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SPECIAL ADOPTION

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

35 N.J.R. 3711(a)

Special Adopted Amendments: N.J.A.C. 14:4-1.3 and 1.6

Special Adopted Repeal and New Rules: N.J.A.C. 14:4-6

GOVERNMENT ENERGY AGGREGATION PROGRAMS

Adopted: July 10, 2003 by the New Jersey Board of Public Utilities, Jeanne M. Fox, President, and Frederick F. Butler, Carol J. Murphy, Connie O. Hughes and Jack Alter, Commissioners.

Filed: July 11, 2003 as R.2003 d.322.

Authority: *N.J.S.A. 48:3-92*, 93.1 through 93.3, and 94; 48:3-85.

BPU Docket Number: EX 03010041.

Effective Date: July 11, 2003.

Expiration Date: January 11, 2005.

Summary

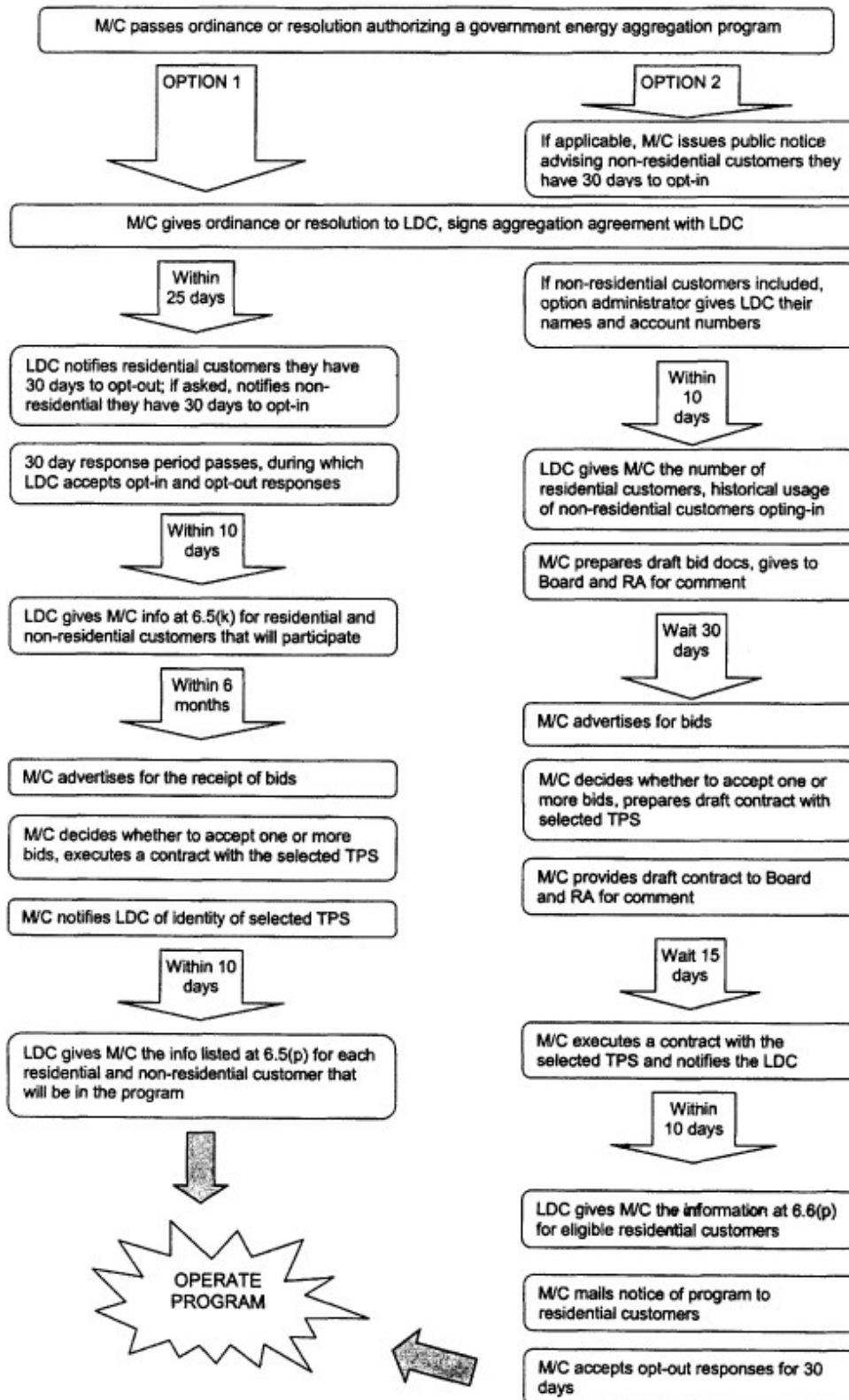
The New Jersey Board of Public Utilities is adopting rules governing programs for government aggregation of certain energy services pursuant to *N.J.S.A. 48:3-92*, 93 and 94, and 48:3-85. In response to recent amendments to the Board's statutory authority over government energy aggregation, the Board is repealing its existing rules on government aggregation, found at *N.J.A.C. 14:4-6*, and is replacing them with new rules. In addition, the Board is amending related rules regarding customer switches between energy suppliers. The statutory amendments, *N.J.S.A. 48:3-93.2a*, direct the Board to adopt these rules through a special rulemaking process, whereby the rules are effective immediately upon publication. The rules will be effective for 18 months. During that time, the Board will publish a readoption proposal for public comment and will adopt the rules in final form, including any amendments made during the readoption process.

