

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rulemaking Re :  
Electric Distribution Companies' :  
Obligation to Serve Retail Customers at the : Docket No. L-00040169  
Conclusion of the Transition Period :  
Pursuant To 66 Pa. C.S. §2807(e)(2) :

**COMMENTS OF THE MID-ATLANTIC POWER SUPPLY ASSOCIATION**

**I. INTRODUCTION**

The Mid-Atlantic Power Supply Association ("MAPSA")<sup>1</sup> submits these comments to the Pennsylvania Public Utility Commission ("Commission") rulemaking to establish the rules governing Default Service after the completion of the electric utilities' collection of stranded costs. MAPSA believes the Commission should emphasize several key policies in the Commission's development of the rules for Default Service in the post-transition period:

- Default Service should be designed to promote retail competition.
- Market-based pricing for Default Service should reflect changes in market prices and include the full cost of providing retail electricity supply service.
- The fixed price option for Large Customer Default Service should be eliminated.
- Equal and timely access to customer information should be required.
- Deployment of interval metering should be encouraged. To the extent a competitive meter is installed, energy use should be allocated according to the actual hourly usage.
- Effective and enforceable competitive safeguards should be developed.

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<sup>1</sup> MAPSA's Board of Directors includes representatives of Amerada Hess Corporation; Centrica/Direct Energy Service, LLC; Constellation NewEnergy, Inc., Reliant Energy Solutions, Sempra Energy Solutions and Strategic Energy L.L.C. The opinions expressed in this filing may not represent the views of all members of MAPSA.

- No switching or exit fees, or minimum stay requirements should be developed.
- Uniform rules should be in place to enhance competition across all of Pennsylvania.

Default service rules that fully and effectively implement these policies will provide the structure that will permit the competitive market to deliver the benefits envisioned by the General Assembly's enactment of the Electric Choice Act. The Commission has properly determined "that with an appropriate design of POLR service, the market will provide the products and services that meet the needs of consumers" because, after all, POLR service "should primarily serve as a backstop to the competitive retail market."<sup>2</sup>

MAPSA is a trade association comprised of a broad range of retail electric providers active within the Mid-Atlantic and Northeast energy marketplace. Each of MAPSA's members supports the electric services industry and seeks to develop a more competitive power industry. MAPSA members are licensed to sell electric energy in the markets of Pennsylvania's major electric distribution companies ("EDCs"). MAPSA's representative is:

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The opinions expressed in these comments represent the views of MAPSA concerning the policy framework of post-transition Default Service. Individual members may express their views on details of the Commission's rulemaking in separate company filings.

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<sup>2</sup> December 16, 2004 Order at 5.

## II. SPECIFIC COMMENTS

### A. Default Service Should Be Designed To Promote Retail Competition

Initially, the Commission must recognize that the Default Service is for customers that are not receiving competitive service. It must not be designed or seen as a substitute for retail competition. It is crucial to the development of a healthy competitive market that default be structured as a "plain vanilla" service. Innovative products or services should only be offered by an EGS.

### B. Default Service Must Be Designed to Promote and Enhance Retail Access for All Customers

#### 1. Market Responsive Pricing

The General Assembly has declared that competitive market forces are more effective than economic regulation in producing efficient prices.<sup>3</sup> The Commission's order initiating this rulemaking views this as "one of the key policy declarations of the Act."<sup>4</sup> This key fundamental policy is the basis for the pricing standard that electricity for Default Service in the post-transition period is to be acquired at "prevailing market prices" and provide for full recovery of all other reasonable costs.<sup>5</sup>

Thus, post-transition pricing for Default Service must be market responsive to comply with the Electric Choice Act, and to provide price signals to customers to enable the competitive market to deliver innovative electric products and services responsive to customers' needs and preferences. The Commission has correctly recognized that "any POLR service model must be

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<sup>3</sup> 66 Pa. C.S. § 2802(5).

<sup>4</sup> December 16, 2004 Order at 4. Other key policy declarations identified by the Commission are: "POLR service should be reliable, available on reasonable terms and conditions, associated with high-quality customer service, and provided consistent with the level of protections currently afforded to low-income customers. 66 Pa. C.S. §§2802(9), (10), (11)." *Id.*

<sup>5</sup> 66 Pa. C.S. § 2807(e)(3).

carefully designed to avoid distortions to the market," avoid administrative determinations and give preference to market solutions.<sup>6</sup>

Default Service pricing should be adjustable to prevailing market prices in order to minimize potential distortions in the competitive market. If the Default Service prices are set at levels which become too low, vis-à-vis the market, customers will have an artificial incentive to retain Default Service. This barrier to new market entry will distort and shutter the long-term economic well being of customers. Therefore, the pricing model chosen by the Commission should be flexible enough so that Default Service rates will, to the greatest degree possible, be adjustable to changing market prices and conditions.

## 2. Risk and Cost of Providing Default Service

The post-transition pricing standard requires Default Service prices to cover the expenses and risks associated with retail service. These costs would, at a minimum, need to cover all wholesale and retail costs, such as supply costs, retail customer care costs, and all costs which address the risks associated with Default Service, including customer migration risks. There should be no retroactive adjustments or "true-ups" to account for variations in these costs. Pricing Default Service as a fully separate service from a utility's retail wires service will ensure that Default Service reflects the total cost of providing the service.

Retail customer care costs<sup>7</sup> for Default Service customers should be fully reflected in Default Service prices because customer care services are necessary services that can be

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<sup>6</sup> *Id.* at 5.

<sup>7</sup> Expenses that the default provider will incur include, but are not limited to, customer call center, customer information and recordkeeping, customer agreement initiation and maintenance, customer enrollment and switching support, billing, credit and collection, revenue accounting and disbursement, uncollectibles, EDI processes and maintenance, managing renewable requirements, demand response programs.

provided competitively. Other than access to customer information (addressed below), the EDCs have no special capability in this area.

