the solar electric generation.]

[(g)] (e) If a REC is to be used for RPS compliance for a reporting year, the REC shall be based on energy generated in that same reporting year, [except pursuant to N.J.A.C. 14:4-8.8(b) and] except for fractions carried over in accordance with [(i)] (g) below.

[(h)] (f) (No change in text.)

[(i)] (g) If a generator has accumulated a fraction of a megawatt hour by the end of a reporting year, the fraction may be carried over and combined with energy generated in one or more subsequent reporting years in order to make a full megawatt hour that is eligible for a REC. In such a case, the combined energy shall be eligible for issuance of a REC only during the reporting year in which accumulated generation reaches one full megawatt hour. Only a fraction of a megawatt hour shall be carried over. [In accordance with (f) above, a full megawatt hour shall not be carried over. ] If a full megawatt hour is generated by the end of a reporting year and an application for a REC is not submitted by the end of the true-up period immediately following the reporting year, the megawatt hour shall not be eligible for a REC and shall not be usable for RPS compliance.

[(j)] (h) Because each true-up period is also the first three months of a new reporting year, a REC based on [solar] energy generated during this three month period shall be used only for RPS compliance for the new reporting year.

[(k)] (i) A request for issuance of a solar REC **or class I RECs based on electricity generated on a customer-generator's premises** shall be submitted to the Board on a form posted on the Board's website at [www.bpu.state.nj.us] **www.njcleanenergy.com**. The Board shall require submittal of information and certifications needed to enable the Board or its designee to verify the generation that forms the basis of the requested RECs. The Board shall require inspections of generation equipment, monitoring and metering equipment, and other facilities relevant to verifying [solar] electric generation. The Board shall impose application fees, inspection fees, and/or other charges for work required to verify [solar] electric generation and issue RECs.

[(l)] (j) Each REC shall include the following:

1.-4. (No change.)

[(m)] (k) The Board or its designee shall not issue a [solar] REC based on [solar] electric generation that has previously been used for compliance with this subchapter, or that has been used to satisfy another state's renewable energy requirements **or any voluntary clean electricity market or program**.

**(l) In accordance with N.J.A.C. 14:8-4.3, a customer-generator that is eligible for net metering owns the renewable attributes of the energy it generates on or after October 4, 2004, unless there is a contract with an express provision that assigns ownership of the renewable attributes.**

[14:4-8.10] **14:8-2.10** Alternative compliance payments (ACPs and SACPs)

(a) A supplier/provider may choose to submit one or more alternative compliance payments (ACPs) or solar alternative compliance payments (SACPs), as those terms are defined in N.J.A.C. [14:4-8.2] **14:8-2.2**, in lieu of supplying the percentage of renewable energy required under Table A in N.J.A.C. [14:4-8.3] **14:8-2.3**. A supplier/provider that wishes to use ACPs or SACPs to comply with this subchapter shall meet the requirements of this section.

(b)-(e) (No change.)

[14:4-8.11] **14:8-2.11** Demonstrating compliance, reporting and record keeping

(a) By September 1st of each year, each supplier/provider shall file an annual report with the Board, demonstrating that the supplier/provider has met the requirements of this subchapter for the preceding reporting year (that is, for the reporting year ending May 31st of the same calendar year). [Except pursuant to (i) below, the first report due under this section shall be submitted by September 1, 2005, and shall cover reporting year 2004.]

(b) If the annual report required under (a) above does not demonstrate that the supplier/provider has supplied the [energy] **RECs or solar RECs** required under Table A of N.J.A.C. [14:4-8.3] **14:8-2.3** for the previous reporting year, the annual report shall be accompanied by [RECs, solar RECs,] ACPs and/or SACPs in sufficient quantities to make up the shortfall.

(c) The annual report shall contain the following basic information for the preceding reporting year:

1. (No change.)

2. The total number of megawatt hours of electricity sold to retail customers in New Jersey that qualify as class I renewable energy under N.J.A.C. [14:4-8.4] **14:8-2.4**;

3. (No change.)

4. The total number of megawatt hours of electricity sold to retail customers in New Jersey that qualify as class II renewable energy under N.J.A.C. [14:4-8.5] **14:8-2.5**;

5. (No change.)