These rules are primarily concerned with the creation and operation of energy aggregation programs by a municipality or a county. The Board's existing rules authorize this type of aggregation, but the recent statutory

amendments provide new procedures and options intended to increase participation in aggregation programs and to improve their performance. The most significant change made by the amendments is to authorize local governments to include local residential customers on an opt-out basis--that is, to automatically include such customers in the program unless the customer affirmatively indicates a desire not to be included. Non-residential customers would be required to opt-in to the program. The rule provides two options a municipality or county may follow in establishing an energy aggregation program that includes residential and/or non-residential customers. A flow chart showing the basic procedures for each option is set forth below:

FLOW CHART: GOVERNMENT-PRIVATE ENERGY AGGREGATION PROGRAMS

(for purposes of this flow chart, the term "M/C" means "municipality or county")



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A government aggregation program authorized by these rules may include energy related services such as appliance repair or maintenance. However, unlike energy supply services, such services may not be provided to a customer unless the customer opts-in, or affirmatively indicates a desire to obtain these services through the aggregation program. While a government aggregator may elect to create and operate a program that includes appliance repair under these rules as adopted, the Board expects to issue additional rules and/or guidance in the future regarding the inclusion of energy related services in government aggregation programs.

The Board is also adopting related amendments to N.J.A.C. 14:4-1.3(b), (d) and 1.6(f). These rules address change orders and switching of customers. The amendments clarify these provisions in relation to customer switches based on the opt-out procedures found in *N.J.A.C. 14:4-6*.

Full text of the adopted repeal can be found in the New Jersey Administrative Code at *N.J.A.C. 14:4-6*, pending its deletion through the 8-4-03 Code update.

Full text of the adopted new rules and amendments follows:

14:4-1.3 Change orders for gas or electric service

(a) (No change.)

(b) A change order shall be deemed to be unauthorized unless[A>:<A]

[A>1. <A][D>the<D] [A>The<A] customer has authorized the change affirmatively and voluntarily and the supplier has obtained the customer's approval[A>,<A] either through a signed contract or [D>such<D] [A>through<A] other [D>alternative forms of<D] verification [D>as<D] [A>authorized by<A] the Board [D>may permit, pursuant to its consumer protection standards or Board Order<D][A>, such as through opting-in to an energy aggregation program established under *N.J.A.C. 14:4-6*; or<A]

[A>2. The change order is a result of a residential customer becoming a participant in a government-private energy aggregation program through the procedure set forth at *N.J.A.C. 14:4-6*.<A]

(c) (No change.)