Real competition will only be promoted if the Commission continues to refrain from imposing switching restrictions. Customer migration risks are more effectively managed through market responsive Default Service pricing than through switching restrictions, which are inherently anticompetitive. If Default Service prices accurately reflect prevailing market prices and cover the cost of providing Default Service including the expense of implementing customer migration risk strategies then customer switching to exploit seasonal price variations not reflected in administratively determined prices will be eliminated.

3. Eliminate the fixed price option for Large Customer Default Service

For large business customers, hourly energy pricing for Default Service is the very definition of market responsive pricing and most appropriate because these customers are sophisticated buyers of goods and services, including energy, so these customers have the ability to respond to market price signals and the incentive to shop for energy products and services that reflect their needs. Where large business customers are subject to hourly Default Service pricing, such as in Maryland and New Jersey, these customers have shopped and the competitive retail market has responded with the products and services the customers want. So too in Texas, where there is no price-regulated default price for large customers, customers have shopped and the competitive retail market has responded with the products and service the customers want. Similarly, Default Service should not be permitted to offer voluntary fixed price options – for large customers. Should the Commission choose to allow fixed price options, they should not be allowed to impose exit fees or minimum stay requirements. In various jurisdictions, large commercial customers have available a hourly-only priced default service and such a structure

has worked well, providing greater opportunities for competition and greater financial savings and enhanced products and services for the customers.

For less sophisticated residential customers and smaller business customers, market-based Default Service prices should be adjustable for changes in market conditions and prices – but not to address or manage risks such as customer migration or EGS behavior "to exploit seasonal variations in the market."<sup>8</sup> As stated below, customer migration risk should be borne by the Default Service provider and reflected in Default Service pricing. Market responsive pricing will mitigate seasonal switching activity and eliminate the incentive for the seasonal switching and, thus, remove any need for restrictions on a customer's right to switch. With respect to the other "risk" specifically identified by the Commission, MAPSA respectfully disagrees with the position that EGSs' market responsive behavior is "exploitation" of Default Service pricing. The focus of this proceeding should instead be on the promulgation of market based default service rates that "exploit" market pricing principles so that this natural conflict is removed without imposing less optimal and complex exit fees and minimum stays that impose further barriers to the development of competitive retail markets.

Market responsive pricing is also a necessary component of effective demand response initiatives. There is no dispute that market based price signals provide the most effective method for supporting demand response activities and programs. Conservation cannot be used effectively unless prices are transparent. Thus, market responsive Default Service pricing will promote effective demand response and permit these activities and programs to be offered competitively.

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<sup>8</sup> *Id.* at 19.

### C. Equal And Timely Access To Customer Information

As the Commission has correctly recognized, Default Service "should serve primarily as a backstop to the competitive retail market" and that with an appropriately designed Default Service, "the market will provide the products and services that meet the needs of consumers."<sup>9</sup> However, the competitive retail market cannot provide the products and services consumers want, even under an appropriately designed Default Service, unless competitive suppliers have non-discriminatory and timely access to customer usage information. This is a critical issue presently as well, and the Commission has received comments in the proceeding initiated by Tentative Order entered August 19, 2004.<sup>10</sup> However, MAPSA raises this policy issue in this rulemaking to emphasize its importance to enable competitive suppliers to actually make timely offers that respond to what customers want. MAPSA hereby incorporates by reference its Comments and Reply Comments submitted in Docket No. M-00041819, and reiterates these key points:

- EDCs should be required to provide to EGSs the same customer information that accrues to them as the incumbent utilities and that the EDCs rely upon and use in their operations, especially billing.<sup>11</sup>
- EGSs cannot begin to provide customers with information and offers of service – necessary if customers are going to make informed choices – unless EGSs have access to at least minimal customer information: customer name, account number, billing address and certain billing and load data information.<sup>12</sup> EDCs should be required to provide this information in a consistent and standard uniform EDI format.<sup>13</sup>

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<sup>9</sup> December 16, 2004 Order at 5.

<sup>10</sup> Docket No. M-00041819. The order was published in the Pennsylvania Bulletin on September 4, 2004, 34 Pa.B. 4991.

<sup>11</sup> Docket No. M-00041819, MAPSA Comments at 2.

<sup>12</sup> *Id.* at 1 (the billing and load data information is described at 3-5, 8-10).

<sup>13</sup> *Id.* at 2, 5, 7-9 (12 months of historical interval meter data should be made available to customers and EGSs in electronic format at least once every 6 months at no charge).

- With respect to customers that provide an EGS authorization to access their previously restricted customer information, Pennsylvania EDCs (as the utilities in Maryland, Delaware and the District of Columbia) should be prohibited from imposing any additional requirements upon the EGS to validate the customer's authorization before providing the information.<sup>14</sup>

MAPSA requests that the Commission resolve these customer information access issues in both this and the proceeding at Docket No. M-00041817 so that EGSs not affiliated with Pennsylvania EDCs can obtain the information they need to provide timely offers tailored to customers' specific needs, now and in the post-transition period.

#### **D. Deployment Of Interval Metering**

As stated above, market responsive pricing and timely access to customer demand and usage information is critical for the development of the competitive retail electric market. Interval metering addresses both of these fundamental requirements by providing the means for the industry and customers to better react to market price signals. The Commission should establish policies that expedite installation of interval metering. Advanced meters support demand side response as well as the efficient use of energy by reflecting real-time market conditions and providing the appropriate price signals to customers. Many of the major EDCs have initiated and, in some cases, nearly completed the installation of advanced meters for larger business customers. In summary, the Commission should encourage policies that augment availability of interval metering.