6. The total number of megawatt hours of electricity sold to retail customers in New Jersey that qualify as solar electric generation under N.J.A.C. [14:4-8.4] **14:8-2.4**;

7.-8. (No change.)

9. The total number of ACPs and/or SACPs submitted with the annual report; [and]

10. A summary demonstrating how compliance with the requirements in Table A [have] **has** been achieved[.]; **and**

**11. An accounting issued by PJM-EIS that shows the number of RECs purchased and/or held by the supplier/provider.**

(d) The documentation required under (c) above shall include the following:

1.-3. (No change.)

4. For each solar REC submitted, certification of compliance with the requirement at N.J.A.C. [14:4-8.4(b)] **14:8-2.4(b)** that the REC has not been used to satisfy another state's renewable energy requirements. The certification shall be in a form required by the Board, and available on the BPU website at [www.bpu.state.nj.us] **www.njcleanenergy.com**.

[(e) Once the GATS system is operational, the documentation required under (c) above shall include an accounting issued by PJM Interconnection that shows the number of RECs purchased and/or held by the supplier/provider.]

[(f)] **(e)** Failure of a supplier/provider to demonstrate compliance with this subchapter in accordance with this section,

within the deadlines set forth in this section, shall subject the supplier/provider to penalties under N.J.A.C. [14:4-8.12] **14:8-2.12.**

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

[(h)] Upon the implementation of the GATS system, the Board may modify the reporting requirements in this section as necessary to facilitate implementation of the GATS system. Any such modification shall be accomplished through a Board order or by rulemaking.

(i) Each supplier/provider shall file a report by September 1, 2004, demonstrating both of the following:

1. Compliance, for calendar year 2003, with the applicable requirements of the previously effective interim renewable portfolio standards; and
2. Compliance, for the period from January 1, 2004 through May 31, 2004, with the percentage requirements at N.J.A.C. 14:4-8.3(h).

[(j)] For purposes of demonstrating compliance for calendar year 2003, the report required under (i) above shall replace the annual report that was due on March 1, 2004 under the previously effective interim renewable portfolio standards. ]

[14:4-8.12 Penalties] **14:8-2.12**            **Enforcement**

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

SUBCHAPTER [4.] **3.**            [INTERIM] ENVIRONMENTAL INFORMATION DISCLOSURE [STANDARDS]

[14:4-4.1] **14:8-3.1**            Scope

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

(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-[4.6(e)] **3.6(e).**

(d) (No change.)

[14:4-4.2] **14:8-3.2**            Implementation schedule

[(a)] The environmental disclosure standards set forth in this subchapter will be effective as regulations immediately upon adoption by the Board (adopted September 11, 2000) and will be effective for a period not to exceed 18 months. The Board may thereafter, in accordance with the procedures of the Administrative Procedure Act (P.L. 1968, c.410 (C.52:14B-1 et seq.)) readopt these standards, adopt these standards with amendments, or replace these standards with new standards.

(b) As of September 11, 2000, each electricity supplier is required to disclose environmental information to retail customers in its marketing activities in the State and when it solicits retail customers in New Jersey.]

[(c)] The Environmental Disclosure Program will be incrementally implemented. [The Phase I period is projected to end by January 1, 2002, with the commencement of Phase II of environmental disclosure. Phase I shall consist of two parts: Phase I-A, during which electricity suppliers shall implement environmental disclosure independently; and] **As of**

**(effective date of the readoption), the program isin** Phase I-B, during which the Program Administrator shall assist in the implementation of environmental disclosure in accordance with the terms set forth in Appendix D, incorporated herein by reference. [Notwithstanding the projected start date for Phase II, the Board recognizes the importance of having a full tracking system in place and functioning as early as feasible, and seeks means to implement Phase II as soon as possible.] Phase II shall be implemented after successful testing of the [full] tracking system **that will be used for the program.**

[14:4-4.3] **14:8-3.3** Definitions

The following words and terms, when used in [these standards] **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 *14:3-1.1* shall apply to this subchapter, unless the context clearly indicates otherwise.**

["Basic generation service" means electric generation service that is provided by a utility to any retail customer that has not chosen an alternative electric power supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any retail customer that cannot obtain such service from a non-utility electric power supplier for any reason, including non-payment for services. Basic generation service is not a competitive service and shall be fully regulated by the Board.]