(d) Records of customer authorization changes shall be retained by the TPS for a minimum of three years. In the event that a customer disputes a change order, either before or after a switch is effectuated by the LDC, the TPS shall produce the customer switch authorization [A>or evidence that the switch resulted from a residential customer becoming a participant in a government-private aggregation program through the procedure set forth at *N.J.A.C. 14:4-6*,<A] within [D>(3)<D] [A>three<A] business days of a request by the customer or the Board.

14:4-1.6 Unauthorized service termination and transfer (slamming)

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

(f) If the customer cannot resolve or correct an unauthorized switch, the customer may file a complaint with the Board [D>under the procedures set forth in Dispute Resolution<D].

(g) (No change.)

[A>SUBCHAPTER 6. GOVERNMENT ENERGY AGGREGATION PROGRAMS<A]

[A>14:4-6.1 Scope<A]

[A>(a) This subchapter governs the establishment of an energy aggregation program for the purchase of electric and gas utility services by a government aggregator. An energy aggregation program is a government operated purchasing cooperative through which multiple energy consumers purchase energy together. An energy aggregation program established under this subchapter may include the purchase of one or more of the following:<A]

[A>1. Electric generation service, as defined at N.J.A.C. 14:4-6.2;<A]

[A>2. Gas supply service, as defined at N.J.A.C. 14:4-6.2;<A]

[A>3. Electric related service, as defined at N.J.A.C. 14:4-6.2, including appliance repair; and/or<A]

[A>4. Gas related service, as defined at N.J.A.C. 14:4-6.2, including appliance repair.<A]

[A>(b) This subchapter applies to government entities, local distribution companies (LDCs), and third party suppliers (TPSs), as those terms are defined at N.J.A.C. 14:4-6.2.<A]

[A>(c) This subchapter authorizes the establishment by a government aggregator of any of the following three types of energy aggregation programs:<A]

[A>1. A stand-alone energy aggregation program, as defined at N.J.A.C. 14:4-6.2;<A]

[A>2. A multi-government energy aggregation program, as defined at N.J.A.C. 14:4-6.2; and<A]

[A>3. A government-private energy aggregation program, as defined at N.J.A.C. 14:4-6.2.<A]

[A>14:4-6.2 Definitions<A]

[A>The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. In addition, definitions set forth at N.J.A.C. 14:4-4.3 shall apply to this subchapter, unless the context clearly indicates otherwise.<A]

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

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

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

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

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

[A>"Electric related service" means a service that is directly related to the consumption of electricity by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises; the

maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user's premises; the provision of energy consumption management, analysis, and information management; billing and bill payment services, as authorized by the Board pursuant to N.J.S.A. 48:3-94a(4)(b).<A]

[A>"Energy aggregation program" means an arrangement for the procurement of energy and/or energy related services, in which a lead agency contracts with a TPS, so as to provide for the energy needs of participants in the program. An energy aggregation program established by a government aggregator is a type of cooperative purchasing system, as defined in the rules of the Department of Community Affairs governing local public and public school cooperative purchasing, set forth at N.J.A.C. 5:34-7.<A]

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

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

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

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

[A>"Government aggregator" means an entity that meets both of the following criteria:<A]

[A>1. The entity is subject to the Local Public Contracts Law, *N.J.S.A. 40A:11-1* et seq.; the Public School Contracts Law, *N.J.S.A. 18A:18A-1* et seq.; or the County College Contracts Law, *N.J.S.A. 18A:64A-25.1* et seq.; or is the New Jersey School Boards Association; and<A]

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

[A>i. For the government aggregator's own use;<A]

[A>ii. For the use of other government aggregators; and/or<A]

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

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

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

[A>"Lead agency" means the government aggregator that establishes and manages an energy aggregation program.<A]

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

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

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

[A>"Option administrator" means the person, as defined at N.J.A.C. 14:4-2.2, responsible for receiving and recording customer submittals indicating that the customer wishes to opt-in or opt-out of the energy aggregation program.<A]

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

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

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

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

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

[A>14:4-6.3 General provisions<A]

[A>(a) A government aggregator may establish an energy aggregation program to purchase electric generation service, electric related service, gas supply service or gas related service, as these terms are defined at N.J.A.C. 14:4-6.2. The energy aggregation program may purchase these services either separately or bundled, for use by one or more of the following:<A]