Most importantly, data from advanced meters should be "open access" to competitive suppliers to comply with the Electric Choice Act. Section 2804(6) of the Act requires an EDC to

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<sup>14</sup> *Id.* at 6; MAPSA Reply Comments at 3, 6, 9 (Policies and practices that require customers (i) to provide authorization forms on their own official letterhead, (ii) to call the EDC to release the information, and (iii) to go online to authorize release of the customer's information have a negative effect on competitive markets – and even more so on developing markets. MAPSA Reply Comments at 3.)



provide access to and use of its distribution system to EGSs and their customers on a basis comparable to the access to and use of the system by the EDC itself. Moreover, to the extent that a competitive interval meter is installed energy use should be allocated according to the actual hourly usage as revealed by the competitive meter.

**E. Effective And Enforceable Competitive Safeguards**

Closely related to the issue of equal and timely access to customer information is the issue of effective and enforceable competitive safeguards.<sup>15</sup> Consistent with the Commission's recognition that Default Service is primarily a backstop to competitive retail service which should provide the products and services consumers want, enforceable and effective safeguards are required to ensure that a Pennsylvania EDC treats competitive suppliers not affiliated with the EDC the same as the EDC treats itself and its affiliated supplier. Although these issues are also important during the transition period and could be addressed in a separate proceeding, MAPSA believes that – as with equal and timely access to customer information – equal treatment of EDC-affiliated suppliers and non-affiliated suppliers clearly must be required and, most importantly, enforced after the various transition periods end and full retail competition unfettered by stranded costs and rate caps is to begin.

Some specific safeguards that relate specifically to POLR service that MAPSA recommends the Commission should adopt into the POLR regulations include:

1. Utilities will in no way promote default supply services or other competitive services or describe any of these services as being superior or preferable to services supplied by competitive retail suppliers.

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<sup>15</sup> The Commission invited comment on whether this rulemaking should include issues of competitive safeguards other than the transfer of customer accounts to Default Service. December 16, 2004 Order at 23.

2. Customer meetings organized to educate customers on changes in utility default supply service should be open to all market participants to ensure that all participants are receiving the same consistent information and messaging

The Commission's existing competitive safeguards prohibit an EDC from giving any EGSs, including an affiliated or division EGS, any preference or advantage in:

- processing a request by an EDC customer for retail generation service;
- the dissemination or disclosure of customer information; and
- the disclosure of information about operational status and availability of its distribution system.<sup>16</sup>

The existing standards require an EDC to supply all regulated services and to apply tariffs to non-affiliated EGSs in the same manner as it does for itself and its affiliated or division EGS. The standards also require EDCs and their affiliated or division EGSs to ensure that their employees "function independently of other related companies."<sup>17</sup>

These standards are appropriate, but lack detail and methods to ensure they are effective and enforceable. Experiencing violations of these standards, and proving the violations, are two different things, and the lack of detailed rules and enforcement methods make the task of proving violations of the standards even more difficult. MAPSA suggests that the Commission amend its competitive safeguards for electric service consistent with the "Affiliate Relations, Fair Competition and Accounting Standards and Related Reporting Requirements" adopted by the New Jersey Board of Public Utilities ("NJBPUB").<sup>18</sup> Specifically, MAPSA believes that the

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<sup>16</sup> 52 Pa. Code § 54.122(1),(2),(6).

<sup>17</sup> *Id.* at § 54.122(7),(11).

<sup>18</sup> A copy of the NJBPUB standards is included with these comments. The standards are also available electronically at <http://www.bpu.state.nj.us/wwwroot/energy/affiltstands.pdf> .

effectiveness of the Commission's competitive safeguards would be strengthened by adoption of the NJBPU standards (applicable to electric service) concerning:

- Business Development and Customer Relations [Section 3.10]
- Disclosure of Customer Information [Section 4.1]
- Separation of Books and Records [Section 5.2]
- Sharing of Plant, Facilities and Equipment or Costs [Section 5.3]
- Joint Purchases [Section 5.4]
- Corporate Support [Section 5.5]
- Employees [Section 5.7]
- Transfer of Services [Section 5.8]
- Conditions for Offering Competitive Products and Services [Section 6.3(d)-(e)]
- Regulatory Oversight [Section 7 (relating to Compliance Plans, New Affiliate Compliance Plans, and Audits)].

In addition, MAPSA suggests that the Commission's existing dispute resolution procedures<sup>19</sup> do not facilitate timely and efficient resolution of competitive safeguards disputes because, barring resolution through mutual agreement or mediation, formal complaint proceedings to resolve the dispute may be initiated long after referral of the complaint.<sup>20</sup> On the other hand, Section 8.1(b) of the NJBPU standards require an investigation of the complaint and communication of "the results of the investigation to the complainant, in writing, within thirty days after the complaint is received, including a description of any action taken." Adopting this requirement in Pennsylvania would hasten the efficient resolution of competitive safeguards disputes by identifying early on in the process the particular issues that are disputed and not disputed.

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<sup>19</sup> 52 Pa. Code § 54.122(4).

<sup>20</sup> Informal dispute resolution may take 30 days, then mediation may take another 30-60 days, and then a formal complaint must be filed within 30 days of unsuccessful mediation. 52 Pa. Code § 54.122(4)(iii),(iv).

## **F. No Switching Or Exit Fees, Or Minimum Stay Requirements**

There should be no switching restrictions related to Default Service. Restrictions on customers switching are anathema to competitive markets, anticompetitive, inconsistent with customer choice and should not be permitted at any time. MAPSA disagrees with the implication that switching restrictions may be appropriate at some time in the future.<sup>21</sup> Moreover, transition period switching restrictions should not be continued into the post-transition period, in which competitive market forces are to replace regulatory controls. As stated above, if Default Service prices accurately reflect prevailing market prices and the full cost of providing Default Service, then customer switching to exploit seasonal price variations not reflected in administratively determined, regulated prices will be eliminated.

Accordingly, there should be no switching restrictions, including minimum stay provisions, switching fees, exit fees or other penalties (such as GRAs) related to Default Service so that a customer can switch to or from the competitive supply market without artificial obstructions. Switching restrictions are inconsistent with customer choice and, as stated above, market responsive pricing is a far more reasonable way – and the required method in the post-transition period – to address legitimate risks and concerns associated with seasonal switching activity.