...

["Customer" means any person that is connected to any part of the transmission and distribution system within an electric public utility's service territory within New Jersey and that takes electricity directly from the transmission and distribution grid.]

...

["Electric public utility" means a public utility, as that term is defined in *N.J.S.A. 48:2-13*, that transmits and distributes electricity to end users within this State.]

"Electricity supplier" [or] **has the same meaning as** "electric power supplier" [means a person that is duly licensed by the Board to offer or provide electric generation service to retail customers in New Jersey, and includes, but is not limited to, load serving entities and electric public utilities that provide electricity to end-users, including basic generation service providers] **as defined at *N.J.A.C. 14:4-1.2*.**

...

["Fossil fuel" means natural gas, petroleum, coal, or any form, of solid, liquid, or gaseous fuel derived from such material.]

...

["Marketer" means a duly licensed electricity supplier that has no owned generation, but that takes title to electricity and/or electric-generating capacity from electric power generators and other wholesale suppliers, and procures transmission and distribution services from T & D facilities, and then resells the electricity to retail customers.]

...

["Person" means an individual, partnership, corporation, association, trust, limited liability company, governmental entity or other legal entity.

"PJM ISO" means PJM Interconnection L.L.C., the independent system operator which serves a control area that includes portions of Pennsylvania, New Jersey, Maryland, Virginia and all of Delaware and the District of Columbia.]

...

["Renewable energy" means electric energy produced from a source of energy that is replenishable and that has minimal associated adverse environmental impacts. For the limited purpose of these interim standards, renewable energy shall include electric energy produced from Class I and Class II renewables as defined in P.L. 1999, c.23, which includes: solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, hydroelectric facilities, methane gas from landfills, sewage and agricultural waste digesters, biomass provided that the biomass is cultivated and harvested in a sustainable manner, and resource recovery facilities, provided that such facility is located where retail competition is permitted and provided that the NJDEP has determined that such facility meets the highest environmental standards and minimizes any impacts to the environment and local communities. With respect to energy produced by resource recovery facilities, all electricity produced by facilities permitted in New Jersey by the NJDEP shall be considered as renewable energy. In addition, energy generated by a facility located outside of New Jersey may also be considered renewable energy if:

1. The owner or operator of the source provides documentation to the NJDEP that the facility would, taking into consideration the age and type of the unit, meet the applicable requirements of *N.J.A.C. 7:27*; and
2. After reviewing the documentation submitted, the NJDEP makes a finding that it is satisfied that the unit does meet the applicable requirements of *N.J.A.C. 7:27*.

For the limited purposes of these interim standards, in respect to hydroelectric power, only electricity produced by hydroelectric facilities, located where retail competition is permitted, and with a capacity of 30 megawatts or less shall qualify as renewable energy until the NJDEP has issued more specific criteria that hydroelectric facilities must meet to ensure that such facility meets the highest environmental standards.

"Residual control area average" means the weighted average fuel mix and emissions associated with the electricity supplied to customers in the PJM control area, as determined by the Program Administrator. In determining this average, the Program Administrator shall take into consideration both the electricity generated in the PJM control area and electricity imported into the control area; and shall exclude the following:

1. Electricity exported from the PJM control area;
2. Both electricity produced by owned generation and electricity purchased by an electricity supplier under a bilateral contract, provided that the electricity is specifically ascribed to the electricity supplier, pursuant to the disclosure rules set forth herein, as electricity used to meet the supplier's retail load; and
3. Electricity purchased by a supplier through a conversion transaction.

"Retail customer" means any person that is connected to any part of the transmission and distribution system within an electric public utility's service territory within this State. This term includes customers of a private aggregator or governmental aggregator, but does not include wholesale customers that take electricity directly from the transmission and distribution grid.]

...

["Transmission and distribution system" ("TDS") means, with respect to an electric public utility, any facility or

equipment that is used for the transmission, distribution or delivery of electricity to the customers of the electric public utility including , but not limited to, the land, structures, meters, lines, switches and all other appurtenances thereof and thereto, owned or controlled by the electric public utility within New Jersey.]