[A>1. The government aggregator's own facilities (stand-alone program);<A]

[A>2. Facilities of other government aggregators (multi-government program); and/or<A]

[A>3. If the government aggregator is a municipality or county, residential and/or non-residential customers (government-private program).<A]

[A>(b) Unless otherwise specified, any obligation of a government aggregator, TPS, or LDC under this chapter may be performed on behalf of the government aggregator, TPS, or LDC by a contractor, consultant, or other designee. Any such designee shall execute a confidentiality agreement or provide other guarantee(s) of compliance with the consumer protection standards at *N.J.A.C. 14:4-3*, and the customer information requirements at (f) below.<A]

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

aggregation agreement.<A]

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

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

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

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

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

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

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

[A>1. Each residential and each non-residential customer shall receive electric or gas service from only one TPS; and<A]

[A>2. Each contract specifies which is the default provider for any customer that does not choose one of the providers.<A]

[A>14:4-6.4 Municipal and/or county energy aggregation programs<A]

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

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

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

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

[A>1. One or more municipalities with residential and/or non-residential customers that will be eligible to participate in the program has authorized participation in the county energy aggregation program by ordinance;<A]

[A]2. All residential and non-residential customers included in the program are within the geographic boundaries of a municipality that has approved such participation in the program; and<A]

[A]3. The county energy aggregation program will not provide services in a municipality that are already provided by an existing energy aggregation program in that municipality.<A]

[A](e) A municipality or county may choose to include appliance repair services in its energy aggregation program. These services may be obtained for government use or, in a government-private energy aggregation program, for use by residential and/or non-residential customers. However, appliance repair services shall be provided only to residential and non-residential customers that affirmatively choose to obtain these services through the energy aggregation program. To advise potential customers of the option to obtain these services through the energy aggregation program, the municipality or county shall:<A]

[A]1. Explain this service as an option in its written notice to customers, pursuant to *N.J.A.C. 14:4-5*, if an Option 1 program; or<A]

[A]2. Issue a public notice at the time of the passage of the resolution or ordinance required under (c) above, if an Option 2 program. The public notice shall provide residential and non-residential customers 30 days to opt-in to the appliance repair services component of the energy aggregation program.<A]

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

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

[A]1. An Option 1 government-private energy aggregation program. An Option 1 program has the following characteristics:<A]

[A]i. The program automatically includes all residential customers in each participating municipality unless:<A]

[A](1) The residential customer has contracted for service with a TPS prior to establishment of the program; or<A]

[A](2) The residential customer opts-out, as defined at *N.J.A.C. 14:4-6.2*, of the program;<A]

[A]ii. The program may, at each participating municipality's discretion, include non-residential customers, as defined at *N.J.A.C. 14:4-6.2*, if the non-residential customers are located within the geographic boundaries of the participating municipality and opt-in, as defined at *N.J.A.C. 14:4-6.2*, to the program;<A]

[A]iii. The LDC is responsible for notifying residential customers of their option to participate in the program or to opt-out, and of notifying non-residential customers of the right to opt-in. This notice shall be provided prior to the advertisement for the receipt of bids for a TPS; and<A]

[A]iv. The LDC shall be the option administrator, as defined at *N.J.A.C. 14:4-6.2*; or<A]

[A]2. An Option 2 government-private energy aggregation program. An Option 2 energy aggregation program has the following characteristics:<A]

[A]i. The program automatically includes all residential customers in each participating municipality unless:<A]

[A](1) The residential customer has contracted for service with a TPS prior to establishment of the program; or<A]

[A](2) The residential customer opts-out of the program;<A]

[A>ii. The program may, at each participating municipality's discretion, include non-residential customers that:<A]

[A>(1) Are located within the geographic boundaries of the participating municipality; and<A]

[A>(2) Opt-in in accordance with N.J.A.C. 14:4-6.6; and<A]

[A>iii. The following duties shall be performed either by the lead agency or by the participating municipalities:<A]

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

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

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

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

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

[A>14:4-6.5 Establishing an Option 1 government-private energy aggregation program<A]