## **G. Uniform Rules Should Be In Place To Enhance Competition Across All Of Pennsylvania**

Default Service *terms and conditions* should be uniform across the state. Different rules for different EDC service territories create barriers to entry and competition in view of the integrated nature of the network and the need for competitive suppliers to achieve economies of

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<sup>21</sup> "[W]e decline to endorse restrictions such as minimum stay provisions or switching fees **at this time.**" December 16, 2004 Order at 22 (emphasis added).

scale to obtain and pass through to customers the benefits of the competitive market. EDC specific terms and conditions also impede the development of the competitive market by imposing unnecessary additional costs and procedures on competitive suppliers' ability to do business in each of the various service territories. The EDC-specific nature of the Pennsylvania EDCs' restructuring, phase-in and transition plans exemplify the complexity and inconsistencies between the various EDCs that further frustrate consumers and suppliers to bring the benefits of competition to Pennsylvania. The "varying terms of the approved generation rate caps and existing POLR plans"<sup>22</sup> should not be used to justify, in the post-transition period, the anticompetitive burdens imposed during the transition period on suppliers trying to do business and develop the retail electric market in multiple EDC service territories across the state.

However, Default Service prices need not be uniform across the state, but should reflect local market conditions. MAPSA members operate in many states and jurisdictions, so MAPSA acknowledges that differences in local market conditions are appropriately reflected in local Default Service market responsive prices.

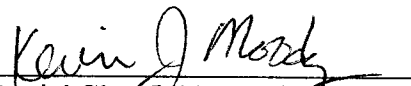
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<sup>22</sup> *Id.* at 10. MAPSA does not agree with the Commission's statement "that different procurement mechanisms may be appropriate in different territories." *Id.* at 7.

### III. CONCLUSION

MAPSA respectfully requests the Commission to implement the policies set forth in these comments in the Commission's final rules for Default Service in the post-transition period to create the structure that will permit the competitive market to deliver benefits to customers as envisioned by the General Assembly's enactment of the Electric Choice Act .

Respectfully submitted,



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Date: April 27, 2005

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**Affiliate Relations, Fair Competition and Accounting Standards {PRIVATE }  
and Related Reporting Requirements**

**SECTION 1. SCOPE**

**1. Scope**

(a) These standards shall apply as follows:

i. Sections 3 through 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;

ii. Section 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

iii. Sections 7 through 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) The Board reserves the right to promulgate any additional interim standards as may be required to effectuate the intent of the Act.

**2. Limited Exemption**

(a) A New Jersey electric and/or gas public utility, which is also a multi-state electric and/or gas public utility and subject to the jurisdiction of other state or federal regulatory commissions, may file an application, requesting a limited exemption from these standards or part(s) thereof, for transactions between the electric or/gas public utility and its affiliate(s) solely in its role of serving its jurisdictional areas wholly outside of New Jersey.

(b) The applicant has the burden of proof to establish the appropriateness of the requested exemption.

## SECTION 2 DEFINITIONS

### 1. Words defined

The following words and terms shall have the following meanings unless the context clearly indicates otherwise.

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

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

{PRIVATE } "Affiliated" means related to an electric or gas public utility as an affiliate thereof{tc \l 1  
""Affiliated" means related to an electric or gas public utility as an affiliate thereof"}

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

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

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

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

"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.



"Demand side management" means the management of customer demand for energy service through the implementation of cost-effective energy efficiency technologies, including, but not limited to, installed conservation, load management and energy efficiency measures on and in the residential, commercial, industrial, institutional and governmental premises and facilities in this State.

"Dth" means decatherms or ten therms.

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

"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 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 measurement and billing services.

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

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

"Functional separation" means the formation of a separate business unit by an electric or gas public utility for purposes of offering competitive services permitted by NJSA48:3-55(f) or N.J.S.A. 48:3-58(b) of the Act, which separate business unit shall be a related competitive business segment of an electric public utility or gas public utility as defined herein and in the Act.

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

"Gas public utility" means a public utility, as that term is defined in NJSA 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 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 measurement and billing services.

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

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

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

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

“kW” means kilowatts or 1000 watts.

“kWh” means kilowatt-hours or 1000 watt-hours.

“Long term” means a transaction in excess of thirty-one (31) days.

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

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

“Products” means goods as defined in the Uniform Commercial Code, NJSA, all other real, personal and intellectual property of whatever being or nature.

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

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

“Ratepayer Advocate” or “RA” means the Division of Ratepayer Advocate or any successor agency.

“Regulatory asset” means an asset recorded on the books of an electric public utility or gas public utility pursuant to the Statement of Financial Accounting Standards, No. 71, entitled “Accounting for the Effects of Certain Types of Regulation,” or any successor standard and as deemed recoverable by the Board.

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

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

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

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

“Short term” means a transaction of thirty-one (31) days or less.

“Slamming” means the unauthorized change of a consumer’s electric power supplier or gas supplier.  
“Structural separation” means the formation of a related competitive business segment of a public utility holding company.

“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 LDC, respectively within this State.

### **SECTION 3 NONDISCRIMINATION**

#### **1. Preferential Treatment Regarding Services Provided by an Electric and/or Gas Public Utility**

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

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

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

#### **2. Transactions**

(a) 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:

- (i) tariffed products and services;
- (ii) the sale or purchase of goods, property, products or services made generally available by the electric and/or gas public utility, by the PUHC or a related competitive business segment of its public utility holding company to all market participants through an open, competitive bidding process; or
- (iii) as provided for in subsection 5.4 {Joint purchases}, in subsection 5.5 {Corporate support} or subsection 6.1 {Competitive Utility Products and/or Services} below, provided the transactions specified in Section 6 {Competitive Utility Products and/or Services} comply with all other applicable rules.

