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"New law bans misleading claims from power utilities via unsolicited phone calls," The Times, 1-22-14

LAW/KR

P.L.2013, CHAPTER 263, *approved January 17, 2014*
Assembly, No. 3422 (*Second Reprint*)

1 AN ACT concerning certain advertising and marketing standards for
2 ²the provision of electric power ²**【suppliers】** and gas supply² and
3 amending P.L.1999, c.23.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read
9 as follows:

10 3. As used in P.L.1999, c.23 (C.48:3-49 et al.):

11 "Assignee" means a person to which an electric public utility or
12 another assignee assigns, sells or transfers, other than as security,
13 all or a portion of its right to or interest in bondable transition
14 property. Except as specifically provided in P.L.1999, c.23
15 (C.48:3-49 et al.), an assignee shall not be subject to the public
16 utility requirements of Title 48 or any rules or regulations adopted
17 pursuant thereto;

18 "Base load electric power generation facility" means an electric
19 power generation facility intended to be operated at a greater than
20 50 percent capacity factor including, but not limited to, a combined
21 cycle power facility and a combined heat and power facility;

22 "Base residual auction" means the auction conducted by PJM, as
23 part of PJM's reliability pricing model, three years prior to the start
24 of the delivery year to secure electrical capacity as necessary to
25 satisfy the capacity requirements for that delivery year;

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

33 "Basic generation service" or "BGS" means electric generation
34 service that is provided, to any customer that has not chosen an
35 alternative electric power supplier, whether or not the customer has
36 received offers for competitive supply options, including, but not
37 limited to, any customer that cannot obtain such service from an
38 electric power supplier for any reason, including non-payment for
39 services. Basic generation service is not a competitive service and
40 shall be fully regulated by the board;

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】 in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹**Assembly ATU committee amendments adopted June 6, 2013.**

²**Senate floor amendments adopted December 19, 2013.**

1 "Basic generation service provider" or "provider" means a
2 provider of basic generation service;

3 "Basic generation service transition costs" means the amount by
4 which the payments by an electric public utility for the procurement
5 of power for basic generation service and related ancillary and
6 administrative costs exceeds the net revenues from the basic
7 generation service charge established by the board pursuant to
8 section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period,
9 together with interest on the balance at the board-approved rate, that
10 is reflected in a deferred balance account approved by the board in
11 an order addressing the electric public utility's unbundled rates,
12 stranded costs, and restructuring filings pursuant to P.L.1999, c.23
13 (C.48:3-49 et al.). Basic generation service transition costs shall
14 include, but are not limited to, costs of purchases from the spot
15 market, bilateral contracts, contracts with non-utility generators,
16 parting contracts with the purchaser of the electric public utility's
17 divested generation assets, short-term advance purchases, and
18 financial instruments such as hedging, forward contracts, and
19 options. Basic generation service transition costs shall also include
20 the payments by an electric public utility pursuant to a competitive
21 procurement process for basic generation service supply during the
22 transition period, and costs of any such process used to procure the
23 basic generation service supply;

24 "Board" means the New Jersey Board of Public Utilities or any
25 successor agency;

26 "Bondable stranded costs" means any stranded costs or basic
27 generation service transition costs of an electric public utility
28 approved by the board for recovery pursuant to the provisions of
29 P.L.1999, c.23 (C.48:3-49 et al.), together with, as approved by the
30 board: (1) the cost of retiring existing debt or equity capital of the
31 electric public utility, including accrued interest, premium and other
32 fees, costs and charges relating thereto, with the proceeds of the
33 financing of bondable transition property; (2) if requested by an
34 electric public utility in its application for a bondable stranded costs
35 rate order, federal, State and local tax liabilities associated with
36 stranded costs recovery or basic generation service transition cost
37 recovery or the transfer or financing of such property or both,
38 including taxes, whose recovery period is modified by the effect of
39 a stranded costs recovery order, a bondable stranded costs rate order
40 or both; and (3) the costs incurred to issue, service or refinance
41 transition bonds, including interest, acquisition or redemption
42 premium, and other financing costs, whether paid upon issuance or
43 over the life of the transition bonds, including, but not limited to,
44 credit enhancements, service charges, overcollateralization, interest
45 rate cap, swap or collar, yield maintenance, maturity guarantee or
46 other hedging agreements, equity investments, operating costs and
47 other related fees, costs and charges, or to assign, sell or otherwise
48 transfer bondable transition property;

1 "Bondable stranded costs rate order" means one or more
2 irrevocable written orders issued by the board pursuant to P.L.1999,
3 c.23 (C.48:3-49 et al.) which determines the amount of bondable
4 stranded costs and the initial amount of transition bond charges
5 authorized to be imposed to recover such bondable stranded costs,
6 including the costs to be financed from the proceeds of the
7 transition bonds, as well as on-going costs associated with servicing
8 and credit enhancing the transition bonds, and provides the electric
9 public utility specific authority to issue or cause to be issued,
10 directly or indirectly, transition bonds through a financing entity
11 and related matters as provided in P.L.1999, c.23 (C.48:3-49 et al.),
12 which order shall become effective immediately upon the written
13 consent of the related electric public utility to such order as
14 provided in P.L.1999, c.23 (C.48:3-49 et al.);

15 "Bondable transition property" means the property consisting of
16 the irrevocable right to charge, collect and receive, and be paid
17 from collections of, transition bond charges in the amount necessary
18 to provide for the full recovery of bondable stranded costs which
19 are determined to be recoverable in a bondable stranded costs rate
20 order, all rights of the related electric public utility under such
21 bondable stranded costs rate order including, without limitation, all
22 rights to obtain periodic adjustments of the related transition bond
23 charges pursuant to subsection b. of section 15 of P.L.1999, c.23
24 (C.48:3-64), and all revenues, collections, payments, money and
25 proceeds arising under, or with respect to, all of the foregoing;

26 "British thermal unit" or "Btu" means the amount of heat
27 required to increase the temperature of one pound of water by one
28 degree Fahrenheit;

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

36 "Brownfield" means any former or current commercial or
37 industrial site that is currently vacant or underutilized and on which
38 there has been, or there is suspected to have been, a discharge of a
39 contaminant;

40 "Buydown" means an arrangement or arrangements involving the
41 buyer and seller in a given power purchase contract and, in some
42 cases third parties, for consideration to be given by the buyer in
43 order to effectuate a reduction in the pricing, or the restructuring of
44 other terms to reduce the overall cost of the power contract, for the
45 remaining succeeding period of the purchased power arrangement
46 or arrangements;

47 "Buyout" means an arrangement or arrangements involving the
48 buyer and seller in a given power purchase contract and, in some

1 cases third parties, for consideration to be given by the buyer in
2 order to effectuate a termination of such power purchase contract;

3 "Class I renewable energy" means electric energy produced from
4 solar technologies, photovoltaic technologies, wind energy, fuel
5 cells, geothermal technologies, wave or tidal action, small scale
6 hydropower facilities with a capacity of three megawatts or less and
7 put into service after the effective date of P.L.2012, c.24, and
8 methane gas from landfills or a biomass facility, provided that the
9 biomass is cultivated and harvested in a sustainable manner;

10 "Class II renewable energy" means electric energy produced at a
11 hydropower facility with a capacity of greater than three megawatts
12 or a resource recovery facility, provided that such facility is located
13 where retail competition is permitted and provided further that the
14 Commissioner of Environmental Protection has determined that
15 such facility meets the highest environmental standards and
16 minimizes any impacts to the environment and local communities;

17 "Co-generation" means the sequential production of electricity
18 and steam or other forms of useful energy used for industrial or
19 commercial heating and cooling purposes;

20 "Combined cycle power facility" means a generation facility that
21 combines two or more thermodynamic cycles, by producing electric
22 power via the combustion of fuel and then routing the resulting
23 waste heat by-product to a conventional boiler or to a heat recovery
24 steam generator for use by a steam turbine to produce electric
25 power, thereby increasing the overall efficiency of the generating
26 facility;

27 "Combined heat and power facility" or "co-generation facility"
28 means a generation facility which produces electric energy and
29 steam or other forms of useful energy such as heat, which are used
30 for industrial or commercial heating or cooling purposes. A
31 combined heat and power facility or co-generation facility shall not
32 be considered a public utility;

33 "Competitive service" means any service offered by an electric
34 public utility or a gas public utility that the board determines to be
35 competitive pursuant to section 8 or section 10 of P.L.1999, c.23
36 (C.48:3-56 or C.48:3-58) or that is not regulated by the board;

37 "Commercial and industrial energy pricing class customer" or
38 "CIEP class customer" means that group of non-residential
39 customers with high peak demand, as determined by periodic board
40 order, which either is eligible or which would be eligible, as
41 determined by periodic board order, to receive funds from the Retail
42 Margin Fund established pursuant to section 9 of P.L.1999, c.23
43 (C.48:3-57) and for which basic generation service is hourly-priced;

44 "Comprehensive resource analysis" means an analysis including,
45 but not limited to, an assessment of existing market barriers to the
46 implementation of energy efficiency and renewable technologies
47 that are not or cannot be delivered to customers through a
48 competitive marketplace;

1 "Connected to the distribution system" means, for a solar electric
2 power generation facility, that the facility is: (1) connected to a net
3 metering customer's side of a meter, regardless of the voltage at
4 which that customer connects to the electric grid, (2) an on-site
5 generation facility, (3) qualified for net metering aggregation as
6 provided pursuant to paragraph (4) of subsection e. of section 38 of
7 P.L.1999, c.23 (C.48:3-87), (4) owned or operated by an electric
8 public utility and approved by the board pursuant to section 13 of
9 P.L.2007, c.340 (C.48:3-98.1), (5) directly connected to the electric
10 grid at 69 kilovolts or less, regardless of how an electric public
11 utility classifies that portion of its electric grid, and is designated as
12 "connected to the distribution system" by the board pursuant to
13 subsections q. through s. of section 38 of P.L.1999, c.23 (C.48:3-
14 87), or (6) is certified by the board, in consultation with the
15 Department of Environmental Protection, as being located on a
16 brownfield, on an area of historic fill, or on a properly closed
17 sanitary landfill facility. Any solar electric power generation
18 facility, other than that of a net metering customer on the customer's
19 side of the meter, connected above 69 kilovolts shall not be
20 considered connected to the distribution system;

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

25 "Customer account service" means metering, billing, or such
26 other administrative activity associated with maintaining a customer
27 account;

28 "Delivery year" or "DY" means the 12-month period from June
29 1st through May 31st, numbered according to the calendar year in
30 which it ends;

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

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

42 "Electric power generator" means an entity that proposes to
43 construct, own, lease or operate, or currently owns, leases or
44 operates, an electric power production facility that will sell or does
45 sell at least 90 percent of its output, either directly or through a
46 marketer, to a customer or customers located at sites that are not on
47 or contiguous to the site on which the facility will be located or is
48 located. The designation of an entity as an electric power generator

1 for the purposes of P.L.1999, c.23 (C.48:3-49 et al.) shall not, in
2 and of itself, affect the entity's status as an exempt wholesale
3 generator under the Public Utility Holding Company Act of 1935,
4 15 U.S.C. s.79 et seq., or its successor;

5 "Electric power supplier" means a person or entity that is duly
6 licensed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et
7 al.) to offer and to assume the contractual and legal responsibility to
8 provide electric generation service to retail customers, and includes
9 load serving entities, marketers and brokers that offer or provide
10 electric generation service to retail customers. The term excludes an
11 electric public utility that provides electric generation service only
12 as a basic generation service pursuant to section 9 of P.L.1999, c.23
13 (C.48:3-57);

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

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

24 "Electronic signature" means an electronic sound, symbol or
25 process, attached to, or logically associated with, a contract or other
26 record, and executed or adopted by a person with the intent to sign
27 the record;

28 "Eligible generator" means a developer of a base load or mid-
29 merit electric power generation facility including, but not limited to,
30 an on-site generation facility that qualifies as a capacity resource
31 under PJM criteria and that commences construction after the
32 effective date of P.L.2011, c.9 (C.48:3-98.2 et al.);

33 "Energy agent" means a person that is duly registered pursuant to
34 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), that arranges the
35 sale of retail electricity or electric related services or retail gas
36 supply or gas related services between government aggregators or
37 private aggregators and electric power suppliers or gas suppliers,
38 but does not take title to the electric or gas sold;

39 "Energy consumer" means a business or residential consumer of
40 electric generation service or gas supply service located within the
41 territorial jurisdiction of a government aggregator;

42 "Energy efficiency portfolio standard" means a requirement to
43 procure a specified amount of energy efficiency or demand side
44 management resources as a means of managing and reducing energy
45 usage and demand by customers;

46 "Energy year" or "EY" means the 12-month period from June 1st
47 through May 31st, numbered according to the calendar year in
48 which it ends;

1 "Existing business relationship" means a relationship formed by
2 a voluntary two-way communication between an electric power
3 supplier², gas supplier, broker, energy agent, marketer, private
4 aggregator, sales representative, or telemarketer² and a customer
5 ²[with or without] regardless of² an exchange of consideration, on
6 the basis of an inquiry, application, purchase, or transaction
7 initiated by the customer regarding products or services offered by
8 ²[such] the² electric power supplier², gas supplier, broker, energy
9 agent, marketer, private aggregator, sales representative, or
10 telemarketer; however, a consumer's use of electric generation
11 service or gas supply service through the consumer's electric public
12 utility or gas public utility shall not constitute or establish an
13 existing business relationship for the purpose of P.L. _____,
14 c. (C. _____) (pending before the Legislature as this bill)² ;

15 "Farmland" means land actively devoted to agricultural or
16 horticultural use that is valued, assessed, and taxed pursuant to the
17 "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et
18 seq.);

19 "Federal Energy Regulatory Commission" or "FERC" means the
20 federal agency established pursuant to 42 U.S.C. s.7171 et seq. to
21 regulate the interstate transmission of electricity, natural gas, and
22 oil;

23 "Final remediation document" shall have the same meaning as
24 provided in section 3 of P.L.1976, c.141 (C.58:10-23.11b);

25 "Financing entity" means an electric public utility, a special
26 purpose entity, or any other assignee of bondable transition
27 property, which issues transition bonds. Except as specifically
28 provided in P.L.1999, c.23 (C.48:3-49 et al.), a financing entity
29 which is not itself an electric public utility shall not be subject to
30 the public utility requirements of Title 48 or any rules or regulations
31 adopted pursuant thereto;

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

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

41 "Gas supplier" means a person that is duly licensed pursuant to
42 the provisions of P.L.1999, c.23 (C.48:3-49 et al.) to offer and
43 assume the contractual and legal obligation to provide gas supply
44 service to retail customers, and includes, but is not limited to,
45 marketers and brokers. A non-public utility affiliate of a public
46 utility holding company may be a gas supplier, but a gas public
47 utility or any subsidiary of a gas utility is not a gas supplier. In the
48 event that a gas public utility is not part of a holding company legal

1 structure, a related competitive business segment of that gas public
2 utility may be a gas supplier, provided that related competitive
3 business segment is structurally separated from the gas public
4 utility, and provided that the interactions between the gas public
5 utility and the related competitive business segment are subject to
6 the affiliate relations standards adopted by the board pursuant to
7 subsection k. of section 10 of P.L.1999, c.23 (C.48:3-58);

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

11 "Government aggregator" means any government entity subject
12 to the requirements of the "Local Public Contracts Law," P.L.1971,
13 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
14 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"
15 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
16 contract with a licensed electric power supplier or a licensed gas
17 supplier for: (1) the provision of electric generation service, electric
18 related service, gas supply service, or gas related service for its own
19 use or the use of other government aggregators; or (2) if a
20 municipal or county government, the provision of electric
21 generation service or gas supply service on behalf of business or
22 residential customers within its territorial jurisdiction;

23 "Government energy aggregation program" means a program and
24 procedure pursuant to which a government aggregator enters into a
25 written contract for the provision of electric generation service or
26 gas supply service on behalf of business or residential customers
27 within its territorial jurisdiction;

28 "Governmental entity" means any federal, state, municipal, local
29 or other governmental department, commission, board, agency,
30 court, authority or instrumentality having competent jurisdiction;

31 "Greenhouse gas emissions portfolio standard" means a
32 requirement that addresses or limits the amount of carbon dioxide
33 emissions indirectly resulting from the use of electricity as applied
34 to any electric power suppliers and basic generation service
35 providers of electricity;

36 "Historic fill" means generally large volumes of non-indigenous
37 material, no matter what date they were emplaced on the site, used
38 to raise the topographic elevation of a site, which were
39 contaminated prior to emplacement and are in no way connected
40 with the operations at the location of emplacement and which
41 include, but are not limited to, construction debris, dredge spoils,
42 incinerator residue, demolition debris, fly ash, and non-hazardous
43 solid waste. "Historic fill" shall not include any material which is
44 substantially chromate chemical production waste or any other
45 chemical production waste or waste from processing of metal or
46 mineral ores, residues, slags, or tailings;

47 "Incremental auction" means an auction conducted by PJM, as
48 part of PJM's reliability pricing model, prior to the start of the

1 delivery year to secure electric capacity as necessary to satisfy the
2 capacity requirements for that delivery year, that is not otherwise
3 provided for in the base residual auction;