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

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

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

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

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

[A>1. The LDC aggregation agreement has been signed by all parties to the agreement; and<A]

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

[A>(f) The notice of customers required under (c) above shall include the following:<A]

[A>1. A statement that the participating municipality is establishing or participating in an energy aggregation program;<A]

[A>2. If the notice is to a residential customer, a statement that the residential customer has a right to opt-out of the program, but that if no opt-out response is submitted the customer will be included in the program;<A]

[A>3. If the notice is to a non-residential customer, a statement that the customer has a right to opt-in to the program, but that if no opt-in response is submitted the customer will not be included in the program;<A]

[A>4. If the notice is to a non-residential customer, a statement that by choosing to opt-in to the program, the customer has authorized the participating municipality or lead agency to obtain the non-residential customer's 12-month historical usage information;<A]

[A>5. A requirement that any opt-out or opt-in response be submitted to the option administrator within 30 calendar days after the postmark on the notice;<A]

[A>6. Directions on how to submit an opt-in or opt-out response; and<A]

[A>7. A telephone number and e-mail address for customer inquiries regarding the energy aggregation program.<A]

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

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

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

[A>(j) Within 10 calendar days after the expiration of the 30-day response period for customers to opt-in or opt-out, the LDC shall provide the following information to the person identified in the government aggregator agreement. This information shall be provided in an ASCII file or other form specified by the Board secretary:<A]

[A>1. The number of that LDC's residential customers, by rate class, that:<A]

[A>i. Are located within the geographic boundary of the participating municipality;<A]

[A>ii. Are not already being served by a third party supplier; and<A]

[A>iii. Did not submit an opt-out response during the 30-day response period;<A]

[A>2. The 12-month historical usage for each non-residential customer located within the geographic boundary of the participating municipality, that has chosen to opt-in to the energy aggregation program. Less than 12 months of data may be supplied if the customer is new to the LDC system or, in the case of electric interval data, if the appropriate metering has been installed less than 12 months previously; and<A]

[A>3. The 12-month historical usage for each government facility that each participating government aggregator

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

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

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

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

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

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

[A>(p) The government aggregator shall begin operation of the program promptly upon selection of a TPS.<A]

[A>14:4-6.6 Establishing an Option 2 energy aggregation program<A]

[A>(a) Each municipality or county that wishes to establish or participate in a government-private Option 2 energy aggregation program shall provide a copy of the resolution or ordinance adopted pursuant to N.J.A.C. 14:4-6.4(c) to each LDC that serves the geographic area governed by the municipality or county.<A]

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

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

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

[A>(e) If the energy aggregation program includes non-residential customers, the option administrator shall provide to the LDC the names and account numbers of the non-residential customers that submitted opt-in responses during the

30-day response period set forth in the public notice required under (b) above.<A]

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

[A>1. If the LDC aggregation agreement contains any conditions that must be met prior to the provision of the information required under (g) below, all of these prior conditions have been met; and<A]

[A>2. If the energy aggregation program includes non-residential customers, the option administrator has provided the information required under (e) above.<A]

[A>(g) The LDC shall provide the lead agency with the following information as required under (f) above:<A]

[A>1. The number of residential customers, by rate class, that are located within the geographic boundaries of the participating municipality and are not being served by a third party supplier;<A]

[A>2. The 12-month historical usage of the non-residential customers that the option administrator has identified as program participants. This information may be provided separately for each customer or as an aggregate amount; and<A]

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

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

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

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

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

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

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

[A>1. The date upon which the Board and the Ratepayer Advocate have both submitted comments on the contract or have both indicated that they will not comment; or<A]

[A>2. Fifteen days after the Board and the Ratepayer Advocate received the draft contract.<A]

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

6.10.<A]

[A>(o) After execution of the contract, the lead agency and/or each participating municipality shall provide written notice to all affected LDCs of the identity of the selected TPS(s).<A]

[A>(p) Within 10 business days after the postmark on the notice to the LDC required under (o) above, the LDC shall provide the lead agency with the name, address and account number of each residential customer located in a participating municipality, which is not already being served by a TPS.<A]