#### **3. Provision of Supply, Capacity, Services or Information**

(a) 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 {Joint purchases}, subsection 5.5 {Corporate support} and subsection 6.1 {Competitive Utility Products and/or Services} below, provided the transactions specified in Section 6 {Competitive Utility Products and/or Services} below comply with all other applicable rules.

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

#### **4. Surplus Energy and/or Capacity**

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

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

#### **5. Offering of Discounts and Discretionary Waivers**

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

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

(b) An electric and/or gas public utility shall document the cost differential underlying the discount to its PUHC or a related competitive business segment of its public utility holding company in the Affiliate Discount Report described in subsection 3.11(a) below.

#### **6. Interpretation of Tariff Provisions**

(a) An electric and/or gas public utility shall apply tariff provision(s) on a non-discriminatory basis to

its PUHC or related competitive business segments of its public utility holding company and to other market participants and their respective customers if the tariff provision allows for discretion in its application.

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

#### **7. Processing Requests for Electric and/or Gas Public Utility Services**

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

#### **8. Tying of Products and/or Services Provided by an Electric and/or Gas Public Utility**

An electric and/or gas public utility shall not condition or otherwise tie the provision of any products and/or services provided by the electric and/or gas public utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any products and/or services provided by the electric and/or gas public utility to the taking of any products and/or services from its PUHC or a related competitive business segment of its public utility holding company.

#### **9. Assignment of Customers**

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

#### **10. Business Development and Customer Relations**

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

1. provide leads to its PUHC or a related competitive business segment of its public utility holding company;
2. solicit business on behalf of its PUHC or a related competitive business segment of its public utility holding company;
3. acquire information on behalf of or to provide to its PUHC or a related competitive business

segment of its public utility holding company;

4. share market analysis reports or any other type(s) of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its PUHC or a related competitive business segment of its public utility holding company;

5. share customer usage or end use equipment information obtained during the course of providing electric and/or gas public utility services, including but not limited to the administration of demand-side management programs, with its PUHC or a related competitive business segment of its public utility holding company;

6. request authorization from its customers to pass on customer information exclusively to its PUHC or a related competitive business segment of its public utility holding company;

7. represent or imply that the electric and/or gas public utility speaks on behalf of its PUHC or a related competitive business segment of its public utility holding company or that the customer will receive preferential treatment as a consequence of conducting business with the related competitive business segment of its public utility holding company; or

8. represent or imply that its PUHC or a related competitive business segment of its public utility holding company speaks on behalf of the electric and/or gas public utility.

(b) Provided it is in compliance with these standards, and subject to the provisions of subsection 4.5(b), 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.

## **11. Affiliate Discount Reports**

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

1. the name of the its PUHC or related competitive business segment of its public utility holding company involved in the transaction;

2. the rate charged;

3. the maximum rate;

the time period for which the discount, rebate, or waiver applies;

5. the quantities involved in the transaction;

6. the delivery points involved in the transaction;

7. any conditions or requirements applicable to the discount, rebate or waiver, and a documentation of the cost differential underlying the discount as required in subsection 4 of Section 3 above; and

8. procedures by which a non-affiliated entity may request a comparable offer.

(b) An electric and/or gas public utility that provides its PUHC or a related competitive business

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

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

(c) All records maintained pursuant to these standards shall also conform to FERC rules where applicable.

## **SECTION 4 INFORMATION DISCLOSURE**

### **1. Customer Information**

An electric and/or gas public utility may provide individual proprietary information to its PUHC or a related competitive business segments of its public utility holding company, and only with prior affirmative customer written consent or as otherwise authorized by the Board and only if it is provided to unaffiliated entities on a non-discriminatory basis.

### **2. Non-Customer Specific Non-Public Information**

(a) 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 segments of its public utility holding company, provided it is necessary to exchange this information in the provision of the corporate support



services permitted by *subsection 5.5* below.

2. The PUHC's or related competitive business segment's use of such proprietary information is limited to its use in conjunction with the permitted corporate support services, and is not permitted for any other use.

### **3. Supplier Lists**

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

### **4. Non-Public Supplier Information**

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

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

### **5. Product and/or Service Provider Information**

(a) Except upon request by a customer or as authorized in subsection 3 of this subsection or otherwise by the Board, an electric and/or gas public utility shall not provide its customers with any list of product and/or service providers, which highlights or otherwise identifies its PUHC or a related competitive business segment of its public utility holding company, regardless of whether such list also includes the names of unaffiliated entities.

(b) If a customer requests information about any affiliated product and/or service provider, the electric and/or gas public utility may acknowledge that such affiliated product and/or service provider exists, but shall provide no additional information unless it provides a list of all providers of gas-related, electricity-related, or other utility-related products and/or services in business in its service territory, including the related competitive business segment of its public utility holding company.

Any such list shall include all suppliers licensed by the Board.

2. Where maintaining such list would be unduly burdensome due to the number of service providers, the electric and/or gas public utility shall not provide a list and may direct the customer to a

generally available listing of service providers, e.g., the Board, the telephone directory or Internet.

## **6. Record-Keeping**

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

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

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

## **7. Maintenance of Affiliate Contracts and Related Bids**

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

## **SECTION 5 SEPARATION**

### **1. Corporate Entities**

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

### **2. Books and Records**

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

(b) Electric and/or gas public utilities' books and records shall be kept in accordance with applicable Uniform System of Accounts (USOA).

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

### **3. Sharing of Plant, Facilities, Equipment or Costs**

(a) 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 of Section 5 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 subsection 1.(b) of Section 7.

(b) Paragraph (a) of this subsection does not preclude an electric and/or gas public utility from offering a joint product and/or service, provided such joint product and/or service is authorized by the Board and is available to all non-affiliated product and/or service providers on the same terms and conditions, e.g., joint billing services.

#### **4. Joint Purchases**

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

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

#### **5. Corporate Support**

(a) 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

Sections 4 and 5, respectively, set forth herein, as well as other applicable Board pricing and reporting requirements.

(b) 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 subsections 1 or 2 of Section 7 below, 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.