4 "Leakage" means an increase in greenhouse gas emissions
5 related to generation sources located outside of the State that are not
6 subject to a state, interstate or regional greenhouse gas emissions
7 cap or standard that applies to generation sources located within the
8 State;

9 "Locational deliverability area" or "LDA" means one or more of
10 the zones within the PJM region which are used to evaluate area
11 transmission constraints and reliability issues including electric
12 public utility company zones, sub-zones, and combinations of
13 zones;

14 "Long-term capacity agreement pilot program" or "LCAPP"
15 means a pilot program established by the board that includes
16 participation by eligible generators, to seek offers for financially-
17 settled standard offer capacity agreements with eligible generators
18 pursuant to the provisions of P.L.2011, c.9 (C.48:3-98.2 et al.);

19 "Market transition charge" means a charge imposed pursuant to
20 section 13 of P.L.1999, c.23 (C.48:3-61) by an electric public
21 utility, at a level determined by the board, on the electric public
22 utility customers for a limited duration transition period to recover
23 stranded costs created as a result of the introduction of electric
24 power supply competition pursuant to the provisions of P.L.1999,
25 c.23 (C.48:3-49 et al.);

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

35 "Mid-merit electric power generation facility" means a
36 generation facility that operates at a capacity factor between
37 baseload generation facilities and peaker generation facilities;

38 "Net metering aggregation" means a procedure for calculating
39 the combination of the annual energy usage for all facilities owned
40 by a single customer where such customer is a State entity, school
41 district, county, county agency, county authority, municipality,
42 municipal agency, or municipal authority, and which are served by
43 a solar electric power generating facility as provided pursuant to
44 paragraph (4) of subsection e. of section 38 of P.L.1999, c.23
45 (C.48:3-87);

46 "Net proceeds" means proceeds less transaction and other related
47 costs as determined by the board;

1 "Net revenues" means revenues less related expenses, including
2 applicable taxes, as determined by the board;

3 "Offshore wind energy" means electric energy produced by a
4 qualified offshore wind project;

5 "Offshore wind renewable energy certificate" or "OREC" means
6 a certificate, issued by the board or its designee, representing the
7 environmental attributes of one megawatt hour of electric
8 generation from a qualified offshore wind project;

9 "Off-site end use thermal energy services customer" means an
10 end use customer that purchases thermal energy services from an
11 on-site generation facility, combined heat and power facility, or co-
12 generation facility, and that is located on property that is separated
13 from the property on which the on-site generation facility,
14 combined heat and power facility, or co-generation facility is
15 located by more than one easement, public thoroughfare, or
16 transportation or utility-owned right-of-way;

17 "On-site generation facility" means a generation facility,
18 including, but not limited to, a generation facility that produces
19 Class I or Class II renewable energy, and equipment and services
20 appurtenant to electric sales by such facility to the end use customer
21 located on the property or on property contiguous to the property on
22 which the end user is located. An on-site generation facility shall
23 not be considered a public utility. The property of the end use
24 customer and the property on which the on-site generation facility is
25 located shall be considered contiguous if they are geographically
26 located next to each other, but may be otherwise separated by an
27 easement, public thoroughfare, transportation or utility-owned
28 right-of-way, or if the end use customer is purchasing thermal
29 energy services produced by the on-site generation facility, for use
30 for heating or cooling, or both, regardless of whether the customer
31 is located on property that is separated from the property on which
32 the on-site generation facility is located by more than one easement,
33 public thoroughfare, or transportation or utility-owned right-of-
34 way;

35 "Person" means an individual, partnership, corporation,
36 association, trust, limited liability company, governmental entity or
37 other legal entity;

38 "PJM Interconnection, L.L.C." or "PJM" means the privately-
39 held, limited liability corporation that is a FERC-approved Regional
40 Transmission Organization, or its successor, that manages the
41 regional, high-voltage electricity grid serving all or parts of 13
42 states including New Jersey and the District of Columbia, operates
43 the regional competitive wholesale electric market, manages the
44 regional transmission planning process, and establishes systems and
45 rules to ensure that the regional and in-State energy markets operate
46 fairly and efficiently;

47 "Preliminary assessment" shall have the same meaning as
48 provided in section 3 of P.L.1976, c.141 (C.58:10-23.11b);

1 "Private aggregator" means a non-government aggregator that is
2 a duly-organized business or non-profit organization authorized to
3 do business in this State that enters into a contract with a duly
4 licensed electric power supplier for the purchase of electric energy
5 and capacity, or with a duly licensed gas supplier for the purchase
6 of gas supply service, on behalf of multiple end-use customers by
7 combining the loads of those customers;

8 "Properly closed sanitary landfill facility" means a sanitary
9 landfill facility, or a portion of a sanitary landfill facility, for which
10 performance is complete with respect to all activities associated
11 with the design, installation, purchase, or construction of all
12 measures, structures, or equipment required by the Department of
13 Environmental Protection, pursuant to law, in order to prevent,
14 minimize, or monitor pollution or health hazards resulting from a
15 sanitary landfill facility subsequent to the termination of operations
16 at any portion thereof, including, but not necessarily limited to, the
17 placement of earthen or vegetative cover, and the installation of
18 methane gas vents or monitors and leachate monitoring wells or
19 collection systems at the site of any sanitary landfill facility;

20 "Public utility holding company" means: (1) any company that,
21 directly or indirectly, owns, controls, or holds with power to vote,
22 ten percent or more of the outstanding voting securities of an
23 electric public utility or a gas public utility or of a company which
24 is a public utility holding company by virtue of this definition,
25 unless the Securities and Exchange Commission, or its successor,
26 by order declares such company not to be a public utility holding
27 company under the Public Utility Holding Company Act of 1935,
28 15 U.S.C. s.79 et seq., or its successor; or (2) any person that the
29 Securities and Exchange Commission, or its successor, determines,
30 after notice and opportunity for hearing, directly or indirectly, to
31 exercise, either alone or pursuant to an arrangement or
32 understanding with one or more other persons, such a controlling
33 influence over the management or policies of an electric public
34 utility or a gas public utility or public utility holding company as to
35 make it necessary or appropriate in the public interest or for the
36 protection of investors or consumers that such person be subject to
37 the obligations, duties, and liabilities imposed in the Public Utility
38 Holding Company Act of 1935 or its successor;

39 "Qualified offshore wind project" means a wind turbine
40 electricity generation facility in the Atlantic Ocean and connected
41 to the electric transmission system in this State, and includes the
42 associated transmission-related interconnection facilities and
43 equipment, and approved by the board pursuant to section 3 of
44 P.L.2010, c.57 (C.48:3-87.1);

45 "Registration program" means an administrative process
46 developed by the board pursuant to subsection u. of section 38 of
47 P.L.1999, c.23 (C.48:3-87) that requires all owners of solar electric
48 power generation facilities connected to the distribution system that

1 intend to generate SRECs, to file with the board documents
2 detailing the size, location, interconnection plan, land use, and other
3 project information as required by the board;

4 "Regulatory asset" means an asset recorded on the books of an
5 electric public utility or gas public utility pursuant to the Statement
6 of Financial Accounting Standards, No. 71, entitled "Accounting for
7 the Effects of Certain Types of Regulation," or any successor
8 standard and as deemed recoverable by the board;

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

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

21 "Reliability pricing model" or "RPM" means PJM's capacity-
22 market model, and its successors, that secures capacity on behalf of
23 electric load serving entities to satisfy load obligations not satisfied
24 through the output of electric generation facilities owned by those
25 entities, or otherwise secured by those entities through bilateral
26 contracts;

27 "Renewable energy certificate" or "REC" means a certificate
28 representing the environmental benefits or attributes of one
29 megawatt-hour of generation from a generating facility that
30 produces Class I or Class II renewable energy, but shall not include
31 a solar renewable energy certificate or an offshore wind renewable
32 energy certificate;

33 "Resource clearing price" or "RCP" means the clearing price
34 established for the applicable locational deliverability area by the
35 base residual auction or incremental auction, as determined by the
36 optimization algorithm for each auction, conducted by PJM as part
37 of PJM's reliability pricing model;

38 "Resource recovery facility" means a solid waste facility
39 constructed and operated for the incineration of solid waste for
40 energy production and the recovery of metals and other materials
41 for reuse, which the Department of Environmental Protection has
42 determined to be in compliance with current environmental
43 standards, including, but not limited to, all applicable requirements
44 of the federal "Clean Air Act" (42 U.S.C. s.7401 et seq.);

45 "Restructuring related costs" means reasonably incurred costs
46 directly related to the restructuring of the electric power industry,
47 including the closure, sale, functional separation and divestiture of
48 generation and other competitive utility assets by a public utility, or

1 the provision of competitive services as such costs are determined
2 by the board, and which are not stranded costs as defined in
3 P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be limited
4 to, investments in management information systems, and which
5 shall include expenses related to employees affected by
6 restructuring which result in efficiencies and which result in
7 benefits to ratepayers, such as training or retraining at the level
8 equivalent to one year's training at a vocational or technical school
9 or county community college, the provision of severance pay of two
10 weeks of base pay for each year of full-time employment, and a
11 maximum of 24 months' continued health care coverage. Except as
12 to expenses related to employees affected by restructuring,
13 "restructuring related costs" shall not include going forward costs;

14 "Retail choice" means the ability of retail customers to shop for
15 electric generation or gas supply service from electric power or gas
16 suppliers, or opt to receive basic generation service or basic gas
17 service, and the ability of an electric power or gas supplier to offer
18 electric generation service or gas supply service to retail customers,
19 consistent with the provisions of P.L.1999, c.23 (C.48:3-49 et al.);

20 "Retail margin" means an amount, reflecting differences in
21 prices that electric power suppliers and electric public utilities may
22 charge in providing electric generation service and basic generation
23 service, respectively, to retail customers, excluding residential
24 customers, which the board may authorize to be charged to
25 categories of basic generation service customers of electric public
26 utilities in this State, other than residential customers, under the
27 board's continuing regulation of basic generation service pursuant to
28 sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), for the
29 purpose of promoting a competitive retail market for the supply of
30 electricity;

31 ²"Sales representative" means a person employed by, acting on
32 behalf of, or as an independent contractor for, an electric power
33 supplier, gas supplier, broker, energy agent, marketer, or private
34 aggregator who, by any means, solicits a potential residential
35 customer for the provision of electric generation service or gas
36 supply service.²

37 "Sanitary landfill facility" shall have the same meaning as
38 provided in section 3 of P.L.1970, c.39 (C.13:1E-3);

39 "School district" means a local or regional school district
40 established pursuant to chapter 8 or chapter 13 of Title 18A of the
41 New Jersey Statutes, a county special services school district
42 established pursuant to article 8 of chapter 46 of Title 18A of the
43 New Jersey Statutes, a county vocational school district established
44 pursuant to article 3 of chapter 54 of Title 18A of the New Jersey
45 Statutes, and a district under full State intervention pursuant to
46 P.L.1987, c.399 (C.18A:7A-34 et al.);

47 "Shopping credit" means an amount deducted from the bill of an
48 electric public utility customer to reflect the fact that such customer

1 has switched to an electric power supplier and no longer takes basic
2 generation service from the electric public utility;

3 "Site investigation" shall have the same meaning as provided in
4 section 3 of P.L.1976, c.141 (C.58:10-23.11b);

5 "Small scale hydropower facility" means a facility located within
6 this State that is connected to the distribution system, and that
7 meets the requirements of, and has been certified by, a nationally
8 recognized low-impact hydropower organization that has
9 established low-impact hydropower certification criteria applicable
10 to: (1) river flows; (2) water quality; (3) fish passage and
11 protection; (4) watershed protection; (5) threatened and endangered
12 species protection; (6) cultural resource protection; (7) recreation;
13 and (8) facilities recommended for removal;

14 "Social program" means a program implemented with board
15 approval to provide assistance to a group of disadvantaged
16 customers, to provide protection to consumers, or to accomplish a
17 particular societal goal, and includes, but is not limited to, the
18 winter moratorium program, utility practices concerning "bad debt"
19 customers, low income assistance, deferred payment plans,
20 weatherization programs, and late payment and deposit policies, but
21 does not include any demand side management program or any
22 environmental requirements or controls;

23 "Societal benefits charge" means a charge imposed by an electric
24 public utility, at a level determined by the board, pursuant to, and in
25 accordance with, section 12 of P.L.1999, c.23 (C.48:3-60);

26 "Solar alternative compliance payment" or "SACP" means a
27 payment of a certain dollar amount per megawatt hour (MWh)
28 which an electric power supplier or provider may submit to the
29 board in order to comply with the solar electric generation
30 requirements under section 38 of P.L.1999, c.23 (C.48:3-87);

31 "Solar renewable energy certificate" or "SREC" means a
32 certificate issued by the board or its designee, representing one
33 megawatt hour (MWh) of solar energy that is generated by a facility
34 connected to the distribution system in this State and has value
35 based upon, and driven by, the energy market;

36 "Standard offer capacity agreement" or "SOCA" means a
37 financially-settled transaction agreement, approved by board order,
38 that provides for eligible generators to receive payments from the
39 electric public utilities for a defined amount of electric capacity for
40 a term to be determined by the board but not to exceed 15 years,
41 and for such payments to be a fully non-bypassable charge, with
42 such an order, once issued, being irrevocable;

43 "Standard offer capacity price" or "SOCP" means the capacity
44 price that is fixed for the term of the SOCA and which is the price
45 to be received by eligible generators under a board-approved
46 SOCA;

1 "State entity" means a department, agency, or office of State
2 government, a State university or college, or an authority created by
3 the State;

4 "Stranded cost" means the amount by which the net cost of an
5 electric public utility's electric generating assets or electric power
6 purchase commitments, as determined by the board consistent with
7 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), exceeds the
8 market value of those assets or contractual commitments in a
9 competitive supply marketplace and the costs of buydowns or
10 buyouts of power purchase contracts;

11 "Stranded costs recovery order" means each order issued by the
12 board in accordance with subsection c. of section 13 of P.L.1999,
13 c.23 (C.48:3-61) which sets forth the amount of stranded costs, if
14 any, the board has determined an electric public utility is eligible to
15 recover and collect in accordance with the standards set forth in
16 section 13 of P.L.1999, c.23 (C.48:3-61) and the recovery
17 mechanisms therefor;

18 ²"Telemarketer" shall have the same meaning as set forth in
19 section 2 of P.L.2003, c.76 (C.56:8-120);

20 "Telemarketing sales call" means a telephone call made by a
21 telemarketer to a potential residential customer as part of a plan,
22 program, or campaign to encourage the customer to change the
23 customer's electric power supplier or gas supplier. A telephone call
24 made to an existing customer of an electric power supplier, gas
25 supplier, broker, energy agent, marketer, private aggregator, or
26 sales representative, for the sole purpose of collecting on accounts
27 or following up on contractual obligations, shall not be deemed a
28 telemarketing sales call. A telephone call made in response to an
29 express written request of a customer shall not be deemed a
30 telemarketing sales call;²

31 "Thermal efficiency" means the useful electric energy output of a
32 facility, plus the useful thermal energy output of the facility,
33 expressed as a percentage of the total energy input to the facility;

34 "Transition bond charge" means a charge, expressed as an
35 amount per kilowatt hour, that is authorized by and imposed on
36 electric public utility ratepayers pursuant to a bondable stranded
37 costs rate order, as modified at any time pursuant to the provisions
38 of P.L.1999, c.23 (C.48:3-49 et al.);

39 "Transition bonds" means bonds, notes, certificates of
40 participation or beneficial interest or other evidences of
41 indebtedness or ownership issued pursuant to an indenture, contract
42 or other agreement of an electric public utility or a financing entity,
43 the proceeds of which are used, directly or indirectly, to recover,
44 finance or refinance bondable stranded costs and which are, directly
45 or indirectly, secured by or payable from bondable transition
46 property. References in P.L.1999, c.23 (C.48:3-49 et al.) to
47 principal, interest, and acquisition or redemption premium with
48 respect to transition bonds which are issued in the form of

1 certificates of participation or beneficial interest or other evidences
2 of ownership shall refer to the comparable payments on such
3 securities;

4 "Transition period" means the period from August 1, 1999
5 through July 31, 2003;

6 "Transmission and distribution system" means, with respect to an
7 electric public utility, any facility or equipment that is used for the
8 transmission, distribution or delivery of electricity to the customers
9 of the electric public utility including, but not limited to, the land,
10 structures, meters, lines, switches and all other appurtenances
11 thereof and thereto, owned or controlled by the electric public
12 utility within this State; **[and]**

13 "Universal service" means any service approved by the board
14 with the purpose of assisting low-income residential customers in
15 obtaining or retaining electric generation or delivery service; and

16 "Unsolicited advertisement" means any advertising claims of the
17 commercial availability or quality of services provided by an
18 electric power supplier², gas supplier, broker, energy agent,
19 marketer, private aggregator, sales representative, or telemarketer²
20 which is transmitted to a potential customer without that customer's
21 prior express invitation or permission.