[A>(q) After receiving the information required under (p) above from the LDC, the lead agency or each participating municipality shall provide written notice in accordance with (r) and (s) below to all residential electric and/or gas customers within the jurisdiction of a participating municipality, except residential customers that already obtain electric generation service or gas supply service from a TPS.<A]

[A>(r) The notice to residential customers required under (q) above shall include the following:<A]

[A>1. A statement that the participating municipality is establishing an energy aggregation program;<A]

[A>2. A statement that the residential customer has a right to opt-out, as defined at N.J.A.C. 14:4-6.2, of the program; but that if no opt-out is submitted the customer will be included in the program;<A]

[A>3. A specific statement of the cost to customers of participation in the program, and any other information necessary to enable customers to compare the program to other alternatives;<A]

[A>4. A requirement that any opt-out response be submitted to the option administrator within 30 calendar days after the postmark on the notice;<A]

[A>5. Approximate start date for the program, and program duration;<A]

[A>6. Directions on how to submit an opt-out response; and<A]

[A>7. A contact name, phone number, and e-mail address for customer inquiries.<A]

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

[A>(t) If a residential customer does not submit an opt-out response to the option administrator within 30 calendar days after the postmark on the notice required under this section, the customer shall be included in the energy aggregation program.<A]

[A>(u) The government aggregator shall begin operation of the program promptly upon completion of the 30-day response period for customer opt-outs.<A]

[A>14:4-6.7 LDC aggregation agreement for government-private energy aggregation programs<A]

[A>(a) After the adoption of an ordinance or resolution authorizing establishment of a government-private energy aggregation program, each participating municipality shall execute a LDC aggregation agreement with each LDC that serves customers in the municipality, using the applicable form agreement found on the Board's website at www.bpu.state.nj.us. This agreement governs the working relationship between the participating municipality and the LDC during the establishment and operation of the government-private energy aggregation program.<A]

[A>(b) The LDC aggregation agreement shall require the government aggregator to do the following:<A]

[A>1. Respond to specific inquiries regarding the details of the particular government-private energy aggregation program;<A]

[A>2. In the case of an Option 2 government-private energy aggregation program:<A]

[A>i. Notify residential customers of the program in accordance with N.J.A.C. 14:4-6.6(q) through (s); and<A]

[A>ii. Act as the option administrator, as defined at N.J.A.C. 14:4-6.2;<A]

[A>3. Reimburse the LDC for certain costs, as specified in the form LDC aggregation agreement provided by the Board; and<A]

[A>4. Ensure compliance with all other requirements of this chapter that apply to the government aggregator.<A]

[A>(c) The LDC aggregation agreement shall require the LDC to:<A]

[A>1. Respond to general customer inquiries regarding government energy aggregation programs;<A]

[A>2. In the case of an Option 1 government-private energy aggregation program:<A]

[A>i. Notify residential customers of the program in accordance with N.J.A.C. 14:4-6.5(c) through (f);<A]

[A>ii. Notify non-residential customers, if requested; and<A]

[A>iii. Act as the option administrator;<A]

[A>3. Exercise reasonable care in the disclosure of customer information. However, the LDC shall not be responsible for errors or omissions in the preparation or the content of the customer information;<A]

[A>4. Charge the government aggregator no more than the actual, incremental costs incurred as a result of this rule; and<A]

[A>5. Ensure compliance with all other requirements of this chapter that apply to the LDC.<A]

[A>(d) The LDC aggregation agreement shall set forth the methods and procedures to be followed by both parties in performing their obligations under the agreement, including procedures for the transfer and handling of confidential customer information.<A]

[A>14:4-6.8 Advertising for bids, contract award<A]

[A>(a) A lead agency that is establishing an energy aggregation program shall issue an advertisement for the receipt of bids from TPSs interested in supplying services to the program. Such an advertisement for bids shall include bid specifications and shall, at a minimum, meet the requirements of this section and other applicable law.<A]

[A>(b) Bid specifications for a government-private energy aggregation program shall include:<A]