...

(b) (No change.)

[14:4-4.4] **14:8-3.4** Requirements of the rules

(a) Pursuant to the mandates embodied in P.L. 1999, c.23, the interim rules for environmental disclosure to retail customers require every electric service supplier to provide the following:

1. (No change.)

2. Fuel mix (energy source) information:

i.-ii. (No change.)

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 as listed in N.J.A.C.

[14:4-4.3] **14:8-3.3** to generate electricity, then 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.-4. (No change.)

[14:4-4.5] **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. Initially in Phase I, incumbent utilities with owned generation shall be the only suppliers of existing products. These existing products include electricity the utility provides pursuant to its basic generation service obligations. During Phase I-A, until a Program Administrator is established and is technically and administratively able to assist energy suppliers, each electricity supplier of existing products will develop for itself the environmental information to be set forth in its disclosure label(s) for each product offered. 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 herein and N.J.A.C. [14:4-4.6] **14:8-3.6**.

1. (No change.)

(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). (See N.J.A.C. [14:4-4.6] **14:8-3.6** for greater detail.) Alternatively, for a period of at least 18 months, through December 2000, these suppliers may use the default values for fuel mix and emissions information set forth by the Board. This choice shall be permitted for a limited period of time in recognition that suppliers of new electricity products, including suppliers newly serving retail customers in New Jersey, will not have an historical record on which to base disclosure.

1.-2. (No change.)

(c)-(f) (No change.)

[14:4-4.6] **14:8-3.6** Methodology for developing a disclosure label

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

(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), or if the electricity supplier of a new product chooses to disclose default information during the initial 18-month period of Phase I-A, default values set forth in Appendix F shall be used to determine the environmental information to be disclosed on the label. During Phase I, the default values for fuel mix shall initially be the average characteristics of the PJM control area and the default values for air emissions shall initially be the adjusted PJM average set forth in Appendix F, and used as explained in N.J.A.C. [14:4-4.5(b)2] **14:8-3.5(b)2**, until such time as the Board and/or the Program Administrator is able to provide more accurate or complete information.

(d) In developing disclosure labels, each category of electric generating resources shall be treated as follows:

1. (No change.)

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. [14:4-4.9] **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. [14:4-4.9] **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. (No change.)

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. [14:4-4.9] **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. (No change.)

(e)-(f) (No change.)

(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 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 by generating and retiring discrete emission reduction (["DER"]) credits pursuant to New Jersey's Open Market Emissions Trading (["OMET"]) program 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. [14:4-4.4(a)4] **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.

[14:4-4.7] **14:8-3.7** Disclosure information updating and reporting requirements

(a) (No change.)

(b) For the limited purposes of these interim standards, suppliers of basic generation service shall develop and distribute to their basic generation customers, no later than September 15, 1999, environmental information as defined in N.J.A.C. [14:4-4.5] **14:8-3.5** and [4.6] **3.6** and illustrated in Appendix A. Thereafter, suppliers of basic generation service shall provide environmental information to basic generation customers according to the schedule as set forth in the preceding paragraph and in Appendix H.

(c) (No change.)

(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. [14:4-4.6(f)] **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) (No change.)

Recodify existing N.J.A.C. 14:4-4.8, 4.9 and 4.10 as **14:8-3.8, 3.9 and 3.10** (No change in text.)

Recodify existing *N.J.A.C. 14:4-4* Appendices A through I as **14:8-3 Appendices A through I** (No change in text.)

**SUBCHAPTER [9] 4. NET METERING AND INTERCONNECTION STANDARDS FOR CLASS I RENEWABLE ENERGY SYSTEMS**

[14:4-9.1] **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-[9.2] **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-[9.2] **1.2 and 14:8-1.2**.

[14:4-9.2] **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.

...

["Basic generation service" has the meaning assigned to this term at N.J.A.C. 14:4-8.2.

"Class I renewable energy" has the meaning assigned to this term in N.J.A.C. 14:4-8.2.]

...