22 (cf: P.L.2012, c.24, s.1)

23

24 2. Section 36 of P.L.1999, c.23 (C.48:3-85) is amended to read
25 as follows:

26 36. a. Notwithstanding any provisions of the "Administrative
27 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
28 contrary, the board, in consultation with the Division of Consumer
29 Affairs in the Department of Law and Public Safety, shall initiate a
30 proceeding and shall adopt, after notice, provision of the
31 opportunity for comment, and public hearing, interim consumer
32 protection standards for electric power suppliers or gas suppliers,
33 within 90 days of February 9, 1999, including, but not limited to,
34 standards for collections, credit, contracts, ¹and¹ authorized changes
35 of an energy consumer's electric power supplier or gas supplier, for
36 the prohibition of discriminatory marketing, for advertising and for
37 disclosure. Such standards shall be effective as regulations
38 immediately upon filing with the Office of Administrative Law and
39 shall be effective for a period not to exceed 18 months, and may,
40 thereafter, be amended, adopted ¹,¹ or readopted by the board in
41 accordance with the provisions of the "Administrative Procedure
42 Act."

43 (1) Contract standards shall include, but not be limited to,
44 requirements that electric power supply contracts or gas supply
45 contracts must conspicuously disclose the duration of the contract;
46 state the price per kilowatt hour or per therm or other pricing
47 determinant approved by the board; have the customer's written
48 signature; the customer's electronic signature; an audio recording of

1 a telephone call initiated by the customer; independent, third-party
2 verification, in accordance with section 37 of P.L.1999, c.23
3 (C.48:3-86), of a telephone call initiated by an electric power
4 supplier, gas supplier or private aggregator; or such alternative
5 forms of verification as the board, in consultation with the Division
6 of Consumer Affairs, may permit for switching electric power
7 suppliers or gas suppliers and for contract renewal; and include
8 termination procedures, notice of any fees, and toll-free or local
9 telephone numbers for the electric power supplier or gas supplier
10 and for the board.

11 (2) Standards for the prohibition of discriminatory marketing
12 ¹【standards】¹ shall provide at a minimum that a decision made by
13 an electric power supplier or a gas supplier to accept or reject a
14 customer shall not be based on race, color, national origin, age,
15 gender, religion, source of income, receipt of public benefits, family
16 status, sexual preference, or geographic location. The board shall
17 adopt reporting requirements to monitor compliance with such
18 standards.

19 (3) Advertising standards for electric power suppliers or gas
20 suppliers shall provide, at a minimum, that optional charges to the
21 consumer will not be added to any advertised cost per kilowatt hour
22 or per therm, and that the only unit of measurement that may be
23 used in advertisements is cost per kilowatt hour or per therm, unless
24 otherwise approved by the board. If an electric power supplier or
25 gas supplier does not advertise using cost per kilowatt hour or per
26 therm, the electric power supplier or gas supplier shall provide, at
27 the consumer's request, an estimate of the cost per kilowatt hour or
28 per therm. Any optional charges to the consumer shall be identified
29 separately and denoted as optional.

30 (4) Credit standards shall include, at a minimum, that the credit
31 requirements used to make ¹【offer】¹ decisions must be the same for
32 all residential customers and that electric power suppliers, gas
33 suppliers, and private aggregators not impose unreasonable income
34 or credit requirements.

35 (5) Billing standards shall include, at a minimum, provisions
36 prohibiting electric public utilities, gas public utilities, electric
37 power suppliers, and gas suppliers from charging a fee to residential
38 customers for either the commencement or termination of electric
39 generation service or gas supply service.

40 b. (1) Except as provided in paragraph (2) of this subsection, an
41 electric power supplier, a gas supplier, an electric public utility, and
42 a gas public utility shall not disclose, sell ¹₁ or transfer individual
43 proprietary information, including, but not limited to, a customer's
44 name, address, telephone number, energy usage ¹₁ and electric
45 power payment history, to a third party without the consent of the
46 customer.

47 (2) (a) An electric public utility or a gas public utility may
48 disclose and provide, in an electronic format, which may include a

1 CD rom, diskette, and other format as determined by the board,
2 without the consent of a residential customer, a residential
3 customer's name, rate class, and account number, to a government
4 aggregator that is a municipality or a county, or to an energy agent
5 acting as a consultant to a government aggregator that is a
6 municipality or a county, if the customer information is to be used
7 to establish a government energy aggregation program pursuant to
8 sections 42, 43, and 45 of P.L.1999, c.23 (C.48:3-91; 48:3-92; and
9 48:3-94). The number of residential customers and their rate class,
10 and the load profile of non-residential customers who have
11 affirmatively chosen to be included in a government energy
12 aggregation program pursuant to paragraph (3) of subsection a. of
13 section 45 of P.L.1999, **[c 23]** c.23 (C.48:3-94) may be disclosed
14 pursuant to this paragraph prior to the request by the government
15 aggregator for bids pursuant to paragraph (1) of subsection b. of
16 section 45 of P.L.1999, c.23 (C.48:3-94), and the name, address,
17 and account number of a residential customer and the name,
18 address, and account number of non-residential customers who have
19 affirmatively chosen to be included in a government energy
20 aggregation program pursuant to paragraph (3) of subsection a. of
21 section 45 of P.L.1999, c.23 (C.48:3-94) may be disclosed pursuant
22 to this paragraph upon the awarding of a contract to a licensed
23 power supplier or licensed gas supplier pursuant to paragraph (2) of
24 subsection b. of section 45 of P.L.1999, c.23 ²(C.48:3-94)². Any
25 customer information disclosed pursuant to this paragraph shall not
26 be considered a government record for the purposes of, and shall be
27 exempt from the provisions of P.L.2001, c.404.

28 (b) An electric public utility or a gas public utility disclosing
29 customer information pursuant to this paragraph shall exercise
30 reasonable care in the preparation of this customer information, but
31 shall not be responsible for errors or omissions in the preparation or
32 the content of the customer information.

33 (c) Any person using any information disclosed pursuant to this
34 paragraph for any purpose other than to establish a government
35 energy aggregation program pursuant to sections 42, 43 ^{1,1} and 45
36 of P.L.1999, c.23 (C.48:3-91; 48:3-92; and 48:3-94) shall be subject
37 to the provisions of section 34 of P.L.1999, c.23 (C.48:3-83).

38 (d) The role of an electric public utility or a gas public utility in
39 a government energy aggregation program established pursuant to
40 P.L.1999, c.23 (C.48:3-49 et al.) shall be limited to the provisions
41 of this paragraph.

42 (3) Whenever any individual proprietary information is
43 disclosed, sold ^{1,1} or transferred, pursuant to paragraph (1) or
44 paragraph (2) of subsection b. of this section, it shall be used only
45 for the provision of continued electric generation service, electric
46 related service, gas supply service ^{1,1} or gas related service to that
47 customer. In the case of a transfer or sale of a business, customer
48 consent shall not be required for the transfer of customer

1 proprietary information to the subsequent owner of the business for
2 maintaining the continuation of such services.

3 (4) Notwithstanding any provisions of the "Administrative
4 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
5 contrary, the board shall, within 90 days of the effective date of
6 P.L.2003, c.24 (C.48:3-93.1 et al.), review existing regulations
7 including, without limitation, Chapter 4 of Title 14 of the New
8 Jersey Administrative Code (Energy Competition Standards), to
9 determine their consistency with the provisions of section 36 of
10 P.L.1999, c.23 (C.48:3-85), section 43 of P.L.1999, c.23 (C.48:3-
11 92) and section 45 of P.L.1999, c.23 (C.48:3-94), ¹~~shall~~¹ repeal
12 or modify any regulations that are inconsistent with the provisions
13 thereof ¹,¹ and shall adopt regulations and standards implementing
14 the provisions thereof permitting disclosure of customer
15 information without the consent of the customer including, without
16 limitation, provisions for the development of a board-approved
17 agreement between the disclosing party and the receiving party and
18 the creation of a mechanism for the recovery by the disclosing
19 electric public utility or gas public utility of its reasonable
20 incremental costs of providing such information if such costs are
21 not covered in an existing third party supplier agreement.

22 (5) An electric power supplier, a gas supplier, a gas public
23 utility,₂ or an electric public utility may use individual proprietary
24 information that it has obtained by virtue of its provision of electric
25 generation service, electric related service, gas supply service,₂ or
26 gas related service to:

27 (a) Initiate, render, bill,₂ and collect for such services to the
28 extent otherwise authorized to provide billing and collection
29 services;

30 (b) Protect the rights or property of the electric power supplier,
31 gas supplier,₂ or public utility; and

32 (c) Protect consumers of such services and other electric power
33 suppliers, gas suppliers,₂ or electric and gas public utilities from
34 fraudulent, abusive ¹,¹ or unlawful use of, or subscription to, such
35 services.

36 c. The board shall establish and maintain a database for the
37 purpose of recording customer complaints concerning electric and
38 gas public utilities, electric power suppliers, gas suppliers, private
39 aggregators, and energy agents.

40 d. The board, in consultation with the Division of Consumer
41 Affairs in the Department of Law and Public Safety, shall establish,
42 or cause to be established, a multi-lingual electric and gas consumer
43 education program. The goal of the consumer education program
44 shall be to educate residential, small business, and special needs
45 consumers about the implications for consumers of the restructuring
46 of the electric power and gas industries. The consumer education
47 program shall include, but need not be limited to, the dissemination
48 of information to enable consumers to make informed choices

1 among available electricity and gas services and suppliers, and the
 2 communication to consumers of the consumer protection provisions
 3 of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.).

4 The board shall ensure the neutrality of the content and message
 5 of advertisements and materials.

6 The board shall promulgate standards for the recovery of
 7 consumer education program costs from customers which include
 8 reasonable measures and criteria to judge the success of the
 9 program in enhancing customer understanding of retail choice.

10 e. (Deleted by amendment, P.L.2003, c.24).

11 f. (1) In addition to the advertising standards adopted by the
 12 board pursuant to paragraph (3) of subsection a. of this section,
 13 ²[and notwithstanding any provisions of the "Administrative
 14 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), or any other
 15 law, rule, regulation, or order to the contrary,]² the board, in
 16 consultation with the Division of Consumer Affairs in the
 17 Department of Law and Public Safety, shall ²[initiate a proceeding
 18 and shall adopt, after notice, provision of the opportunity for
 19 comment, and public hearing,] adopt, pursuant to the
 20 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
 21 seq.)² interim advertising and marketing standards for electric
 22 power suppliers ², gas suppliers, brokers, energy agents, marketers,
 23 private aggregators, sales representatives, and telemarketers²
 24 ¹applicable to potential residential customers¹, within ¹[90]
 25 ²[180]¹ 270² days of the effective date of P.L. _____, c. (C. _____)
 26 (pending before the Legislature as this bill), which standards shall
 27 include, but not limited to, prohibiting ²[an]² electric power
 28 ²[supplier] suppliers, gas suppliers, brokers, energy agents,
 29 marketers, private aggregators, sales representatives, and
 30 telemarketers² from ²[purposely and knowingly]² : ¹[(i)] (a)¹
 31 making false or misleading advertising claims to a potential
 32 ¹residential¹ customer; or ¹[(ii)] (b)¹ contacting a potential
 33 ¹residential¹ customer ¹[via] by¹ telephone ²[more than once per
 34 calendar year]² for the purpose of making an unsolicited
 35 advertisement if the electric power supplier ²[does] , gas supplier,
 36 broker, energy agent, marketer, private aggregator, sales
 37 representative, or telemarketer do² not have an existing business
 38 relationship with the potential ¹residential¹ customer ²and the
 39 residential customer's telephone number appears on the no
 40 telemarketing call list established and maintained by the Division of
 41 Consumer Affairs, pursuant to the provisions of section 9 of
 42 P.L.2003, c.76 (C.56:8-127), or the national do-not-call registry as
 43 maintained by the Federal Trade Commission² . Such standards
 44 shall be effective as regulations immediately upon filing with the
 45 Office of Administrative Law and shall be effective for a period not
 46 to exceed 18 months, and may, thereafter, be amended, adopted, or

1 readopted by the board in accordance with the provisions of the
2 ²["Administrative Procedure Act."] "Administrative Procedure
3 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).²

4 (2) In addition to any other penalties, fines, or remedies
5 authorized by law, ¹[any] an¹ electric power supplier ², gas
6 supplier, broker, energy agent, marketer, private aggregator, sales
7 representative, or telemarketer² that violates ¹subparagraph (a) of
8 paragraph (1) of¹ this subsection and collects charges for electric
9 ²[power supply services] generation service or gas supply service²
10 supplied to a ¹residential¹ customer ¹, who was subjected to false or
11 misleading advertising claims by the electric power supplier ², gas
12 supplier, broker, energy agent, marketer, private aggregator, sales
13 representative, or telemarketer² in violation of subparagraph (a) of
14 paragraph (1) of this subsection,¹ shall be liable to the ¹residential¹
15 customer ¹in¹ an amount equal to all charges paid by the
16 ¹residential¹ customer after such violation ¹occurs¹ in accordance
17 with any procedures as the board may prescribe ², whether the
18 electric power supplier or gas supplier provided the electric
19 generation service or gas supply service to that customer, or the
20 electric generation service or gas supply service was provided to the
21 customer by a broker, energy agent, marketer, private aggregator,
22 sales representative, or telemarketer who contacted the customer on
23 behalf of the electric power supplier or gas supplier². ¹[Any] An¹
24 electric power supplier ², gas supplier, broker, energy agent,
25 marketer, private aggregator, sales representative, or telemarketer²
26 that violates this subsection shall also be liable for a civil penalty
27 pursuant to section 34 of P.L.1999, c.23 (C.48:3-83). The board is
28 hereby authorized to revoke the license of any electric power
29 supplier ², gas supplier, broker, energy agent, marketer, or private
30 aggregator² that violates this subsection.

31 (cf: P.L.2003, c.24, s.3)

32
33 3. This act shall take effect immediately.

34
35
36 _____
37
38 Prohibits certain energy suppliers from making false and
39 misleading claims to potential customers; prohibits suppliers' calls
40 to customers where no business relationship exists.

ASSEMBLY, No. 3422

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED NOVEMBER 19, 2012

Sponsored by:

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblywoman MARLENE CARIDE

District 36 (Bergen and Passaic)

Assemblyman ANGEL FUENTES

District 5 (Camden and Gloucester)

Co-Sponsored by:

Assemblywoman Simon

SYNOPSIS

Prohibits electric power suppliers from making false and misleading claims to potential customers; limits suppliers' calls to customers to once annually where no business relationship exists.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/7/2013)

1 AN ACT concerning certain advertising and marketing standards for
2 electric power suppliers and amending P.L.1999, c.23.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read
8 as follows:

9 3. As used in P.L.1999, c.23 (C.48:3-49 et al.):

10 "Assignee" means a person to which an electric public utility or
11 another assignee assigns, sells or transfers, other than as security,
12 all or a portion of its right to or interest in bondable transition
13 property. Except as specifically provided in P.L.1999, c.23
14 (C.48:3-49 et al.), an assignee shall not be subject to the public
15 utility requirements of Title 48 or any rules or regulations adopted
16 pursuant thereto;

17 "Base load electric power generation facility" means an electric
18 power generation facility intended to be operated at a greater than
19 50 percent capacity factor including, but not limited to, a combined
20 cycle power facility and a combined heat and power facility;

21 "Base residual auction" means the auction conducted by PJM, as
22 part of PJM's reliability pricing model, three years prior to the start
23 of the delivery year to secure electrical capacity as necessary to
24 satisfy the capacity requirements for that delivery year;

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

32 "Basic generation service" or "BGS" means electric generation
33 service that is provided, to any customer that has not chosen an
34 alternative electric power supplier, whether or not the customer has
35 received offers for competitive supply options, including, but not
36 limited to, any customer that cannot obtain such service from an
37 electric power supplier for any reason, including non-payment for
38 services. Basic generation service is not a competitive service and
39 shall be fully regulated by the board;

40 "Basic generation service provider" or "provider" means a
41 provider of basic generation service;

42 "Basic generation service transition costs" means the amount by
43 which the payments by an electric public utility for the procurement
44 of power for basic generation service and related ancillary and
45 administrative costs exceeds the net revenues from the basic
46 generation service charge established by the board pursuant to

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period,
2 together with interest on the balance at the board-approved rate, that
3 is reflected in a deferred balance account approved by the board in
4 an order addressing the electric public utility's unbundled rates,
5 stranded costs, and restructuring filings pursuant to P.L.1999, c.23
6 (C.48:3-49 et al.). Basic generation service transition costs shall
7 include, but are not limited to, costs of purchases from the spot
8 market, bilateral contracts, contracts with non-utility generators,
9 parting contracts with the purchaser of the electric public utility's
10 divested generation assets, short-term advance purchases, and
11 financial instruments such as hedging, forward contracts, and
12 options. Basic generation service transition costs shall also include
13 the payments by an electric public utility pursuant to a competitive
14 procurement process for basic generation service supply during the
15 transition period, and costs of any such process used to procure the
16 basic generation service supply;

17 "Board" means the New Jersey Board of Public Utilities or any
18 successor agency;