[A>1. An estimate, by rate class, of the number of residential customers, if any, that will participate in the aggregation program;<A]

[A>2. An estimate of the energy needs of the non-residential customers, if any, that will participate in the aggregation program; and<A]

[A]>3. A specific listing of all government facilities that will be served under the energy aggregation program, and an estimate of the energy needs of each.<A]

[A]>(c) Bid specifications shall not include provisions for "take or pay" contracts, under which an entity commits to pay for a specified level of service, whether or not the specified level is actually used. However, if a government aggregator lists a facility in the bid specifications under (b)3 above, the government aggregator shall continue to obtain services for that facility from the government-private energy aggregation program for the duration of the program contract, and may not obtain that service from another TPS during that time.<A]

[A]>(d) The bid specifications shall require that any reimbursement made by the TPS to the government aggregator for expenses shall be made only for costs actually incurred by the government aggregator, in establishing or operating the energy aggregation program, as reflected in invoices or vouchers authorized and paid by the government aggregator. Bid specifications shall not include provisions for the payment by a TPS of concession fees, finders' fees or other direct monetary benefits to the government aggregator.<A]

[A]>(e) If bid specifications include a requirement that a TPS reimburse a government aggregator for expenses incurred in establishing or operating the energy aggregation program, the bid specifications shall include:<A]

[A]>1. A description of the items for which reimbursement shall be required;<A]

[A]>2. An estimate of the costs; and<A]

[A]>3. A maximum amount that may be reimbursed by the TPS.<A]

[A]>(f) All expenditures and reimbursements of preliminary costs under this chapter shall be budgeted in accordance with the Local Budget Law, *N.J.S.A. 40A:4-1* et seq., and procured pursuant to the Local Public Contracts Law, *N.J.S.A. 40A:11-1* et seq.<A]

[A]>(g) The lead agency shall evaluate bids received and shall select a bid based on the following, as applicable:<A]

[A]>1. For a government-private energy aggregation program, the lead agency shall select the most advantageous proposal, price and other factors considered; and<A]

[A]>2. For a stand-alone or multi-government energy aggregation program, the lead agency shall select the lowest responsible bidder in accordance with the rules of the Department of Community Affairs governing local public and public school cooperative purchasing, set forth at N.J.A.C. 5:34-7.<A]

[A]>(h) If a government-private energy aggregation program will provide appliance repair service, the lead agency shall prepare and issue a separate advertisement for the receipt of bids, which shall comply with all applicable requirements of this chapter.<A]

[A]>14:4-6.9 Price requirements for government-private programs<A]

[A]>(a) This section governs the rates for services provided to residential and non-residential customers under a government-private energy aggregation program.<A]

[A]>(b) A contract providing for electric generation service and/or gas supply service to residential customers shall not set a rate for such service that, at the time of the contract award, exceeds the benchmark price, as determined pursuant to this section, except that the rate for electric generation service may exceed the benchmark price in accordance with (g) below.<A]

[A]>(c) The contract may set a fixed price per kilowatt hour, or may include a pricing structure that allows for fluctuations in price during the life of the contract. However, the pricing structure shall not be charged without notice to

the customers in accordance with N.J.A.C. 14:4-6.11(a).<A]

[A]>(d) The benchmark price for each rate class shall be calculated using a worksheet provided by the Board on its website at www.bpu.state.nj.us, and shall not exceed the applicable amount specified at (e) or (f) below.<A]

[A]>(e) The benchmark price for electricity generation service shall be:<A]

[A]>1. The cost of basic generation service, as defined at N.J.A.C. 14:4-6.2, for the rate class; plus<A]

[A]>2. The pro rata value of the cost of compliance with the renewable energy portfolio standards at N.J.A.C. 14:4-8, which value is derived from a non-utility generation contract with an electric public utility that provides for the transfer of certain environmental attributes from the electric public utility to a supplier of basic generation service. This pro rata value shall be determined by the Board.<A]

[A]>(f) The benchmark price for gas supply service shall be the rate for basic gas supply service, as defined at N.J.A.C. 14:4-6.2.<A]