## **6. Corporate Identification and Advertising**

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

1. the PUHC or related competitive business segment of the public utility holding company "is not the same company as [LDC's NAME HERE], the electric and/or gas public utility";

2. the PUHC or related competitive business segment of the public utility holding company is not regulated by the Board; and

3. "You do not have to buy [RELATED COMPETITIVE BUSINESS SEGMENT'S NAME HERE] products in order to continue to receive quality regulated services from the electric and/or gas public utility."

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

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

(d) An electric and/or gas public utility shall not offer or provide to its PUHC or a related competitive business segment of its public utility holding company advertising space in the electric and/or gas public utility's billing envelope(s) or any other form of electric and/or gas public utility's written

communication to its customers unless it provides access to all other unaffiliated service providers on the same terms and conditions.

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

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

2. Except as otherwise provided for by these standards, an electric and/or gas public utility shall not participate in any joint business activity(ies) with its PUHC or a related competitive business segment of its public utility holding company which includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;

3. An electric and/or gas public utility shall not participate jointly with its PUHC or a related competitive business segment of the PUHC in trade shows, conferences, or other information or marketing events held in New Jersey; and

4. An electric and/or gas public utility shall not subsidize costs, fees, or payments with its PUHC or related competitive business segments of its public utility holding company associated with research and development activities or investment in advanced technology research.

## **7. Employees**

(a) Except as permitted in subsection 5 of Section 5 {Corporate support} above, an electric and/or gas public utility and its PUHC or related competitive business segments of its public utility holding company which are engaged in offering merchant functions and/or electric related services or gas related services shall not employ the same employees or otherwise retain, with or without compensation, as employees, independent contractors, consultants, or otherwise.

\_\_\_1. Other than shared administration and overheads, employees of the competitive services business unit of the public utility holding company shall not also be involved in the provision of non-competitive utility and safety services, and the competitive services are provided utilizing separate assets than those utilized to provide non-competitive utility and safety services

(b) 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 Board of Directors as corporate officers, except for the following circumstances.

1. In instances when these standards are applicable to public utility holding companies, any board member or corporate officer may serve on the holding company and with either the electric and/or gas public utility or a related competitive business segment of the public utility holding company, but not both the electric and/or gas public utility and a related competitive business segment of the public utility holding company.

2. Where the electric and/or gas public utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the related competitive business segments, the prohibition against any board member or corporate officer of the electric and/or gas public utility also serving as a board member or corporate officer of a related competitive business segment shall only apply to related competitive business segments operating within New Jersey.

i. In the case of shared directors and officers, a corporate officer from the electric and/or gas public utility and holding company shall verify, subject to Board approval, in the electric and/or gas public utility's compliance plan required pursuant to subsections 1 and 2 of Section 7 below, 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.

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

1. The electric and/or gas public utility shall make a public posting of all employee transfers within 3 working days.

2. An electric and/or gas public utility shall track and report annually to the Board all employee transfers between the electric and/or gas public utility and such related competitive business segments of its public utility holding company.

3. Once an employee of an electric and/or gas public utility is transferred to such related competitive business segment of its public utility holding company, said employee may not return to the electric and/or gas public utility for a period of one year, unless the related competitive business segment of the public utility holding company to which the employee is transferred goes out of business or is acquired by a non-affiliated company during the one-year period.

4. In the event that an employee is returned to the electric and/or gas public utility, such employee cannot be transferred for employment by a related competitive business segment of the public utility holding company which is engaged in offering merchant functions and/or electric-related services or gas-related services for a period of one year.

(d) Employees transferring from an electric and/or gas public utility to a related competitive business

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

i. Any electric and/or gas public utility employee hired by a related competitive business segment of the public utility holding company shall not remove or otherwise provide information to said affiliate which said related competitive business segment of the public utility holding company would otherwise be precluded from having pursuant to these standards.

ii. An electric and/or gas public utility shall not make temporary or intermittent assignments, or rotations to related competitive business segments of its public utility holding company.

## **8. Transfer of Services**

(a) All transfers of services not prohibited by these standards shall be subject to the following provisions:

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

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

3. Prices for services regulated by a state or federal agency shall be deemed to be the fair market value.

4. Services produced, purchased or developed for sale on the open market by the electric and/or gas public utility shall be provided to related competitive business segments of its public utility holding company and unaffiliated company(ies) on a nondiscriminatory basis, except as otherwise required or permitted by these standards or applicable law.

5. Transfers of services not produced, purchased or developed for sale on the open market by the electric and/or gas public utility from the electric and/or gas public utility to related competitive business segments of its public utility holding company shall be priced at fully allocated cost.

6. Transfers of services not produced, purchased or developed for sale on the open market by a related competitive business segment of the public utility holding company from that related competitive business segment of the public utility holding company to the electric and/or gas public utility shall be priced at the lower of fully allocated cost or fair market value.

**9. Transfer, Lease or Rental of Utility Assets**

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

(b)

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

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

**SECTION 6 COMPETITIVE PRODUCTS AND/OR SERVICES OFFERED BY A UTILITY OR RELATED COMPETITIVE BUSINESS SEGMENTS OF A UTILITY**

**1. Eligible Competitive Products and/or Services**

(a) Except as provided for in the Act or these standards, an electric and/or gas public utility or a related competitive business segment of an electric and/or gas public utility shall not offer competitive products and/or services without the prior review and approval by the Board of a proposed tariff, except where pre-empted by federal law.

\_\_\_\_\_ 1. A public utility holding company may offer any competitive service, including, but not limited to, electric generation service, telecommunications service, and cable service, to retail customers of an electric public utility that is owned by the holding company, but only through a related business segment of the holding company that is not an electric public utility or a related business segment of the electric public utility. Competitive services shall be offered in compliance with all Board rules and regulations for carriers of these services.