19 "Bondable stranded costs" means any stranded costs or basic
20 generation service transition costs of an electric public utility
21 approved by the board for recovery pursuant to the provisions of
22 P.L.1999, c.23 (C.48:3-49 et al.), together with, as approved by the
23 board: (1) the cost of retiring existing debt or equity capital of the
24 electric public utility, including accrued interest, premium and other
25 fees, costs and charges relating thereto, with the proceeds of the
26 financing of bondable transition property; (2) if requested by an
27 electric public utility in its application for a bondable stranded costs
28 rate order, federal, State and local tax liabilities associated with
29 stranded costs recovery or basic generation service transition cost
30 recovery or the transfer or financing of such property or both,
31 including taxes, whose recovery period is modified by the effect of
32 a stranded costs recovery order, a bondable stranded costs rate order
33 or both; and (3) the costs incurred to issue, service or refinance
34 transition bonds, including interest, acquisition or redemption
35 premium, and other financing costs, whether paid upon issuance or
36 over the life of the transition bonds, including, but not limited to,
37 credit enhancements, service charges, overcollateralization, interest
38 rate cap, swap or collar, yield maintenance, maturity guarantee or
39 other hedging agreements, equity investments, operating costs and
40 other related fees, costs and charges, or to assign, sell or otherwise
41 transfer bondable transition property;

42 "Bondable stranded costs rate order" means one or more
43 irrevocable written orders issued by the board pursuant to P.L.1999,
44 c.23 (C.48:3-49 et al.) which determines the amount of bondable
45 stranded costs and the initial amount of transition bond charges
46 authorized to be imposed to recover such bondable stranded costs,
47 including the costs to be financed from the proceeds of the
48 transition bonds, as well as on-going costs associated with servicing

1 and credit enhancing the transition bonds, and provides the electric
2 public utility specific authority to issue or cause to be issued,
3 directly or indirectly, transition bonds through a financing entity
4 and related matters as provided in P.L.1999, c.23 (C.48:3-49 et al.),
5 which order shall become effective immediately upon the written
6 consent of the related electric public utility to such order as
7 provided in P.L.1999, c.23 (C.48:3-49 et al.);

8 "Bondable transition property" means the property consisting of
9 the irrevocable right to charge, collect and receive, and be paid
10 from collections of, transition bond charges in the amount necessary
11 to provide for the full recovery of bondable stranded costs which
12 are determined to be recoverable in a bondable stranded costs rate
13 order, all rights of the related electric public utility under such
14 bondable stranded costs rate order including, without limitation, all
15 rights to obtain periodic adjustments of the related transition bond
16 charges pursuant to subsection b. of section 15 of P.L.1999, c.23
17 (C.48:3-64), and all revenues, collections, payments, money and
18 proceeds arising under, or with respect to, all of the foregoing;

19 "British thermal unit" or "Btu" means the amount of heat
20 required to increase the temperature of one pound of water by one
21 degree Fahrenheit;

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

29 "Brownfield" means any former or current commercial or
30 industrial site that is currently vacant or underutilized and on which
31 there has been, or there is suspected to have been, a discharge of a
32 contaminant;

33 "Buydown" means an arrangement or arrangements involving the
34 buyer and seller in a given power purchase contract and, in some
35 cases third parties, for consideration to be given by the buyer in
36 order to effectuate a reduction in the pricing, or the restructuring of
37 other terms to reduce the overall cost of the power contract, for the
38 remaining succeeding period of the purchased power arrangement
39 or arrangements;

40 "Buyout" means an arrangement or arrangements involving the
41 buyer and seller in a given power purchase contract and, in some
42 cases third parties, for consideration to be given by the buyer in
43 order to effectuate a termination of such power purchase contract;

44 "Class I renewable energy" means electric energy produced from
45 solar technologies, photovoltaic technologies, wind energy, fuel
46 cells, geothermal technologies, wave or tidal action, small scale
47 hydropower facilities with a capacity of three megawatts or less and
48 put into service after the effective date of P.L.2012, c.24, and

1 methane gas from landfills or a biomass facility, provided that the
2 biomass is cultivated and harvested in a sustainable manner;

3 "Class II renewable energy" means electric energy produced at a
4 hydropower facility with a capacity of greater than three megawatts
5 or a resource recovery facility, provided that such facility is located
6 where retail competition is permitted and provided further that the
7 Commissioner of Environmental Protection has determined that
8 such facility meets the highest environmental standards and
9 minimizes any impacts to the environment and local communities;

10 "Co-generation" means the sequential production of electricity
11 and steam or other forms of useful energy used for industrial or
12 commercial heating and cooling purposes;

13 "Combined cycle power facility" means a generation facility that
14 combines two or more thermodynamic cycles, by producing electric
15 power via the combustion of fuel and then routing the resulting
16 waste heat by-product to a conventional boiler or to a heat recovery
17 steam generator for use by a steam turbine to produce electric
18 power, thereby increasing the overall efficiency of the generating
19 facility;

20 "Combined heat and power facility" or "co-generation facility"
21 means a generation facility which produces electric energy and
22 steam or other forms of useful energy such as heat, which are used
23 for industrial or commercial heating or cooling purposes. A
24 combined heat and power facility or co-generation facility shall not
25 be considered a public utility;

26 "Competitive service" means any service offered by an electric
27 public utility or a gas public utility that the board determines to be
28 competitive pursuant to section 8 or section 10 of P.L.1999, c.23
29 (C.48:3-56 or C.48:3-58) or that is not regulated by the board;

30 "Commercial and industrial energy pricing class customer" or
31 "CIEP class customer" means that group of non-residential
32 customers with high peak demand, as determined by periodic board
33 order, which either is eligible or which would be eligible, as
34 determined by periodic board order, to receive funds from the Retail
35 Margin Fund established pursuant to section 9 of P.L.1999, c.23
36 (C.48:3-57) and for which basic generation service is hourly-priced;

37 "Comprehensive resource analysis" means an analysis including,
38 but not limited to, an assessment of existing market barriers to the
39 implementation of energy efficiency and renewable technologies
40 that are not or cannot be delivered to customers through a
41 competitive marketplace;

42 "Connected to the distribution system" means, for a solar electric
43 power generation facility, that the facility is: (1) connected to a net
44 metering customer's side of a meter, regardless of the voltage at
45 which that customer connects to the electric grid, (2) an on-site
46 generation facility, (3) qualified for net metering aggregation as
47 provided pursuant to paragraph (4) of subsection e. of section 38 of
48 P.L.1999, c.23 (C.48:3-87), (4) owned or operated by an electric

1 public utility and approved by the board pursuant to section 13 of
2 P.L.2007, c.340 (C.48:3-98.1), (5) directly connected to the electric
3 grid at 69 kilovolts or less, regardless of how an electric public
4 utility classifies that portion of its electric grid, and is designated as
5 "connected to the distribution system" by the board pursuant to
6 subsections q. through s. of section 38 of P.L.1999, c.23 (C.48:3-
7 87), or (6) is certified by the board, in consultation with the
8 Department of Environmental Protection, as being located on a
9 brownfield, on an area of historic fill, or on a properly closed
10 sanitary landfill facility. Any solar electric power generation
11 facility, other than that of a net metering customer on the customer's
12 side of the meter, connected above 69 kilovolts shall not be
13 considered connected to the distribution system;

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

18 "Customer account service" means metering, billing, or such
19 other administrative activity associated with maintaining a customer
20 account;

21 "Delivery year" or "DY" means the 12-month period from June
22 1st through May 31st, numbered according to the calendar year in
23 which it ends;

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

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

35 "Electric power generator" means an entity that proposes to
36 construct, own, lease or operate, or currently owns, leases or
37 operates, an electric power production facility that will sell or does
38 sell at least 90 percent of its output, either directly or through a
39 marketer, to a customer or customers located at sites that are not on
40 or contiguous to the site on which the facility will be located or is
41 located. The designation of an entity as an electric power generator
42 for the purposes of P.L.1999, c.23 (C.48:3-49 et al.) shall not, in
43 and of itself, affect the entity's status as an exempt wholesale
44 generator under the Public Utility Holding Company Act of 1935,
45 15 U.S.C. s.79 et seq., or its successor;

46 "Electric power supplier" means a person or entity that is duly
47 licensed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et
48 al.) to offer and to assume the contractual and legal responsibility to

1 provide electric generation service to retail customers, and includes
2 load serving entities, marketers and brokers that offer or provide
3 electric generation service to retail customers. The term excludes an
4 electric public utility that provides electric generation service only
5 as a basic generation service pursuant to section 9 of P.L.1999, c.23
6 (C.48:3-57);

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

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

17 "Electronic signature" means an electronic sound, symbol or
18 process, attached to, or logically associated with, a contract or other
19 record, and executed or adopted by a person with the intent to sign
20 the record;

21 "Eligible generator" means a developer of a base load or mid-
22 merit electric power generation facility including, but not limited to,
23 an on-site generation facility that qualifies as a capacity resource
24 under PJM criteria and that commences construction after the
25 effective date of P.L.2011, c.9 (C.48:3-98.2 et al.);

26 "Energy agent" means a person that is duly registered pursuant to
27 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), that arranges the
28 sale of retail electricity or electric related services or retail gas
29 supply or gas related services between government aggregators or
30 private aggregators and electric power suppliers or gas suppliers,
31 but does not take title to the electric or gas sold;

32 "Energy consumer" means a business or residential consumer of
33 electric generation service or gas supply service located within the
34 territorial jurisdiction of a government aggregator;

35 "Energy efficiency portfolio standard" means a requirement to
36 procure a specified amount of energy efficiency or demand side
37 management resources as a means of managing and reducing energy
38 usage and demand by customers;

39 "Energy year" or "EY" means the 12-month period from June 1st
40 through May 31st, numbered according to the calendar year in
41 which it ends;

42 "Existing business relationship" means a relationship formed by
43 a voluntary two-way communication between an electric power
44 supplier and a customer with or without an exchange of
45 consideration, on the basis of an inquiry, application, purchase, or
46 transaction initiated by the customer regarding products or services
47 offered by such electric power supplier;

1 "Farmland" means land actively devoted to agricultural or
2 horticultural use that is valued, assessed, and taxed pursuant to the
3 "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et
4 seq.);

5 "Federal Energy Regulatory Commission" or "FERC" means the
6 federal agency established pursuant to 42 U.S.C. s.7171 et seq. to
7 regulate the interstate transmission of electricity, natural gas, and
8 oil;

9 "Final remediation document" shall have the same meaning as
10 provided in section 3 of P.L.1976, c.141 (C.58:10-23.11b);

11 "Financing entity" means an electric public utility, a special
12 purpose entity, or any other assignee of bondable transition
13 property, which issues transition bonds. Except as specifically
14 provided in P.L.1999, c.23 (C.48:3-49 et al.), a financing entity
15 which is not itself an electric public utility shall not be subject to
16 the public utility requirements of Title 48 or any rules or regulations
17 adopted pursuant thereto;

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

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

27 "Gas supplier" means a person that is duly licensed pursuant to
28 the provisions of P.L.1999, c.23 (C.48:3-49 et al.) to offer and
29 assume the contractual and legal obligation to provide gas supply
30 service to retail customers, and includes, but is not limited to,
31 marketers and brokers. A non-public utility affiliate of a public
32 utility holding company may be a gas supplier, but a gas public
33 utility or any subsidiary of a gas utility is not a gas supplier. In the
34 event that a gas public utility is not part of a holding company legal
35 structure, a related competitive business segment of that gas public
36 utility may be a gas supplier, provided that related competitive
37 business segment is structurally separated from the gas public
38 utility, and provided that the interactions between the gas public
39 utility and the related competitive business segment are subject to
40 the affiliate relations standards adopted by the board pursuant to
41 subsection k. of section 10 of P.L.1999, c.23 (C.48:3-58);

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

45 "Government aggregator" means any government entity subject
46 to the requirements of the "Local Public Contracts Law," P.L.1971,
47 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
48 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"

1 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
2 contract with a licensed electric power supplier or a licensed gas
3 supplier for: (1) the provision of electric generation service, electric
4 related service, gas supply service, or gas related service for its own
5 use or the use of other government aggregators; or (2) if a
6 municipal or county government, the provision of electric
7 generation service or gas supply service on behalf of business or
8 residential customers within its territorial jurisdiction;

9 "Government energy aggregation program" means a program and
10 procedure pursuant to which a government aggregator enters into a
11 written contract for the provision of electric generation service or
12 gas supply service on behalf of business or residential customers
13 within its territorial jurisdiction;

14 "Governmental entity" means any federal, state, municipal, local
15 or other governmental department, commission, board, agency,
16 court, authority or instrumentality having competent jurisdiction;

17 "Greenhouse gas emissions portfolio standard" means a
18 requirement that addresses or limits the amount of carbon dioxide
19 emissions indirectly resulting from the use of electricity as applied
20 to any electric power suppliers and basic generation service
21 providers of electricity;

22 "Historic fill" means generally large volumes of non-indigenous
23 material, no matter what date they were emplaced on the site, used
24 to raise the topographic elevation of a site, which were
25 contaminated prior to emplacement and are in no way connected
26 with the operations at the location of emplacement and which
27 include, but are not limited to, construction debris, dredge spoils,
28 incinerator residue, demolition debris, fly ash, and non-hazardous
29 solid waste. "Historic fill" shall not include any material which is
30 substantially chromate chemical production waste or any other
31 chemical production waste or waste from processing of metal or
32 mineral ores, residues, slags, or tailings;

33 "Incremental auction" means an auction conducted by PJM, as
34 part of PJM's reliability pricing model, prior to the start of the
35 delivery year to secure electric capacity as necessary to satisfy the
36 capacity requirements for that delivery year, that is not otherwise
37 provided for in the base residual auction;

38 "Leakage" means an increase in greenhouse gas emissions
39 related to generation sources located outside of the State that are not
40 subject to a state, interstate or regional greenhouse gas emissions
41 cap or standard that applies to generation sources located within the
42 State;

43 "Locational deliverability area" or "LDA" means one or more of
44 the zones within the PJM region which are used to evaluate area
45 transmission constraints and reliability issues including electric
46 public utility company zones, sub-zones, and combinations of
47 zones;

1 "Long-term capacity agreement pilot program" or "LCAPP"
2 means a pilot program established by the board that includes
3 participation by eligible generators, to seek offers for financially-
4 settled standard offer capacity agreements with eligible generators
5 pursuant to the provisions of P.L.2011, c.9 (C.48:3-98.2 et al.);

6 "Market transition charge" means a charge imposed pursuant to
7 section 13 of P.L.1999, c.23 (C.48:3-61) by an electric public
8 utility, at a level determined by the board, on the electric public
9 utility customers for a limited duration transition period to recover
10 stranded costs created as a result of the introduction of electric
11 power supply competition pursuant to the provisions of P.L.1999,
12 c.23 (C.48:3-49 et al.);

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

22 "Mid-merit electric power generation facility" means a
23 generation facility that operates at a capacity factor between
24 baseload generation facilities and peaker generation facilities;

25 "Net metering aggregation" means a procedure for calculating
26 the combination of the annual energy usage for all facilities owned
27 by a single customer where such customer is a State entity, school
28 district, county, county agency, county authority, municipality,
29 municipal agency, or municipal authority, and which are served by
30 a solar electric power generating facility as provided pursuant to
31 paragraph (4) of subsection e. of section 38 of P.L.1999, c.23
32 (C.48:3-87);

33 "Net proceeds" means proceeds less transaction and other related
34 costs as determined by the board;

35 "Net revenues" means revenues less related expenses, including
36 applicable taxes, as determined by the board;

37 "Offshore wind energy" means electric energy produced by a
38 qualified offshore wind project;

39 "Offshore wind renewable energy certificate" or "OREC" means
40 a certificate, issued by the board or its designee, representing the
41 environmental attributes of one megawatt hour of electric
42 generation from a qualified offshore wind project;

43 "Off-site end use thermal energy services customer" means an
44 end use customer that purchases thermal energy services from an
45 on-site generation facility, combined heat and power facility, or co-
46 generation facility, and that is located on property that is separated
47 from the property on which the on-site generation facility,
48 combined heat and power facility, or co-generation facility is

1 located by more than one easement, public thoroughfare, or
2 transportation or utility-owned right-of-way;

3 "On-site generation facility" means a generation facility,
4 including, but not limited to, a generation facility that produces
5 Class I or Class II renewable energy, and equipment and services
6 appurtenant to electric sales by such facility to the end use customer
7 located on the property or on property contiguous to the property on
8 which the end user is located. An on-site generation facility shall
9 not be considered a public utility. The property of the end use
10 customer and the property on which the on-site generation facility is
11 located shall be considered contiguous if they are geographically
12 located next to each other, but may be otherwise separated by an
13 easement, public thoroughfare, transportation or utility-owned
14 right-of-way, or if the end use customer is purchasing thermal
15 energy services produced by the on-site generation facility, for use
16 for heating or cooling, or both, regardless of whether the customer
17 is located on property that is separated from the property on which
18 the on-site generation facility is located by more than one easement,
19 public thoroughfare, or transportation or utility-owned right-of-
20 way;

21 "Person" means an individual, partnership, corporation,
22 association, trust, limited liability company, governmental entity or
23 other legal entity;

24 "PJM Interconnection, L.L.C." or "PJM" means the privately-
25 held, limited liability corporation that is a FERC-approved Regional
26 Transmission Organization, or its successor, that manages the
27 regional, high-voltage electricity grid serving all or parts of 13
28 states including New Jersey and the District of Columbia, operates
29 the regional competitive wholesale electric market, manages the
30 regional transmission planning process, and establishes systems and
31 rules to ensure that the regional and in-State energy markets operate
32 fairly and efficiently;