["Electric distribution company" or "EDC" means an electric public utility, as the term is defined in *N.J.S.A. 48:2-13*, that transmits or distributes electricity to end users within New Jersey. An EDC cannot be an electric power supplier, but may provide basic generation service.

"Electric distribution system" means that portion of an electric system which delivers electricity from transformation points on the transmission system to points of connection at a customer's premises. An electric distribution system generally carries less than 69 kilovolts of electricity.

"Electric power supplier" has the meaning assigned to this term at N.J.A.C. 14:4-8.2.]

...

["kW" means kilowatts, a unit of power representing 1,000 watts. A kW equals 1/1000 of a MW, as defined herein.

"MW" means megawatts, a unit of power representing 1,000,000 watts. A megawatt equals 1000 kW.

"Net metering" means a system of metering electricity in which the EDC:

1. Credits a customer-generator at the full retail rate for each kilowatt-hour produced by a class I renewable energy system installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used

by that customer during an annualized period; and

2. Compensates the customer-generator at the end of the annualized period for any remaining credits, at a rate equal to the supplier/provider's avoided cost of wholesale power.]

...

["Solar electric generation" has the meaning assigned to this term at N.J.A.C. 14:4 -8.2.]

...

["Supplier/provider" means an electric power supplier or a basic generation service provider.]

[14:4-9.3] **14:8-4.3** Net metering general provisions

(a) All electric distribution companies (EDC) and supplier/providers, as defined at N.J.A.C. [14:4-9.2] **14:4-1.2 and 14:3-1.1, respectively**, shall offer net metering to their residential and small commercial customers, as defined at N.J.A.C. [14:4-9.2] **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 MW, 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)-(c) (No change.)

(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. [14:4-9.2] **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. [14:4-9.2] **14:8-4.2**.

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

(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. [14:4-8.9] **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)-(l) (No change.)

[14:4-9.4] **14:8-4.4** (No change in text.)

[14:4-9.5] **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. [14:4-9.6] **14:8-4.6**. Level 1 interconnection review procedures are set forth at N.J.A.C. [14:4-9.7] **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 two MW or less, which meet the certification requirements at N.J.A.C. [14:4 -9.6] **14:8-4.6**. Level 2 interconnection review procedures are set forth at N.J.A.C. [14:4 -9.8] **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 two 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. [14:4-9.9] **14:8-4.9**.

(b)-(h) (No change.)

[14:4-9.6] **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. [14:4-9.7] **14:8-4.7** and [9.8] **4.8**, a customer-generator facility must be certified as complying with the following standards, as applicable:

1.-2. (No change.)

(b)-(e) (No change.)

[14:4-9.7] **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.-2. (No change.)

3. The facility has been certified in accordance with N.J.A.C. [14:4-9.6] **14:8-4.6**.

(b)-(g) (No change.)

(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. [14:4-9.5(d)] **14:8-4.5(d)**. An applicant may choose to simultaneously submit an EDC's standard form interconnection agreement executed by the applicant.

(i)-(p) (No change.)

[14:4-9.8] **14:8-4.8** Level 2 interconnection review

(a) Each EDC shall adopt [an] 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. (No change.)

2. The facility has been certified in accordance with N.J.A.C. [14:4-9.6] **14:8-4.6**.

(b)-(s) (No change.)

[14:4-9.9] **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 two megawatts and does not qualify for the level 1 or level 2 interconnection review procedures set forth at N.J.A.C. [14:4 -9.7] **14:8-4.7** and [9.8] **4.8**.

(b) (No change.)

(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. [14:4-9.2] **14:8-4.2**, and shall:

1.-3. (No change.)

(d)-(l) (No change.)

[14:4-9.10] **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. [14:4 -9.7(p)] **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 \$ 50.00 plus \$ 1.00 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. [14:4-9.8(o)3 or 4] **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 \$ 100.00 per hour.

(c) For a level 3 interconnection review, the EDC may charge fees of up to \$ 100.00 plus \$ 2.00 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. [14:4-9.9] **14:8-4.9**. Costs for engineering work done as part of an impact study or facilities study shall not exceed \$ 100.00 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.

[14:4-9.11] **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. [14:4-9.7] **14:8-4.7** and [9.8] **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)-(e) (No change.)