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

(b) An electric and/or gas public utility or its related competitive business segment may only offer to



provide the following competitive products and/or services:

1. Metering, billing or administrative services that are deemed competitive by the Board pursuant to NJSA 48:3-56.

2. Products and/or services related to customer and public safety and reliability of non-competitive utility services as determined by the Board;

3. Competitive products and/or services that have been offered by any electric and/or gas public utility in the State prior to January 1, 1993 or that have been approved by the Board prior to February 9, 1999, to be offered by any electric and/or gas public utility in the State;

4. Products and/or services that are substantially similar, as determined by the Board, to competitive services that have been offered by any electric and/or gas public utility in the State prior to January 1, 1993 or that have been approved by the Board prior to February 9, 1999 to be offered by any electric and/or gas public utility in the State and, in the case of electric public utilities, for which a request for approval by the public utility seeking to offer such service had been filed with the Board on or before July 1, 1998.; or

5. Competitive services to non-residential customers using existing public utility employees

(c) For a competitive product and/or service that has been offered by an electric and/or gas public utility prior to January 1, 1993 or that has been approved by the Board prior to February 9, 1999, the electric and/or gas public utility may continue offering such product or service, subject to the provisions of these standards and applicable law and shall not be required to seek further approval to offer said product and/or service, provided, however that if the electric and/or gas public utility does not have a tariff for the service on file with the Board, the electric and/or gas public utility shall file with the Board within 60 days of the date of final adoption of these standards a tariff setting forth the pricing terms, and other terms and conditions of the product and/or service.

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

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

(f) All tariffs for competitive services filed with the Board shall be in the public records unless the rates contained therein are determined to be proprietary, in which case said tariffs shall be filed under seal and made available under the terms of an appropriate protective agreement as provided by Board

Order. The public utility shall have the burden of proof by affidavit and motions to demonstrate the need for proprietary treatment. The rates shall become public upon Board approval.

## **2. Standards for Approval**

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

1. the proposed product and/or service is competitive, consistent with the standards for competitive products and/or services set forth in the Act and as determined by the Board;

2. the provision of the proposed product and/or service by the electric and/or gas public utility will not adversely impact the electric and/or gas public utility's ability to offer its non-competitive services to customers in a safe, adequate and proper manner, and that in all instances where resources are jointly deployed by the electric and/or gas public utility to provide competitive and non-competitive services and resource constraints arise, the provision of safety-and reliability-related and non-competitive services receives the higher priority;

3. the competitive product and/or service will be offered in a non-discriminatory manner to all customers; and

4. the price which the electric and/or gas public utility or its related competitive business segment will charge for the competitive product and/or service will equal or exceed the fully allocated cost to the electric and/or gas public utility or its related competitive business segment to provide the competitive product and/or service, and will not otherwise result in cross-subsidization.

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

## **3. Conditions for Offering Competitive Products and/or Services**

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

(b) Each electric and/or gas public utility is responsible for and has an ongoing obligation to track, monitor and update, as necessary, its fully allocated cost of providing each competitive product and/or service offering by itself or its related competitive business segment, and to ensure that the price it or its related competitive business segment charges for each such competitive product and/or service at all times equals or exceeds the fully allocated cost of providing such competitive products and/or services and to file the notification required by Subsection 6 below.

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

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

(e) An electric and/or gas public utility employee engaged in providing non-competitive, regulated services shall not violate these rules regarding cost allocation and fair competition and shall not:

1. solicit competitive services business on behalf of the public utility or its related competitive business segment, or provide business leads to the public utility's or its related competitive business segment's employees engaged in the offering of competitive services;

2. share market analysis reports or other type(s) of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with the public utility's employees involved in the offering of competitive products and/or services, or with employees of a related competitive business segment of the public utility, unless such information is made available on a non-discriminatory basis to all other service providers and the information is kept open to public inspection, or as otherwise authorized by the Board;

3. represent or imply that a customer will receive preferential treatment as a consequence of obtaining competitive products and/or services from the public utility or its related competitive business segment as opposed to a non-affiliated service provider;

4. provide a customer preferential treatment as a consequence of obtaining competitive products and/or services from the public utility or its related competitive business segment as opposed to a non-affiliated service provider;

5. process any request for non-competitive services offered by the electric and/or gas public utility on a preferential or discriminatory basis for a customer taking competitive products and/or services from the public utility or its related competitive business segment, as opposed to taking such products and/or services from a non-affiliated provider;

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

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

#### **4. Accounting Standards, Books and Records and Periodic Reporting**

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

total customers;

2. total revenues received by the utility;

dedicated assets;

4. carrying costs on dedicated assets;

portion of shared assets allocated to the competitive service(s);

6. dedicated expenses incurred in the start-up, promotion, and provision of service;

fully allocated shared expenses;

8. total margins, defined as the difference between the total revenues received and the total expenses;

9. net revenues, defined as the difference between total revenues and dedicated expenses;

10. any such other item as the Board may determine.

(b) Each electric and/or gas public utility shall file with the Board, by no later than forty-five (45) days following the close of each calendar year, an annual financial report and, no later than six (6) months thereafter each year, a semi-annual financial report, providing information on the financial performance of each competitive product and/or service offering made by the public utility and/or its related competitive business segment, utilizing the information compiled pursuant to subsection 4(a) above.

(c) Each electric and/or gas public utility is responsible in the preparation of its annual and semi-annual reports to be filed in accordance with subsection 4(b) above, to reflect the most current cost information available to report the financial performance of it and/or its related competitive business segment's competitive product and/or service offerings.

(d) All transfers, leases or rental of utility assets from an electric and/or gas public utility to a related competitive business segment of the public utility, for purpose of the asset becoming a dedicated asset of the related competitive business segment of the public utility, shall be recorded at the greater of book cost or fair market value and shall be subject to approval by the Board.

## **5. Treatment of Revenues**

(a) The revenues received by an electric and/or gas public utility or its related competitive business segment(s) for the provision of a competitive product and/or service shall be treated in the following manner:

1. The level of gross revenues representing the fully allocated cost of providing the service shall be recorded in the respective competitive service revenue account and treated above-the-line for ratemaking purposes and credited to ratepayers in a manner to be determined by the Board.