33 "Preliminary assessment" shall have the same meaning as
34 provided in section 3 of P.L.1976, c.141 (C.58:10-23.11b);

35 "Private aggregator" means a non-government aggregator that is
36 a duly-organized business or non-profit organization authorized to
37 do business in this State that enters into a contract with a duly
38 licensed electric power supplier for the purchase of electric energy
39 and capacity, or with a duly licensed gas supplier for the purchase
40 of gas supply service, on behalf of multiple end-use customers by
41 combining the loads of those customers;

42 "Properly closed sanitary landfill facility" means a sanitary
43 landfill facility, or a portion of a sanitary landfill facility, for which
44 performance is complete with respect to all activities associated
45 with the design, installation, purchase, or construction of all
46 measures, structures, or equipment required by the Department of
47 Environmental Protection, pursuant to law, in order to prevent,
48 minimize, or monitor pollution or health hazards resulting from a

1 sanitary landfill facility subsequent to the termination of operations
2 at any portion thereof, including, but not necessarily limited to, the
3 placement of earthen or vegetative cover, and the installation of
4 methane gas vents or monitors and leachate monitoring wells or
5 collection systems at the site of any sanitary landfill facility;

6 "Public utility holding company" means: (1) any company that,
7 directly or indirectly, owns, controls, or holds with power to vote,
8 ten percent or more of the outstanding voting securities of an
9 electric public utility or a gas public utility or of a company which
10 is a public utility holding company by virtue of this definition,
11 unless the Securities and Exchange Commission, or its successor,
12 by order declares such company not to be a public utility holding
13 company under the Public Utility Holding Company Act of 1935,
14 15 U.S.C. s.79 et seq., or its successor; or (2) any person that the
15 Securities and Exchange Commission, or its successor, determines,
16 after notice and opportunity for hearing, directly or indirectly, to
17 exercise, either alone or pursuant to an arrangement or
18 understanding with one or more other persons, such a controlling
19 influence over the management or policies of an electric public
20 utility or a gas public utility or public utility holding company as to
21 make it necessary or appropriate in the public interest or for the
22 protection of investors or consumers that such person be subject to
23 the obligations, duties, and liabilities imposed in the Public Utility
24 Holding Company Act of 1935 or its successor;

25 "Qualified offshore wind project" means a wind turbine
26 electricity generation facility in the Atlantic Ocean and connected
27 to the electric transmission system in this State, and includes the
28 associated transmission-related interconnection facilities and
29 equipment, and approved by the board pursuant to section 3 of
30 P.L.2010, c.57 (C.48:3-87.1);

31 "Registration program" means an administrative process
32 developed by the board pursuant to subsection u. of section 38 of
33 P.L.1999, c.23 (C.48:3-87) that requires all owners of solar electric
34 power generation facilities connected to the distribution system that
35 intend to generate SRECs, to file with the board documents
36 detailing the size, location, interconnection plan, land use, and other
37 project information as required by the board;

38 "Regulatory asset" means an asset recorded on the books of an
39 electric public utility or gas public utility pursuant to the Statement
40 of Financial Accounting Standards, No. 71, entitled "Accounting for
41 the Effects of Certain Types of Regulation," or any successor
42 standard and as deemed recoverable by the board;

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

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

8 "Reliability pricing model" or "RPM" means PJM's capacity-
9 market model, and its successors, that secures capacity on behalf of
10 electric load serving entities to satisfy load obligations not satisfied
11 through the output of electric generation facilities owned by those
12 entities, or otherwise secured by those entities through bilateral
13 contracts;

14 "Renewable energy certificate" or "REC" means a certificate
15 representing the environmental benefits or attributes of one
16 megawatt-hour of generation from a generating facility that
17 produces Class I or Class II renewable energy, but shall not include
18 a solar renewable energy certificate or an offshore wind renewable
19 energy certificate;

20 "Resource clearing price" or "RCP" means the clearing price
21 established for the applicable locational deliverability area by the
22 base residual auction or incremental auction, as determined by the
23 optimization algorithm for each auction, conducted by PJM as part
24 of PJM's reliability pricing model;

25 "Resource recovery facility" means a solid waste facility
26 constructed and operated for the incineration of solid waste for
27 energy production and the recovery of metals and other materials
28 for reuse, which the Department of Environmental Protection has
29 determined to be in compliance with current environmental
30 standards, including, but not limited to, all applicable requirements
31 of the federal "Clean Air Act" (42 U.S.C. s.7401 et seq.);

32 "Restructuring related costs" means reasonably incurred costs
33 directly related to the restructuring of the electric power industry,
34 including the closure, sale, functional separation and divestiture of
35 generation and other competitive utility assets by a public utility, or
36 the provision of competitive services as such costs are determined
37 by the board, and which are not stranded costs as defined in
38 P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be limited
39 to, investments in management information systems, and which
40 shall include expenses related to employees affected by
41 restructuring which result in efficiencies and which result in
42 benefits to ratepayers, such as training or retraining at the level
43 equivalent to one year's training at a vocational or technical school
44 or county community college, the provision of severance pay of two
45 weeks of base pay for each year of full-time employment, and a
46 maximum of 24 months' continued health care coverage. Except as
47 to expenses related to employees affected by restructuring,
48 "restructuring related costs" shall not include going forward costs;

1 "Retail choice" means the ability of retail customers to shop for
2 electric generation or gas supply service from electric power or gas
3 suppliers, or opt to receive basic generation service or basic gas
4 service, and the ability of an electric power or gas supplier to offer
5 electric generation service or gas supply service to retail customers,
6 consistent with the provisions of P.L.1999, c.23 (C.48:3-49 et al.);

7 "Retail margin" means an amount, reflecting differences in
8 prices that electric power suppliers and electric public utilities may
9 charge in providing electric generation service and basic generation
10 service, respectively, to retail customers, excluding residential
11 customers, which the board may authorize to be charged to
12 categories of basic generation service customers of electric public
13 utilities in this State, other than residential customers, under the
14 board's continuing regulation of basic generation service pursuant to
15 sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), for the
16 purpose of promoting a competitive retail market for the supply of
17 electricity;

18 "Sanitary landfill facility" shall have the same meaning as
19 provided in section 3 of P.L.1970, c.39 (C.13:1E-3);

20 "School district" means a local or regional school district
21 established pursuant to chapter 8 or chapter 13 of Title 18A of the
22 New Jersey Statutes, a county special services school district
23 established pursuant to article 8 of chapter 46 of Title 18A of the
24 New Jersey Statutes, a county vocational school district established
25 pursuant to article 3 of chapter 54 of Title 18A of the New Jersey
26 Statutes, and a district under full State intervention pursuant to
27 P.L.1987, c.399 (C.18A:7A-34 et al.);

28 "Shopping credit" means an amount deducted from the bill of an
29 electric public utility customer to reflect the fact that such customer
30 has switched to an electric power supplier and no longer takes basic
31 generation service from the electric public utility;

32 "Site investigation" shall have the same meaning as provided in
33 section 3 of P.L.1976, c.141 (C.58:10-23.11b);

34 "Small scale hydropower facility" means a facility located within
35 this State that is connected to the distribution system, and that
36 meets the requirements of, and has been certified by, a nationally
37 recognized low-impact hydropower organization that has
38 established low-impact hydropower certification criteria applicable
39 to: (1) river flows; (2) water quality; (3) fish passage and
40 protection; (4) watershed protection; (5) threatened and endangered
41 species protection; (6) cultural resource protection; (7) recreation;
42 and (8) facilities recommended for removal;

43 "Social program" means a program implemented with board
44 approval to provide assistance to a group of disadvantaged
45 customers, to provide protection to consumers, or to accomplish a
46 particular societal goal, and includes, but is not limited to, the
47 winter moratorium program, utility practices concerning "bad debt"
48 customers, low income assistance, deferred payment plans,

1 weatherization programs, and late payment and deposit policies, but
2 does not include any demand side management program or any
3 environmental requirements or controls;

4 "Societal benefits charge" means a charge imposed by an electric
5 public utility, at a level determined by the board, pursuant to, and in
6 accordance with, section 12 of P.L.1999, c.23 (C.48:3-60);

7 "Solar alternative compliance payment" or "SACP" means a
8 payment of a certain dollar amount per megawatt hour (MWh)
9 which an electric power supplier or provider may submit to the
10 board in order to comply with the solar electric generation
11 requirements under section 38 of P.L.1999, c.23 (C.48:3-87);

12 "Solar renewable energy certificate" or "SREC" means a
13 certificate issued by the board or its designee, representing one
14 megawatt hour (MWh) of solar energy that is generated by a facility
15 connected to the distribution system in this State and has value
16 based upon, and driven by, the energy market;

17 "Standard offer capacity agreement" or "SOCA" means a
18 financially-settled transaction agreement, approved by board order,
19 that provides for eligible generators to receive payments from the
20 electric public utilities for a defined amount of electric capacity for
21 a term to be determined by the board but not to exceed 15 years,
22 and for such payments to be a fully non-bypassable charge, with
23 such an order, once issued, being irrevocable;

24 "Standard offer capacity price" or "SOCP" means the capacity
25 price that is fixed for the term of the SOCA and which is the price
26 to be received by eligible generators under a board-approved
27 SOCA;

28 "State entity" means a department, agency, or office of State
29 government, a State university or college, or an authority created by
30 the State;

31 "Stranded cost" means the amount by which the net cost of an
32 electric public utility's electric generating assets or electric power
33 purchase commitments, as determined by the board consistent with
34 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), exceeds the
35 market value of those assets or contractual commitments in a
36 competitive supply marketplace and the costs of buydowns or
37 buyouts of power purchase contracts;

38 "Stranded costs recovery order" means each order issued by the
39 board in accordance with subsection c. of section 13 of P.L.1999,
40 c.23 (C.48:3-61) which sets forth the amount of stranded costs, if
41 any, the board has determined an electric public utility is eligible to
42 recover and collect in accordance with the standards set forth in
43 section 13 of P.L.1999, c.23 (C.48:3-61) and the recovery
44 mechanisms therefor;

45 "Thermal efficiency" means the useful electric energy output of a
46 facility, plus the useful thermal energy output of the facility,
47 expressed as a percentage of the total energy input to the facility;

1 "Transition bond charge" means a charge, expressed as an
2 amount per kilowatt hour, that is authorized by and imposed on
3 electric public utility ratepayers pursuant to a bondable stranded
4 costs rate order, as modified at any time pursuant to the provisions
5 of P.L.1999, c.23 (C.48:3-49 et al.);

6 "Transition bonds" means bonds, notes, certificates of
7 participation or beneficial interest or other evidences of
8 indebtedness or ownership issued pursuant to an indenture, contract
9 or other agreement of an electric public utility or a financing entity,
10 the proceeds of which are used, directly or indirectly, to recover,
11 finance or refinance bondable stranded costs and which are, directly
12 or indirectly, secured by or payable from bondable transition
13 property. References in P.L.1999, c.23 (C.48:3-49 et al.) to
14 principal, interest, and acquisition or redemption premium with
15 respect to transition bonds which are issued in the form of
16 certificates of participation or beneficial interest or other evidences
17 of ownership shall refer to the comparable payments on such
18 securities;

19 "Transition period" means the period from August 1, 1999
20 through July 31, 2003;

21 "Transmission and distribution system" means, with respect to an
22 electric public utility, any facility or equipment that is used for the
23 transmission, distribution or delivery of electricity to the customers
24 of the electric public utility including, but not limited to, the land,
25 structures, meters, lines, switches and all other appurtenances
26 thereof and thereto, owned or controlled by the electric public
27 utility within this State; **[and]**

28 "Universal service" means any service approved by the board
29 with the purpose of assisting low-income residential customers in
30 obtaining or retaining electric generation or delivery service; and

31 "Unsolicited advertisement" means any advertising claims of the
32 commercial availability or quality of services provided by an
33 electric power supplier which is transmitted to a potential customer
34 without that customer's prior express invitation or permission.

35 (cf: P.L.2012, c.24, s.1)

36
37 2. Section 36 of P.L.1999, c.23 (C.48:3-85) is amended to read
38 as follows:

39 36. a. Notwithstanding any provisions of the "Administrative
40 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
41 contrary, the board, in consultation with the Division of Consumer
42 Affairs in the Department of Law and Public Safety, shall initiate a
43 proceeding and shall adopt, after notice, provision of the
44 opportunity for comment, and public hearing, interim consumer
45 protection standards for electric power suppliers or gas suppliers,
46 within 90 days of February 9, 1999, including, but not limited to,
47 standards for collections, credit, contracts, authorized changes of an
48 energy consumer's electric power supplier or gas supplier, for the

1 prohibition of discriminatory marketing, for advertising and for
2 disclosure. Such standards shall be effective as regulations
3 immediately upon filing with the Office of Administrative Law and
4 shall be effective for a period not to exceed 18 months, and may,
5 thereafter, be amended, adopted or readopted by the board in
6 accordance with the provisions of the "Administrative Procedure
7 Act."

8 (1) Contract standards shall include, but not be limited to,
9 requirements that electric power supply contracts or gas supply
10 contracts must conspicuously disclose the duration of the contract;
11 state the price per kilowatt hour or per therm or other pricing
12 determinant approved by the board; have the customer's written
13 signature; the customer's electronic signature; an audio recording of
14 a telephone call initiated by the customer; independent, third-party
15 verification, in accordance with section 37 of P.L.1999, c.23
16 (C.48:3-86), of a telephone call initiated by an electric power
17 supplier, gas supplier or private aggregator; or such alternative
18 forms of verification as the board, in consultation with the Division
19 of Consumer Affairs, may permit for switching electric power
20 suppliers or gas suppliers and for contract renewal; and include
21 termination procedures, notice of any fees, and toll-free or local
22 telephone numbers for the electric power supplier or gas supplier
23 and for the board.

24 (2) Standards for the prohibition of discriminatory marketing
25 standards shall provide at a minimum that a decision made by an
26 electric power supplier or a gas supplier to accept or reject a
27 customer shall not be based on race, color, national origin, age,
28 gender, religion, source of income, receipt of public benefits, family
29 status, sexual preference, or geographic location. The board shall
30 adopt reporting requirements to monitor compliance with such
31 standards.

32 (3) Advertising standards for electric power suppliers or gas
33 suppliers shall provide, at a minimum, that optional charges to the
34 consumer will not be added to any advertised cost per kilowatt hour
35 or per therm, and that the only unit of measurement that may be
36 used in advertisements is cost per kilowatt hour or per therm, unless
37 otherwise approved by the board. If an electric power supplier or
38 gas supplier does not advertise using cost per kilowatt hour or per
39 therm, the electric power supplier or gas supplier shall provide, at
40 the consumer's request, an estimate of the cost per kilowatt hour or
41 per therm. Any optional charges to the consumer shall be identified
42 separately and denoted as optional.

43 (4) Credit standards shall include, at a minimum, that the credit
44 requirements used to make offer decisions must be the same for all
45 residential customers and that electric power suppliers, gas
46 suppliers, and private aggregators not impose unreasonable income
47 or credit requirements.

1 (5) Billing standards shall include, at a minimum, provisions
2 prohibiting electric public utilities, gas public utilities, electric
3 power suppliers, and gas suppliers from charging a fee to residential
4 customers for either the commencement or termination of electric
5 generation service or gas supply service.

6 b. (1) Except as provided in paragraph (2) of this subsection, an
7 electric power supplier, a gas supplier, an electric public utility, and
8 a gas public utility shall not disclose, sell or transfer individual
9 proprietary information, including, but not limited to, a customer's
10 name, address, telephone number, energy usage and electric power
11 payment history, to a third party without the consent of the
12 customer.

13 (2) (a) An electric public utility or a gas public utility may
14 disclose and provide, in an electronic format, which may include a
15 CD rom, diskette, and other format as determined by the board,
16 without the consent of a residential customer, a residential
17 customer's name, rate class, and account number, to a government
18 aggregator that is a municipality or a county, or to an energy agent
19 acting as a consultant to a government aggregator that is a
20 municipality or a county, if the customer information is to be used
21 to establish a government energy aggregation program pursuant to
22 sections 42, 43, and 45 of P.L.1999, c.23 (C.48:3-91; 48:3-92; and
23 48:3-94). The number of residential customers and their rate class,
24 and the load profile of non-residential customers who have
25 affirmatively chosen to be included in a government energy
26 aggregation program pursuant to paragraph (3) of subsection a. of
27 section 45 of P.L.1999, **[c 23]** c.23 (C.48:3-94) may be disclosed
28 pursuant to this paragraph prior to the request by the government
29 aggregator for bids pursuant to paragraph (1) of subsection b. of
30 section 45 of P.L.1999, c.23 (C.48:3-94), and the name, address,
31 and account number of a residential customer and the name,
32 address, and account number of non-residential customers who have
33 affirmatively chosen to be included in a government energy
34 aggregation program pursuant to paragraph (3) of subsection a. of
35 section 45 of P.L.1999, c.23 (C.48:3-94) may be disclosed pursuant
36 to this paragraph upon the awarding of a contract to a licensed
37 power supplier or licensed gas supplier pursuant to paragraph (2) of
38 subsection b. of section 45 of P.L.1999, c.23. Any customer
39 information disclosed pursuant to this paragraph shall not be
40 considered a government record for the purposes of, and shall be
41 exempt from the provisions of P.L.2001, c.404.