[A]>(g) A contract providing for electric generation service and/or gas supply service to residential customers under a government-private energy aggregation program may set a rate for such service that is higher than the benchmark price only if both of the following criteria are met:<A]

[A]>1. The electricity provided contains a percentage of class I and class II renewable energy, as defined at N.J.A.C. 14:4-8.2, that exceeds the applicable percentage required under the renewable portfolio standards at N.J.A.C. 14:4-8.3; and<A]

[A]>2. The participating municipality notifies all residential customers that will participate in or are eligible to participate in the program that an electricity rate higher than the benchmark price is under consideration. This notice shall be provided the customer opt-out notice letter required under N.J.A.C. 14:4-6.5(g) and 6.6(s).<A]

[A]>(h) The contract price for energy service to non-residential customers under a government-private energy aggregation program shall be determined through the bidding process.<A]

[A]>14:4-6.10 Contents of a contract between a government aggregator and the selected TPS<A]

[A]>(a) A contract between a government aggregator and a TPS for an energy aggregation program shall meet all requirements in this subchapter and shall include, at a minimum:<A]

[A]>1. The specific responsibilities of the government aggregator and the TPS;<A]

[A]>2. The charges, rates, and fees for services under the energy aggregation program;<A]

[A]>3. If applicable, the method and procedures to be followed by the TPS to enroll and educate customers concerning the energy aggregation program;<A]

[A]>4. The terms and conditions that shall govern the relationship between the TPS and each customer, which shall include:<A]

[A]>i. Provisions allocating the risks associated with providing services, between the TPS and the customer receiving the services;<A]

[A]>ii. Provisions allocating risks associated with circumstances or occurrences beyond the control of the parties to the contract;<A]

[A>iii. Provisions defining default, and establishing remedies in case of default by a party to the contract; and<A]

[A>iv. Provisions allocating the responsibility for any penalties that may be imposed by an LDC as a result of over-delivery of electricity or gas, under-delivery of electricity or gas, or non-performance by the TPS;<A]

[A>5. Provisions for the use by the TPS of the government aggregator's resources, equipment, systems or employees in connection with the contract;<A]

[A>6. The term of the contract;<A]

[A>7. Provisions indemnifying and holding the government aggregator harmless from all liabilities, damages and costs associated with any contract between a customer and the TPS;<A]

[A>8. A requirement that the TPS provide a performance bond if required by the government aggregator;<A]

[A>9. Procedures to ensure that participation in the aggregation program is consistent with this subchapter;<A]

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

[A>11. If appropriate, provisions requiring the TPS to provide certain communications to customers in a language other than English; and<A]

[A>12. Any other terms and conditions that the government aggregator deems necessary.<A]

[A>14:4-6.11 After an energy aggregation program has begun operating<A]

[A>(a) If there is a change in TPS or pricing structure during the operation of a government-private energy aggregation program, all participating residential customers shall be promptly notified of their right to decline continued participation, as follows:<A]

[A>1. Under an Option 1 program, this notice shall be provided by the LDC(s) that provided the 30-day notice to residential customers required under N.J.A.C. 14:4-6.5(c); and<A]

[A>2. Under an Option 2 program, this notice shall be provided by the lead agency or each participating municipality, whichever provided the 30-day notice to residential customers required under N.J.A.C. 14:4-6.6(q).<A]

[A>(b) The notice required under (a) above shall be provided using a form notice provided by the Board on its website at www.bpu.state.nj.us. The entity responsible for providing the notice shall promptly provide a written certification to the Board that the notice was provided.<A]

[A>(c) If a residential customer is included in government-private energy aggregation program because the customer did not affirmatively opt-out of the energy aggregation program, the customer may switch to another TPS, or to basic generation service or basic gas supply service, at any time without penalty.<A]

[A>(d) If a non-residential customer is included in a government-private energy aggregation program because the customer affirmatively opted-in to the program, the customer may switch to another TPS, or to basic generation service or basic gas supply service, only if this is authorized in the contract with the TPS.<A]

[A>(e) Additional residential and/or non-residential customers may opt-in to an energy aggregation program after it has begun operating, if this is authorized in the contract with the TPS.<A]