2. For electric public utilities and related competitive business segments of electric public utilities except as set forth in (3) below, pursuant to subsection b. of Section 7 of the Act, fifty (50) % of the total margins shall be recorded in respective competitive service revenue accounts and treated above-the-line for ratemaking purposes and credited to ratepayers via a credit to the market transition charge, or distribution service charge in a manner to be determined by the Board.

3. For a related competitive business segment of an electric public utility, 25% of the total margins shall be recorded in respective competitive service revenue accounts and treated above-the-line for ratemaking purposes and credited to ratepayers of the electric public utility via a credit to the market transition charge, or distribution service charge in a manner to be determined by the Board.

4. For gas public utilities the total margins shall be treated above-the-line for ratemaking purposes and credited to ratepayers in a manner to be determined by the Board.

(b) Revenues received by an electric and/or gas public utility as the result of a transfer of services or a transfer, lease or rental of assets to an affiliate shall be recorded in respective competitive service revenue account and credited to ratepayers in a manner to be determined by the Board.

## **6. Change(s) in Price or Terms and Conditions**

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

(b) Subsequent to the filing of an initial tariff for an existing competitive product and/or service offering pursuant to subsection 1(c) above, or subsequent to the initial approval by the Board for the

offering of a new competitive product and/or service by an electric or gas public utility or its related competitive business segment pursuant to subsections 1(d) and 2 above respectively, an electric and/or gas public utility or its related competitive business segment may make modifications to the pricing terms or other terms and conditions of a competitive product and/or service offering without further approval of the Board, provided that the electric and/or gas public utility must notify the Board of the proposed change at least 30 days prior to its intended implementation, such notification to include:

1. a proposed revised tariff with changes in pricing and/or other terms and conditions clearly identified;
2. an affidavit from an officer of the electric and/or gas public utility, including justification, that the proposed changes do not render the product and/or service offering in non-compliance with the standards for approval set forth in subsection 2 above.

#### **7. Change(s) in Competitive and/or Service Offering**

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

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

#### **8. Violations**

(a) 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 subsections 6.1, 6.2 or 6.7 above, or without the prior notification to the Board pursuant to subsection 6.6 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 subsection 1.(b) of Section 9 below.

(b) In the event that the Board determines as a result of the audit performed pursuant to Section 8 of the Act, subsection 3 of Section 7 of these standards 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. order a reimbursement, including interest, to competitive product and/or service offering customers of any overcharges resulting from the violation;
2. order a reimbursement to electric or/gas public utility ratepayers, including interest, of any cross-subsidy(ies) found to have been provided to the competitive product and/or service offerings;
3. impose a penalty of up to \$10,000 for each such violation;
4. For a first violation:
  - i. order a violating electric and/or gas public utility to cease some or all competitive product and/or service offerings and form a related competitive business segment of the public utility to perform the competitive product and/or service offerings; or
  - ii. order a violating related competitive business segment of an electric or/gas public utility to cease some or all competitive product and/or service offerings and permit further competitive offerings only through a related competitive business segment of the public utility holding company; and
5. For a second and subsequent violations:
  - i. order a violating related competitive business segment of the previously-violating public utility to cease some or all competitive product and/or service offerings and permit further competitive offerings only through a related competitive business segment of the public utility holding company.

## **SECTION 7 REGULATORY OVERSIGHT**

### **1. Compliance Plans**

(a) No later than three months from the final adoption of these standards, each electric and/or gas public utility shall file its compliance plan with the Board and provide a copy of said plan to the RA.

(b) Said compliance plan shall demonstrate that there are adequate procedures in place to ensure compliance with these standards.

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

i The information required by subsection 1(b)1. above shall be updated within five (5) business days of any change(s) thereto as well as make a public posting thereof.

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

(d) Annually thereafter or upon changes thereto, the electric and/or gas public utility shall file a revised compliance plan with the Board and the RA.

## **2. New Affiliate Compliance Plans**

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

## **3. Audits**

(a) By no later than December 31, 1999, at the discretion of the Board, the electric and/or gas public utility shall have an audit prepared by an independent auditor, to be selected by the Board, which verifies that the electric and/or gas public utility is in compliance with these standards.

1. The scope of the audit shall be established by the Board.

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

(c) After December 31, 2000, subsequent audits will be performed at least every 2 years thereafter.

## **SECTION 8 DISPUTE RESOLUTION**

### **1. Procedure**

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

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

(c) An electric and/or gas public utility shall report any violation of these standards to the Board, with a copy provided to the RA, within five (5) business days of becoming aware of any such violation(s).

(d) The electric and/or gas public utility shall maintain a log of all resolved and pending complaints.



The log shall be subject to review by the Board and RA and shall contain, at minimum, a summary of the complaint, the manner in which the complaint was resolved, or an explanation why the complaint remains pending.

## **SECTION 9 VIOLATIONS AND PENALTIES**

### **1. Penalties**

(a) If, as a result of an audit conducted pursuant to subsection 7.3 above or by any other means, the Board determines that an electric and/or gas public utility has committed violations of Sections 3,4,5,7 or 8 of these standards 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 subsection 7.3 above 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 Sections 3, 4, 5, 7 or 8 of these standards which are substantial in nature, the Board is authorized to take some or all of the following actions:

1. Impose a penalty of up to \$10,000 for each such violation(s).
2. Order appropriate reimbursement to electric or/gas public utility ratepayers, including interest.
3. For a first violation:

i. order a violating electric or/gas public utility to cease some or all competitive product and/or service offerings and form a related competitive business segment of the public utility to perform the competitive product and/or service offerings; or

ii. order a violating electric or/gas public utility to cease some or all competitive product and/or service offerings through a related competitive business segment of the public utility holding company; and

4. For a second violation:

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