42 (b) An electric public utility or a gas public utility disclosing
43 customer information pursuant to this paragraph shall exercise
44 reasonable care in the preparation of this customer information, but
45 shall not be responsible for errors or omissions in the preparation or
46 the content of the customer information.

47 (c) Any person using any information disclosed pursuant to this
48 paragraph for any purpose other than to establish a government

1 energy aggregation program pursuant to sections 42, 43 and 45 of
2 P.L.1999, c.23 (C.48:3-91; 48:3-92; and 48:3-94) shall be subject to
3 the provisions of section 34 of P.L.1999, c.23 (C.48:3-83).

4 (d) The role of an electric public utility or a gas public utility in
5 a government energy aggregation program established pursuant to
6 P.L.1999, c.23 (C.48:3-49 et al.) shall be limited to the provisions
7 of this paragraph.

8 (3) Whenever any individual proprietary information is
9 disclosed, sold or transferred, pursuant to paragraph (1) or
10 paragraph (2) of subsection b. of this section, it shall be used only
11 for the provision of continued electric generation service, electric
12 related service, gas supply service or gas related service to that
13 customer. In the case of a transfer or sale of a business, customer
14 consent shall not be required for the transfer of customer
15 proprietary information to the subsequent owner of the business for
16 maintaining the continuation of such services.

17 (4) Notwithstanding any provisions of the "Administrative
18 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
19 contrary, the board shall, within 90 days of the effective date of
20 P.L.2003, c.24 (C.48:3-93.1 et al.), review existing regulations
21 including, without limitation, Chapter 4 of Title 14 of the New
22 Jersey Administrative Code (Energy Competition Standards), to
23 determine their consistency with the provisions of section 36 of
24 P.L.1999, c.23 (C.48:3-85), section 43 of P.L.1999, c.23 (C.48:3-
25 92) and section 45 of P.L.1999, c.23 (C.48:3-94), shall repeal or
26 modify any regulations that are inconsistent with the provisions
27 thereof and shall adopt regulations and standards implementing the
28 provisions thereof permitting disclosure of customer information
29 without the consent of the customer including, without limitation,
30 provisions for the development of a board-approved agreement
31 between the disclosing party and the receiving party and the
32 creation of a mechanism for the recovery by the disclosing electric
33 public utility or gas public utility of its reasonable incremental costs
34 of providing such information if such costs are not covered in an
35 existing third party supplier agreement.

36 (5) An electric power supplier, a gas supplier, a gas public
37 utility, or an electric public utility may use individual proprietary
38 information that it has obtained by virtue of its provision of electric
39 generation service, electric related service, gas supply service, or
40 gas related service to:

41 (a) Initiate, render, bill, and collect for such services to the
42 extent otherwise authorized to provide billing and collection
43 services;

44 (b) Protect the rights or property of the electric power supplier,
45 gas supplier, or public utility; and

46 (c) Protect consumers of such services and other electric power
47 suppliers, gas suppliers, or electric and gas public utilities from

1 fraudulent, abusive or unlawful use of, or subscription to, such
2 services.

3 c. The board shall establish and maintain a database for the
4 purpose of recording customer complaints concerning electric and
5 gas public utilities, electric power suppliers, gas suppliers, private
6 aggregators, and energy agents.

7 d. The board, in consultation with the Division of Consumer
8 Affairs in the Department of Law and Public Safety, shall establish,
9 or cause to be established, a multi-lingual electric and gas consumer
10 education program. The goal of the consumer education program
11 shall be to educate residential, small business, and special needs
12 consumers about the implications for consumers of the restructuring
13 of the electric power and gas industries. The consumer education
14 program shall include, but need not be limited to, the dissemination
15 of information to enable consumers to make informed choices
16 among available electricity and gas services and suppliers, and the
17 communication to consumers of the consumer protection provisions
18 of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.).

19 The board shall ensure the neutrality of the content and message
20 of advertisements and materials.

21 The board shall promulgate standards for the recovery of
22 consumer education program costs from customers which include
23 reasonable measures and criteria to judge the success of the
24 program in enhancing customer understanding of retail choice.

25 e. (Deleted by amendment, P.L.2003, c.24).

26 f. (1) In addition to the advertising standards adopted by the
27 board pursuant to paragraph (3) of subsection a. of this section, and
28 notwithstanding any provisions of the "Administrative Procedure
29 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), or any other law, rule,
30 regulation, or order to the contrary, the board, in consultation with
31 the Division of Consumer Affairs in the Department of Law and
32 Public Safety, shall initiate a proceeding and shall adopt, after
33 notice, provision of the opportunity for comment, and public
34 hearing, interim advertising and marketing standards for electric
35 power suppliers, within 90 days of the effective date of P.L. , c.
36 (C.) (pending before the Legislature as this bill), which
37 standards shall include, but not limited to, prohibiting an electric
38 power supplier from purposely and knowingly: (i) making false or
39 misleading advertising claims to a potential customer; or (ii)
40 contacting a potential customer via telephone more than once per
41 calendar year for the purpose of making an unsolicited
42 advertisement if the electric power supplier does not have an
43 existing business relationship with the potential customer. Such
44 standards shall be effective as regulations immediately upon filing
45 with the Office of Administrative Law and shall be effective for a
46 period not to exceed 18 months, and may, thereafter, be amended,
47 adopted, or readopted by the board in accordance with the
48 provisions of the "Administrative Procedure Act."

1 (2) In addition to any other penalties, fines, or remedies
2 authorized by law, any electric power supplier that violates this
3 subsection and collects charges for electric power supply services
4 supplied to a customer shall be liable to the customer an amount
5 equal to all charges paid by the customer after such violation in
6 accordance with any procedures as the board may prescribe. Any
7 electric power supplier that violates this subsection shall also be
8 liable for a civil penalty pursuant to section 34 of P.L.1999, c.23
9 (C.48:3-83). The board is hereby authorized to revoke the license
10 of any electric power supplier that violates this subsection.

11 (cf: P.L.2003, c.24, s.3)

12

13 3. This act shall take effect immediately.

14

15

16

STATEMENT

17

18 This bill requires the Board of Public Utilities (“BPU”) to adopt
19 advertising and marketing standards for electric power suppliers
20 which would prohibit suppliers from purposeful and knowing: 1)
21 making of false or misleading advertising claims to a potential
22 customer; or 2) initiation of contact with a potential customer via
23 telephone more than once per calendar year for the purpose of
24 making an unsolicited advertisement if the electric power supplier
25 does not have an existing business relationship with the potential
26 customer. The terms “unsolicited advertisement” and “existing
27 business relationship” are both defined in the bill.

28 The bill provides that any electric power supplier that violates
29 the above provisions and, in doing so, collects charges for electric
30 power supply services from a customer, shall be liable to the
31 customer in an amount equal to all charges paid by the customer
32 after such violation in accordance with any procedures as the BPU
33 may prescribe. Further, any electric power supplier that violates the
34 above provisions shall be liable for a civil penalty of not more than
35 \$10,000 for the first offense, and not more than \$25,000 for the
36 second and each subsequent offense, for each day that the violation
37 continues. Any civil penalty which may be imposed may be
38 compromised by the BPU. In determining the amount of the
39 penalty, or the amount agreed upon in compromise, the BPU shall
40 consider: 1) the nature, circumstances and gravity of the violation;
41 2) the degree of the violator's culpability; 3) any history of prior
42 violations; 4) the prospective effect of the penalty on the ability of
43 the violator to conduct business; 5) any good faith effort on the part
44 of the violator in attempting to achieve compliance; 6) the violator's
45 ability to pay the penalty; and 7) other factors the BPU determines
46 to be appropriate. Similar penalty provisions currently apply to
47 those electric power and gas suppliers who have been found guilty
48 of making unauthorized changes to a customer's electric power

- 1 supplier or gas supplier, a practice commonly known as
- 2 "slamming."

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3422

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 6, 2013

The Assembly Telecommunications and Utilities Committee reports favorably Assembly Bill No. 3422 with committee amendments.

As amended and reported, this bill requires the Board of Public Utilities (“BPU”) to adopt advertising and marketing standards for electric power suppliers which would prohibit suppliers from purposely and knowingly: 1) making false or misleading advertising claims to a potential residential customer; or 2) initiation of contact with a potential residential customer via telephone more than once per calendar year for the purpose of making an unsolicited advertisement if the electric power supplier does not have an existing business relationship with the potential residential customer. The terms “unsolicited advertisement” and “existing business relationship” are both defined in the bill.

The bill provides that any electric power supplier that violates the bill’s provisions prohibiting the making of false or misleading advertising claims to a potential residential customer and, in doing so, collects charges for electric power supply services from a residential customer, is to be liable to the customer in an amount equal to all charges paid by the residential customer after such violation in accordance with any procedures as the BPU may prescribe. Further, any electric power supplier that violates the bill’s provisions is to be liable for a civil penalty of not more than \$10,000 for the first offense, and not more than \$25,000 for the second and each subsequent offense, for each day that the violation continues. Any civil penalty which may be imposed may be compromised by the BPU. In determining the amount of the penalty, or the amount agreed upon in compromise, the BPU shall consider: 1) the nature, circumstances and gravity of the violation; 2) the degree of the violator's culpability; 3) any history of prior violations; 4) the prospective effect of the penalty on the ability of the violator to conduct business; 5) any good faith effort on the part of the violator in attempting to achieve compliance; 6) the violator's ability to pay the penalty; and 7) other factors the BPU

determines to be appropriate. Similar penalty provisions currently apply to those electric power and gas suppliers who have been found guilty of making unauthorized changes to a customer's electric power supplier or gas supplier, a practice commonly known as "slamming."

COMMITTEE AMENDMENTS:

The amendments clarify that the prohibitions placed on electric power suppliers apply to their interactions with residential customers only. Further, the amendments clarify that any electric power supplier that violates the bill's provisions prohibiting the making of false or misleading advertising claims to a potential residential customer and, in doing so, collects charges for electric power supply services from a residential customer, is to be liable to that customer in an amount equal to all charges paid by the residential customer after such violation in accordance with any procedures as the BPU may prescribe. Finally, the amendments extend the period of time given to the BPU and the Division of Consumer Affairs in the Department of Law and Public Safety to adopt interim advertising and marketing standards from 90 days to 180 days. The committee also made technical amendments to correct punctuation and grammar in the bill.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3422

with Senate Floor Amendments
(Proposed by Senator GREENSTEIN)

ADOPTED: DECEMBER 19, 2013

These Senate floor amendments: 1) add the entities “brokers,” “energy agents,” “marketers,” “private aggregators,” “sales representatives,” and “telemarketers” to the bill’s provisions and provide that they are treated in the same manner as electric power suppliers; 2) provide definitions for the terms “sales representative,” “telemarketer,” and “telemarketing sales call”; 3) provide in the definition of “existing business relationship” that a customer receiving electric or gas supply services through the customer’s electric or gas public utility is not sufficient on its own to establish an existing business relationship; 4) extend the period of time given to the Board of Public Utilities (BPU) to adopt interim advertising and marketing standards from 180 days to 270 days, and do so pursuant to the "Administrative Procedure Act"; and 5) remove the term “purposely and knowingly” and contacting a potential residential customer by telephone more than once per calendar year from the conditions by which an electric power supplier could violate the BPU’s advertising and marketing standards; and 6) add the condition applicable to electric power and gas suppliers, brokers, energy agents, marketers, private aggregators, sales representatives, and telemarketers of contacting by telephone a potential residential customer whose telephone number appears on the State or federal do-not-call lists as a violation of those advertising and marketing standards.

SENATE, No. 2308

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED NOVEMBER 19, 2012

Sponsored by:

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Prohibits electric power suppliers from making false and misleading claims to potential customers; limits suppliers' calls to customers to once annually where no business relationship exists.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain advertising and marketing standards for
2 electric power suppliers and amending P.L.1999, c.23.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read
8 as follows:

9 3. As used in P.L.1999, c.23 (C.48:3-49 et al.):

10 "Assignee" means a person to which an electric public utility or
11 another assignee assigns, sells or transfers, other than as security,
12 all or a portion of its right to or interest in bondable transition
13 property. Except as specifically provided in P.L.1999, c.23
14 (C.48:3-49 et al.), an assignee shall not be subject to the public
15 utility requirements of Title 48 or any rules or regulations adopted
16 pursuant thereto;

17 "Base load electric power generation facility" means an electric
18 power generation facility intended to be operated at a greater than
19 50 percent capacity factor including, but not limited to, a combined
20 cycle power facility and a combined heat and power facility;

21 "Base residual auction" means the auction conducted by PJM, as
22 part of PJM's reliability pricing model, three years prior to the start
23 of the delivery year to secure electrical capacity as necessary to
24 satisfy the capacity requirements for that delivery year;

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

32 "Basic generation service" or "BGS" means electric generation
33 service that is provided, to any customer that has not chosen an
34 alternative electric power supplier, whether or not the customer has
35 received offers for competitive supply options, including, but not
36 limited to, any customer that cannot obtain such service from an
37 electric power supplier for any reason, including non-payment for
38 services. Basic generation service is not a competitive service and
39 shall be fully regulated by the board;

40 "Basic generation service provider" or "provider" means a
41 provider of basic generation service;

42 "Basic generation service transition costs" means the amount by
43 which the payments by an electric public utility for the procurement
44 of power for basic generation service and related ancillary and
45 administrative costs exceeds the net revenues from the basic

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 generation service charge established by the board pursuant to
2 section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period,
3 together with interest on the balance at the board-approved rate, that
4 is reflected in a deferred balance account approved by the board in
5 an order addressing the electric public utility's unbundled rates,
6 stranded costs, and restructuring filings pursuant to P.L.1999, c.23
7 (C.48:3-49 et al.). Basic generation service transition costs shall
8 include, but are not limited to, costs of purchases from the spot
9 market, bilateral contracts, contracts with non-utility generators,
10 parting contracts with the purchaser of the electric public utility's
11 divested generation assets, short-term advance purchases, and
12 financial instruments such as hedging, forward contracts, and
13 options. Basic generation service transition costs shall also include
14 the payments by an electric public utility pursuant to a competitive
15 procurement process for basic generation service supply during the
16 transition period, and costs of any such process used to procure the
17 basic generation service supply;

18 "Board" means the New Jersey Board of Public Utilities or any
19 successor agency;

20 "Bondable stranded costs" means any stranded costs or basic
21 generation service transition costs of an electric public utility
22 approved by the board for recovery pursuant to the provisions of
23 P.L.1999, c.23 (C.48:3-49 et al.), together with, as approved by the
24 board: (1) the cost of retiring existing debt or equity capital of the
25 electric public utility, including accrued interest, premium and other
26 fees, costs and charges relating thereto, with the proceeds of the
27 financing of bondable transition property; (2) if requested by an
28 electric public utility in its application for a bondable stranded costs
29 rate order, federal, State and local tax liabilities associated with
30 stranded costs recovery or basic generation service transition cost
31 recovery or the transfer or financing of such property or both,
32 including taxes, whose recovery period is modified by the effect of
33 a stranded costs recovery order, a bondable stranded costs rate order
34 or both; and (3) the costs incurred to issue, service or refinance
35 transition bonds, including interest, acquisition or redemption
36 premium, and other financing costs, whether paid upon issuance or
37 over the life of the transition bonds, including, but not limited to,
38 credit enhancements, service charges, overcollateralization, interest
39 rate cap, swap or collar, yield maintenance, maturity guarantee or
40 other hedging agreements, equity investments, operating costs and
41 other related fees, costs and charges, or to assign, sell or otherwise
42 transfer bondable transition property;

43 "Bondable stranded costs rate order" means one or more
44 irrevocable written orders issued by the board pursuant to P.L.1999,
45 c.23 (C.48:3-49 et al.) which determines the amount of bondable
46 stranded costs and the initial amount of transition bond charges
47 authorized to be imposed to recover such bondable stranded costs,
48 including the costs to be financed from the proceeds of the

1 transition bonds, as well as on-going costs associated with servicing
2 and credit enhancing the transition bonds, and provides the electric
3 public utility specific authority to issue or cause to be issued,
4 directly or indirectly, transition bonds through a financing entity
5 and related matters as provided in P.L.1999, c.23 (C.48:3-49 et al.),
6 which order shall become effective immediately upon the written
7 consent of the related electric public utility to such order as
8 provided in P.L.1999, c.23 (C.48:3-49 et al.);

9 "Bondable transition property" means the property consisting of
10 the irrevocable right to charge, collect and receive, and be paid
11 from collections of, transition bond charges in the amount necessary
12 to provide for the full recovery of bondable stranded costs which
13 are determined to be recoverable in a bondable stranded costs rate
14 order, all rights of the related electric public utility under such
15 bondable stranded costs rate order including, without limitation, all
16 rights to obtain periodic adjustments of the related transition bond
17 charges pursuant to subsection b. of section 15 of P.L.1999, c.23
18 (C.48:3-64), and all revenues, collections, payments, money and
19 proceeds arising under, or with respect to, all of the foregoing;

20 "British thermal unit" or "Btu" means the amount of heat
21 required to increase the temperature of one pound of water by one
22 degree Fahrenheit;

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

30 "Brownfield" means any former or current commercial or
31 industrial site that is currently vacant or underutilized and on which
32 there has been, or there is suspected to have been, a discharge of a
33 contaminant;

34 "Buydown" means an arrangement or arrangements involving the
35 buyer and seller in a given power purchase contract and, in some
36 cases third parties, for consideration to be given by the buyer in
37 order to effectuate a reduction in the pricing, or the restructuring of
38 other terms to reduce the overall cost of the power contract, for the
39 remaining succeeding period of the purchased power arrangement
40 or arrangements;

41 "Buyout" means an arrangement or arrangements involving the
42 buyer and seller in a given power purchase contract and, in some
43 cases third parties, for consideration to be given by the buyer in
44 order to effectuate a termination of such power purchase contract;

45 "Class I renewable energy" means electric energy produced from
46 solar technologies, photovoltaic technologies, wind energy, fuel
47 cells, geothermal technologies, wave or tidal action, small scale
48 hydropower facilities with a capacity of three megawatts or less and

1 put into service after the effective date of P.L.2012, c.24, and
2 methane gas from landfills or a biomass facility, provided that the
3 biomass is cultivated and harvested in a sustainable manner;

4 "Class II renewable energy" means electric energy produced at a
5 hydropower facility with a capacity of greater than three megawatts
6 or a resource recovery facility, provided that such facility is located
7 where retail competition is permitted and provided further that the
8 Commissioner of Environmental Protection has determined that
9 such facility meets the highest environmental standards and
10 minimizes any impacts to the environment and local communities;

11 "Co-generation" means the sequential production of electricity
12 and steam or other forms of useful energy used for industrial or
13 commercial heating and cooling purposes;

14 "Combined cycle power facility" means a generation facility that
15 combines two or more thermodynamic cycles, by producing electric
16 power via the combustion of fuel and then routing the resulting
17 waste heat by-product to a conventional boiler or to a heat recovery
18 steam generator for use by a steam turbine to produce electric
19 power, thereby increasing the overall efficiency of the generating
20 facility;

21 "Combined heat and power facility" or "co-generation facility"
22 means a generation facility which produces electric energy and
23 steam or other forms of useful energy such as heat, which are used
24 for industrial or commercial heating or cooling purposes. A
25 combined heat and power facility or co-generation facility shall not
26 be considered a public utility;

27 "Competitive service" means any service offered by an electric
28 public utility or a gas public utility that the board determines to be
29 competitive pursuant to section 8 or section 10 of P.L.1999, c.23
30 (C.48:3-56 or C.48:3-58) or that is not regulated by the board;

31 "Commercial and industrial energy pricing class customer" or
32 "CIEP class customer" means that group of non-residential
33 customers with high peak demand, as determined by periodic board
34 order, which either is eligible or which would be eligible, as
35 determined by periodic board order, to receive funds from the Retail
36 Margin Fund established pursuant to section 9 of P.L.1999, c.23
37 (C.48:3-57) and for which basic generation service is hourly-priced;

38 "Comprehensive resource analysis" means an analysis including,
39 but not limited to, an assessment of existing market barriers to the
40 implementation of energy efficiency and renewable technologies
41 that are not or cannot be delivered to customers through a
42 competitive marketplace;

43 "Connected to the distribution system" means, for a solar electric
44 power generation facility, that the facility is: (1) connected to a net
45 metering customer's side of a meter, regardless of the voltage at
46 which that customer connects to the electric grid, (2) an on-site
47 generation facility, (3) qualified for net metering aggregation as
48 provided pursuant to paragraph (4) of subsection e. of section 38 of

1 P.L.1999, c.23 (C.48:3-87), (4) owned or operated by an electric
2 public utility and approved by the board pursuant to section 13 of
3 P.L.2007, c.340 (C.48:3-98.1), (5) directly connected to the electric
4 grid at 69 kilovolts or less, regardless of how an electric public
5 utility classifies that portion of its electric grid, and is designated as
6 "connected to the distribution system" by the board pursuant to
7 subsections q. through s. of section 38 of P.L.1999, c.23 (C.48:3-
8 87), or (6) is certified by the board, in consultation with the
9 Department of Environmental Protection, as being located on a
10 brownfield, on an area of historic fill, or on a properly closed
11 sanitary landfill facility. Any solar electric power generation
12 facility, other than that of a net metering customer on the customer's
13 side of the meter, connected above 69 kilovolts shall not be
14 considered connected to the distribution system;

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

19 "Customer account service" means metering, billing, or such
20 other administrative activity associated with maintaining a customer
21 account;

22 "Delivery year" or "DY" means the 12-month period from June
23 1st through May 31st, numbered according to the calendar year in
24 which it ends;

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

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

36 "Electric power generator" means an entity that proposes to
37 construct, own, lease or operate, or currently owns, leases or
38 operates, an electric power production facility that will sell or does
39 sell at least 90 percent of its output, either directly or through a
40 marketer, to a customer or customers located at sites that are not on
41 or contiguous to the site on which the facility will be located or is
42 located. The designation of an entity as an electric power generator
43 for the purposes of P.L.1999, c.23 (C.48:3-49 et al.) shall not, in
44 and of itself, affect the entity's status as an exempt wholesale
45 generator under the Public Utility Holding Company Act of 1935,
46 15 U.S.C. s.79 et seq., or its successor;

47 "Electric power supplier" means a person or entity that is duly
48 licensed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et

1 al.) to offer and to assume the contractual and legal responsibility to
2 provide electric generation service to retail customers, and includes
3 load serving entities, marketers and brokers that offer or provide
4 electric generation service to retail customers. The term excludes an
5 electric public utility that provides electric generation service only
6 as a basic generation service pursuant to section 9 of P.L.1999, c.23
7 (C.48:3-57);

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

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

18 "Electronic signature" means an electronic sound, symbol or
19 process, attached to, or logically associated with, a contract or other
20 record, and executed or adopted by a person with the intent to sign
21 the record;

22 "Eligible generator" means a developer of a base load or mid-
23 merit electric power generation facility including, but not limited to,
24 an on-site generation facility that qualifies as a capacity resource
25 under PJM criteria and that commences construction after the
26 effective date of P.L.2011, c.9 (C.48:3-98.2 et al.);

27 "Energy agent" means a person that is duly registered pursuant to
28 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), that arranges the
29 sale of retail electricity or electric related services or retail gas
30 supply or gas related services between government aggregators or
31 private aggregators and electric power suppliers or gas suppliers,
32 but does not take title to the electric or gas sold;

33 "Energy consumer" means a business or residential consumer of
34 electric generation service or gas supply service located within the
35 territorial jurisdiction of a government aggregator;

36 "Energy efficiency portfolio standard" means a requirement to
37 procure a specified amount of energy efficiency or demand side
38 management resources as a means of managing and reducing energy
39 usage and demand by customers;

40 "Energy year" or "EY" means the 12-month period from June 1st
41 through May 31st, numbered according to the calendar year in
42 which it ends;

43 "Existing business relationship" means a relationship formed by
44 a voluntary two-way communication between an electric power
45 supplier and a customer with or without an exchange of
46 consideration, on the basis of an inquiry, application, purchase, or
47 transaction initiated by the customer regarding products or services
48 offered by such electric power supplier;

1 "Farmland" means land actively devoted to agricultural or
2 horticultural use that is valued, assessed, and taxed pursuant to the
3 "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et
4 seq.);

5 "Federal Energy Regulatory Commission" or "FERC" means the
6 federal agency established pursuant to 42 U.S.C. s.7171 et seq. to
7 regulate the interstate transmission of electricity, natural gas, and
8 oil;

9 "Final remediation document" shall have the same meaning as
10 provided in section 3 of P.L.1976, c.141 (C.58:10-23.11b);

11 "Financing entity" means an electric public utility, a special
12 purpose entity, or any other assignee of bondable transition
13 property, which issues transition bonds. Except as specifically
14 provided in P.L.1999, c.23 (C.48:3-49 et al.), a financing entity
15 which is not itself an electric public utility shall not be subject to
16 the public utility requirements of Title 48 or any rules or regulations
17 adopted pursuant thereto;

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

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

27 "Gas supplier" means a person that is duly licensed pursuant to
28 the provisions of P.L.1999, c.23 (C.48:3-49 et al.) to offer and
29 assume the contractual and legal obligation to provide gas supply
30 service to retail customers, and includes, but is not limited to,
31 marketers and brokers. A non-public utility affiliate of a public
32 utility holding company may be a gas supplier, but a gas public
33 utility or any subsidiary of a gas utility is not a gas supplier. In the
34 event that a gas public utility is not part of a holding company legal
35 structure, a related competitive business segment of that gas public
36 utility may be a gas supplier, provided that related competitive
37 business segment is structurally separated from the gas public
38 utility, and provided that the interactions between the gas public
39 utility and the related competitive business segment are subject to
40 the affiliate relations standards adopted by the board pursuant to
41 subsection k. of section 10 of P.L.1999, c.23 (C.48:3-58);

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

45 "Government aggregator" means any government entity subject
46 to the requirements of the "Local Public Contracts Law," P.L.1971,
47 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
48 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"

1 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
2 contract with a licensed electric power supplier or a licensed gas
3 supplier for: (1) the provision of electric generation service, electric
4 related service, gas supply service, or gas related service for its own
5 use or the use of other government aggregators; or (2) if a
6 municipal or county government, the provision of electric
7 generation service or gas supply service on behalf of business or
8 residential customers within its territorial jurisdiction;

9 "Government energy aggregation program" means a program and
10 procedure pursuant to which a government aggregator enters into a
11 written contract for the provision of electric generation service or
12 gas supply service on behalf of business or residential customers
13 within its territorial jurisdiction;

14 "Governmental entity" means any federal, state, municipal, local
15 or other governmental department, commission, board, agency,
16 court, authority or instrumentality having competent jurisdiction;

17 "Greenhouse gas emissions portfolio standard" means a
18 requirement that addresses or limits the amount of carbon dioxide
19 emissions indirectly resulting from the use of electricity as applied
20 to any electric power suppliers and basic generation service
21 providers of electricity;

22 "Historic fill" means generally large volumes of non-indigenous
23 material, no matter what date they were emplaced on the site, used
24 to raise the topographic elevation of a site, which were
25 contaminated prior to emplacement and are in no way connected
26 with the operations at the location of emplacement and which
27 include, but are not limited to, construction debris, dredge spoils,
28 incinerator residue, demolition debris, fly ash, and non-hazardous
29 solid waste. "Historic fill" shall not include any material which is
30 substantially chromate chemical production waste or any other
31 chemical production waste or waste from processing of metal or
32 mineral ores, residues, slags, or tailings;

33 "Incremental auction" means an auction conducted by PJM, as
34 part of PJM's reliability pricing model, prior to the start of the
35 delivery year to secure electric capacity as necessary to satisfy the
36 capacity requirements for that delivery year, that is not otherwise
37 provided for in the base residual auction;

38 "Leakage" means an increase in greenhouse gas emissions
39 related to generation sources located outside of the State that are not
40 subject to a state, interstate or regional greenhouse gas emissions
41 cap or standard that applies to generation sources located within the
42 State;

43 "Locational deliverability area" or "LDA" means one or more of
44 the zones within the PJM region which are used to evaluate area
45 transmission constraints and reliability issues including electric
46 public utility company zones, sub-zones, and combinations of
47 zones;

1 "Long-term capacity agreement pilot program" or "LCAPP"
2 means a pilot program established by the board that includes
3 participation by eligible generators, to seek offers for financially-
4 settled standard offer capacity agreements with eligible generators
5 pursuant to the provisions of P.L.2011, c.9 (C.48:3-98.2 et al.);

6 "Market transition charge" means a charge imposed pursuant to
7 section 13 of P.L.1999, c.23 (C.48:3-61) by an electric public
8 utility, at a level determined by the board, on the electric public
9 utility customers for a limited duration transition period to recover
10 stranded costs created as a result of the introduction of electric
11 power supply competition pursuant to the provisions of P.L.1999,
12 c.23 (C.48:3-49 et al.);

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

22 "Mid-merit electric power generation facility" means a
23 generation facility that operates at a capacity factor between
24 baseload generation facilities and peaker generation facilities;

25 "Net metering aggregation" means a procedure for calculating
26 the combination of the annual energy usage for all facilities owned
27 by a single customer where such customer is a State entity, school
28 district, county, county agency, county authority, municipality,
29 municipal agency, or municipal authority, and which are served by
30 a solar electric power generating facility as provided pursuant to
31 paragraph (4) of subsection e. of section 38 of P.L.1999, c.23
32 (C.48:3-87);

33 "Net proceeds" means proceeds less transaction and other related
34 costs as determined by the board;

35 "Net revenues" means revenues less related expenses, including
36 applicable taxes, as determined by the board;

37 "Offshore wind energy" means electric energy produced by a
38 qualified offshore wind project;

39 "Offshore wind renewable energy certificate" or "OREC" means
40 a certificate, issued by the board or its designee, representing the
41 environmental attributes of one megawatt hour of electric
42 generation from a qualified offshore wind project;

43 "Off-site end use thermal energy services customer" means an
44 end use customer that purchases thermal energy services from an
45 on-site generation facility, combined heat and power facility, or co-
46 generation facility, and that is located on property that is separated
47 from the property on which the on-site generation facility,
48 combined heat and power facility, or co-generation facility is

1 located by more than one easement, public thoroughfare, or
2 transportation or utility-owned right-of-way;

3 "On-site generation facility" means a generation facility,
4 including, but not limited to, a generation facility that produces
5 Class I or Class II renewable energy, and equipment and services
6 appurtenant to electric sales by such facility to the end use customer
7 located on the property or on property contiguous to the property on
8 which the end user is located. An on-site generation facility shall
9 not be considered a public utility. The property of the end use
10 customer and the property on which the on-site generation facility is
11 located shall be considered contiguous if they are geographically
12 located next to each other, but may be otherwise separated by an
13 easement, public thoroughfare, transportation or utility-owned
14 right-of-way, or if the end use customer is purchasing thermal
15 energy services produced by the on-site generation facility, for use
16 for heating or cooling, or both, regardless of whether the customer
17 is located on property that is separated from the property on which
18 the on-site generation facility is located by more than one easement,
19 public thoroughfare, or transportation or utility-owned right-of-
20 way;

21 "Person" means an individual, partnership, corporation,
22 association, trust, limited liability company, governmental entity or
23 other legal entity;

24 "PJM Interconnection, L.L.C." or "PJM" means the privately-
25 held, limited liability corporation that is a FERC-approved Regional
26 Transmission Organization, or its successor, that manages the
27 regional, high-voltage electricity grid serving all or parts of 13
28 states including New Jersey and the District of Columbia, operates
29 the regional competitive wholesale electric market, manages the
30 regional transmission planning process, and establishes systems and
31 rules to ensure that the regional and in-State energy markets operate
32 fairly and efficiently;

33 "Preliminary assessment" shall have the same meaning as
34 provided in section 3 of P.L.1976, c.141 (C.58:10-23.11b);

35 "Private aggregator" means a non-government aggregator that is
36 a duly-organized business or non-profit organization authorized to
37 do business in this State that enters into a contract with a duly
38 licensed electric power supplier for the purchase of electric energy
39 and capacity, or with a duly licensed gas supplier for the purchase
40 of gas supply service, on behalf of multiple end-use customers by
41 combining the loads of those customers;

42 "Properly closed sanitary landfill facility" means a sanitary
43 landfill facility, or a portion of a sanitary landfill facility, for which
44 performance is complete with respect to all activities associated
45 with the design, installation, purchase, or construction of all
46 measures, structures, or equipment required by the Department of
47 Environmental Protection, pursuant to law, in order to prevent,
48 minimize, or monitor pollution or health hazards resulting from a

1 sanitary landfill facility subsequent to the termination of operations
2 at any portion thereof, including, but not necessarily limited to, the
3 placement of earthen or vegetative cover, and the installation of
4 methane gas vents or monitors and leachate monitoring wells or
5 collection systems at the site of any sanitary landfill facility;

6 "Public utility holding company" means: (1) any company that,
7 directly or indirectly, owns, controls, or holds with power to vote,
8 ten percent or more of the outstanding voting securities of an
9 electric public utility or a gas public utility or of a company which
10 is a public utility holding company by virtue of this definition,
11 unless the Securities and Exchange Commission, or its successor,
12 by order declares such company not to be a public utility holding
13 company under the Public Utility Holding Company Act of 1935,
14 15 U.S.C. s.79 et seq., or its successor; or (2) any person that the
15 Securities and Exchange Commission, or its successor, determines,
16 after notice and opportunity for hearing, directly or indirectly, to
17 exercise, either alone or pursuant to an arrangement or
18 understanding with one or more other persons, such a controlling
19 influence over the management or policies of an electric public
20 utility or a gas public utility or public utility holding company as to
21 make it necessary or appropriate in the public interest or for the
22 protection of investors or consumers that such person be subject to
23 the obligations, duties, and liabilities imposed in the Public Utility
24 Holding Company Act of 1935 or its successor;

25 "Qualified offshore wind project" means a wind turbine
26 electricity generation facility in the Atlantic Ocean and connected
27 to the electric transmission system in this State, and includes the
28 associated transmission-related interconnection facilities and
29 equipment, and approved by the board pursuant to section 3 of
30 P.L.2010, c.57 (C.48:3-87.1);

31 "Registration program" means an administrative process
32 developed by the board pursuant to subsection u. of section 38 of
33 P.L.1999, c.23 (C.48:3-87) that requires all owners of solar electric
34 power generation facilities connected to the distribution system that
35 intend to generate SRECs, to file with the board documents
36 detailing the size, location, interconnection plan, land use, and other
37 project information as required by the board;

38 "Regulatory asset" means an asset recorded on the books of an
39 electric public utility or gas public utility pursuant to the Statement
40 of Financial Accounting Standards, No. 71, entitled "Accounting for
41 the Effects of Certain Types of Regulation," or any successor
42 standard and as deemed recoverable by the board;

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

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

8 "Reliability pricing model" or "RPM" means PJM's capacity-
9 market model, and its successors, that secures capacity on behalf of
10 electric load serving entities to satisfy load obligations not satisfied
11 through the output of electric generation facilities owned by those
12 entities, or otherwise secured by those entities through bilateral
13 contracts;

14 "Renewable energy certificate" or "REC" means a certificate
15 representing the environmental benefits or attributes of one
16 megawatt-hour of generation from a generating facility that
17 produces Class I or Class II renewable energy, but shall not include
18 a solar renewable energy certificate or an offshore wind renewable
19 energy certificate;

20 "Resource clearing price" or "RCP" means the clearing price
21 established for the applicable locational deliverability area by the
22 base residual auction or incremental auction, as determined by the
23 optimization algorithm for each auction, conducted by PJM as part
24 of PJM's reliability pricing model;

25 "Resource recovery facility" means a solid waste facility
26 constructed and operated for the incineration of solid waste for
27 energy production and the recovery of metals and other materials
28 for reuse, which the Department of Environmental Protection has
29 determined to be in compliance with current environmental
30 standards, including, but not limited to, all applicable requirements
31 of the federal "Clean Air Act" (42 U.S.C. s.7401 et seq.);

32 "Restructuring related costs" means reasonably incurred costs
33 directly related to the restructuring of the electric power industry,
34 including the closure, sale, functional separation and divestiture of
35 generation and other competitive utility assets by a public utility, or
36 the provision of competitive services as such costs are determined
37 by the board, and which are not stranded costs as defined in
38 P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be limited
39 to, investments in management information systems, and which
40 shall include expenses related to employees affected by
41 restructuring which result in efficiencies and which result in
42 benefits to ratepayers, such as training or retraining at the level
43 equivalent to one year's training at a vocational or technical school
44 or county community college, the provision of severance pay of two
45 weeks of base pay for each year of full-time employment, and a
46 maximum of 24 months' continued health care coverage. Except as
47 to expenses related to employees affected by restructuring,
48 "restructuring related costs" shall not include going forward costs;

1 "Retail choice" means the ability of retail customers to shop for
2 electric generation or gas supply service from electric power or gas
3 suppliers, or opt to receive basic generation service or basic gas
4 service, and the ability of an electric power or gas supplier to offer
5 electric generation service or gas supply service to retail customers,
6 consistent with the provisions of P.L.1999, c.23 (C.48:3-49 et al.);

7 "Retail margin" means an amount, reflecting differences in
8 prices that electric power suppliers and electric public utilities may
9 charge in providing electric generation service and basic generation
10 service, respectively, to retail customers, excluding residential
11 customers, which the board may authorize to be charged to
12 categories of basic generation service customers of electric public
13 utilities in this State, other than residential customers, under the
14 board's continuing regulation of basic generation service pursuant to
15 sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), for the
16 purpose of promoting a competitive retail market for the supply of
17 electricity;

18 "Sanitary landfill facility" shall have the same meaning as
19 provided in section 3 of P.L.1970, c.39 (C.13:1E-3);

20 "School district" means a local or regional school district
21 established pursuant to chapter 8 or chapter 13 of Title 18A of the
22 New Jersey Statutes, a county special services school district
23 established pursuant to article 8 of chapter 46 of Title 18A of the
24 New Jersey Statutes, a county vocational school district established
25 pursuant to article 3 of chapter 54 of Title 18A of the New Jersey
26 Statutes, and a district under full State intervention pursuant to
27 P.L.1987, c.399 (C.18A:7A-34 et al.);

28 "Shopping credit" means an amount deducted from the bill of an
29 electric public utility customer to reflect the fact that such customer
30 has switched to an electric power supplier and no longer takes basic
31 generation service from the electric public utility;

32 "Site investigation" shall have the same meaning as provided in
33 section 3 of P.L.1976, c.141 (C.58:10-23.11b);

34 "Small scale hydropower facility" means a facility located within
35 this State that is connected to the distribution system, and that
36 meets the requirements of, and has been certified by, a nationally
37 recognized low-impact hydropower organization that has
38 established low-impact hydropower certification criteria applicable
39 to: (1) river flows; (2) water quality; (3) fish passage and
40 protection; (4) watershed protection; (5) threatened and endangered
41 species protection; (6) cultural resource protection; (7) recreation;
42 and (8) facilities recommended for removal;

43 "Social program" means a program implemented with board
44 approval to provide assistance to a group of disadvantaged
45 customers, to provide protection to consumers, or to accomplish a
46 particular societal goal, and includes, but is not limited to, the
47 winter moratorium program, utility practices concerning "bad debt"
48 customers, low income assistance, deferred payment plans,

1 weatherization programs, and late payment and deposit policies, but
2 does not include any demand side management program or any
3 environmental requirements or controls;

4 "Societal benefits charge" means a charge imposed by an electric
5 public utility, at a level determined by the board, pursuant to, and in
6 accordance with, section 12 of P.L.1999, c.23 (C.48:3-60);

7 "Solar alternative compliance payment" or "SACP" means a
8 payment of a certain dollar amount per megawatt hour (MWh)
9 which an electric power supplier or provider may submit to the
10 board in order to comply with the solar electric generation
11 requirements under section 38 of P.L.1999, c.23 (C.48:3-87);

12 "Solar renewable energy certificate" or "SREC" means a
13 certificate issued by the board or its designee, representing one
14 megawatt hour (MWh) of solar energy that is generated by a facility
15 connected to the distribution system in this State and has value
16 based upon, and driven by, the energy market;

17 "Standard offer capacity agreement" or "SOCA" means a
18 financially-settled transaction agreement, approved by board order,
19 that provides for eligible generators to receive payments from the
20 electric public utilities for a defined amount of electric capacity for
21 a term to be determined by the board but not to exceed 15 years,
22 and for such payments to be a fully non-bypassable charge, with
23 such an order, once issued, being irrevocable;

24 "Standard offer capacity price" or "SOCP" means the capacity
25 price that is fixed for the term of the SOCA and which is the price
26 to be received by eligible generators under a board-approved
27 SOCA;

28 "State entity" means a department, agency, or office of State
29 government, a State university or college, or an authority created by
30 the State;

31 "Stranded cost" means the amount by which the net cost of an
32 electric public utility's electric generating assets or electric power
33 purchase commitments, as determined by the board consistent with
34 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), exceeds the
35 market value of those assets or contractual commitments in a
36 competitive supply marketplace and the costs of buydowns or
37 buyouts of power purchase contracts;

38 "Stranded costs recovery order" means each order issued by the
39 board in accordance with subsection c. of section 13 of P.L.1999,
40 c.23 (C.48:3-61) which sets forth the amount of stranded costs, if
41 any, the board has determined an electric public utility is eligible to
42 recover and collect in accordance with the standards set forth in
43 section 13 of P.L.1999, c.23 (C.48:3-61) and the recovery
44 mechanisms therefor;

45 "Thermal efficiency" means the useful electric energy output of a
46 facility, plus the useful thermal energy output of the facility,
47 expressed as a percentage of the total energy input to the facility;

1 "Transition bond charge" means a charge, expressed as an
2 amount per kilowatt hour, that is authorized by and imposed on
3 electric public utility ratepayers pursuant to a bondable stranded
4 costs rate order, as modified at any time pursuant to the provisions
5 of P.L.1999, c.23 (C.48:3-49 et al.);

6 "Transition bonds" means bonds, notes, certificates of
7 participation or beneficial interest or other evidences of
8 indebtedness or ownership issued pursuant to an indenture, contract
9 or other agreement of an electric public utility or a financing entity,
10 the proceeds of which are used, directly or indirectly, to recover,
11 finance or refinance bondable stranded costs and which are, directly
12 or indirectly, secured by or payable from bondable transition
13 property. References in P.L.1999, c.23 (C.48:3-49 et al.) to
14 principal, interest, and acquisition or redemption premium with
15 respect to transition bonds which are issued in the form of
16 certificates of participation or beneficial interest or other evidences
17 of ownership shall refer to the comparable payments on such
18 securities;

19 "Transition period" means the period from August 1, 1999
20 through July 31, 2003;

21 "Transmission and distribution system" means, with respect to an
22 electric public utility, any facility or equipment that is used for the
23 transmission, distribution or delivery of electricity to the customers
24 of the electric public utility including, but not limited to, the land,
25 structures, meters, lines, switches and all other appurtenances
26 thereof and thereto, owned or controlled by the electric public
27 utility within this State; **[and]**

28 "Universal service" means any service approved by the board
29 with the purpose of assisting low-income residential customers in
30 obtaining or retaining electric generation or delivery service; and

31 "Unsolicited advertisement" means any advertising claims of the
32 commercial availability or quality of services provided by an
33 electric power supplier which is transmitted to a potential customer
34 without that customer's prior express invitation or permission.

35 (cf: P.L.2012, c.24, s.1)

36
37 2. Section 36 of P.L.1999, c.23 (C.48:3-85) is amended to read
38 as follows:

39 36. a. Notwithstanding any provisions of the "Administrative
40 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
41 contrary, the board, in consultation with the Division of Consumer
42 Affairs in the Department of Law and Public Safety, shall initiate a
43 proceeding and shall adopt, after notice, provision of the
44 opportunity for comment, and public hearing, interim consumer
45 protection standards for electric power suppliers or gas suppliers,
46 within 90 days of February 9, 1999, including, but not limited to,
47 standards for collections, credit, contracts, authorized changes of an
48 energy consumer's electric power supplier or gas supplier, for the

1 prohibition of discriminatory marketing, for advertising and for
2 disclosure. Such standards shall be effective as regulations
3 immediately upon filing with the Office of Administrative Law and
4 shall be effective for a period not to exceed 18 months, and may,
5 thereafter, be amended, adopted or readopted by the board in
6 accordance with the provisions of the "Administrative Procedure
7 Act."

8 (1) Contract standards shall include, but not be limited to,
9 requirements that electric power supply contracts or gas supply
10 contracts must conspicuously disclose the duration of the contract;
11 state the price per kilowatt hour or per therm or other pricing
12 determinant approved by the board; have the customer's written
13 signature; the customer's electronic signature; an audio recording of
14 a telephone call initiated by the customer; independent, third-party
15 verification, in accordance with section 37 of P.L.1999, c.23
16 (C.48:3-86), of a telephone call initiated by an electric power
17 supplier, gas supplier or private aggregator; or such alternative
18 forms of verification as the board, in consultation with the Division
19 of Consumer Affairs, may permit for switching electric power
20 suppliers or gas suppliers and for contract renewal; and include
21 termination procedures, notice of any fees, and toll-free or local
22 telephone numbers for the electric power supplier or gas supplier
23 and for the board.

24 (2) Standards for the prohibition of discriminatory marketing
25 standards shall provide at a minimum that a decision made by an
26 electric power supplier or a gas supplier to accept or reject a
27 customer shall not be based on race, color, national origin, age,
28 gender, religion, source of income, receipt of public benefits, family
29 status, sexual preference, or geographic location. The board shall
30 adopt reporting requirements to monitor compliance with such
31 standards.

32 (3) Advertising standards for electric power suppliers or gas
33 suppliers shall provide, at a minimum, that optional charges to the
34 consumer will not be added to any advertised cost per kilowatt hour
35 or per therm, and that the only unit of measurement that may be
36 used in advertisements is cost per kilowatt hour or per therm, unless
37 otherwise approved by the board. If an electric power supplier or
38 gas supplier does not advertise using cost per kilowatt hour or per
39 therm, the electric power supplier or gas supplier shall provide, at
40 the consumer's request, an estimate of the cost per kilowatt hour or
41 per therm. Any optional charges to the consumer shall be identified
42 separately and denoted as optional.

43 (4) Credit standards shall include, at a minimum, that the credit
44 requirements used to make offer decisions must be the same for all
45 residential customers and that electric power suppliers, gas
46 suppliers, and private aggregators not impose unreasonable income
47 or credit requirements.

1 (5) Billing standards shall include, at a minimum, provisions
2 prohibiting electric public utilities, gas public utilities, electric
3 power suppliers, and gas suppliers from charging a fee to residential
4 customers for either the commencement or termination of electric
5 generation service or gas supply service.

6 b. (1) Except as provided in paragraph (2) of this subsection, an
7 electric power supplier, a gas supplier, an electric public utility, and
8 a gas public utility shall not disclose, sell or transfer individual
9 proprietary information, including, but not limited to, a customer's
10 name, address, telephone number, energy usage and electric power
11 payment history, to a third party without the consent of the
12 customer.

13 (2) (a) An electric public utility or a gas public utility may
14 disclose and provide, in an electronic format, which may include a
15 CD rom, diskette, and other format as determined by the board,
16 without the consent of a residential customer, a residential
17 customer's name, rate class, and account number, to a government
18 aggregator that is a municipality or a county, or to an energy agent
19 acting as a consultant to a government aggregator that is a
20 municipality or a county, if the customer information is to be used
21 to establish a government energy aggregation program pursuant to
22 sections 42, 43, and 45 of P.L.1999, c.23 (C.48:3-91; 48:3-92; and
23 48:3-94). The number of residential customers and their rate class,
24 and the load profile of non-residential customers who have
25 affirmatively chosen to be included in a government energy
26 aggregation program pursuant to paragraph (3) of subsection a. of
27 section 45 of P.L.1999, [c 23] c.23 (C.48:3-94) may be disclosed
28 pursuant to this paragraph prior to the request by the government
29 aggregator for bids pursuant to paragraph (1) of subsection b. of
30 section 45 of P.L.1999, c.23 (C.48:3-94), and the name, address,
31 and account number of a residential customer and the name,
32 address, and account number of non-residential customers who have
33 affirmatively chosen to be included in a government energy
34 aggregation program pursuant to paragraph (3) of subsection a. of
35 section 45 of P.L.1999, c.23 (C.48:3-94) may be disclosed pursuant
36 to this paragraph upon the awarding of a contract to a licensed
37 power supplier or licensed gas supplier pursuant to paragraph (2) of
38 subsection b. of section 45 of P.L.1999, c.23. Any customer
39 information disclosed pursuant to this paragraph shall not be
40 considered a government record for the purposes of, and shall be
41 exempt from the provisions of P.L.2001, c.404.

42 (b) An electric public utility or a gas public utility disclosing
43 customer information pursuant to this paragraph shall exercise
44 reasonable care in the preparation of this customer information, but
45 shall not be responsible for errors or omissions in the preparation or
46 the content of the customer information.

47 (c) Any person using any information disclosed pursuant to this
48 paragraph for any purpose other than to establish a government

1 energy aggregation program pursuant to sections 42, 43 and 45 of
2 P.L.1999, c.23 (C.48:3-91; 48:3-92; and 48:3-94) shall be subject to
3 the provisions of section 34 of P.L.1999, c.23 (C.48:3-83).

4 (d) The role of an electric public utility or a gas public utility in
5 a government energy aggregation program established pursuant to
6 P.L.1999, c.23 (C.48:3-49 et al.) shall be limited to the provisions
7 of this paragraph.

8 (3) Whenever any individual proprietary information is
9 disclosed, sold or transferred, pursuant to paragraph (1) or
10 paragraph (2) of subsection b. of this section, it shall be used only
11 for the provision of continued electric generation service, electric
12 related service, gas supply service or gas related service to that
13 customer. In the case of a transfer or sale of a business, customer
14 consent shall not be required for the transfer of customer
15 proprietary information to the subsequent owner of the business for
16 maintaining the continuation of such services.

17 (4) Notwithstanding any provisions of the "Administrative
18 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
19 contrary, the board shall, within 90 days of the effective date of
20 P.L.2003, c.24 (C.48:3-93.1 et al.), review existing regulations
21 including, without limitation, Chapter 4 of Title 14 of the New
22 Jersey Administrative Code (Energy Competition Standards), to
23 determine their consistency with the provisions of section 36 of
24 P.L.1999, c.23 (C.48:3-85), section 43 of P.L.1999, c.23 (C.48:3-
25 92) and section 45 of P.L.1999, c.23 (C.48:3-94), shall repeal or
26 modify any regulations that are inconsistent with the provisions
27 thereof and shall adopt regulations and standards implementing the
28 provisions thereof permitting disclosure of customer information
29 without the consent of the customer including, without limitation,
30 provisions for the development of a board-approved agreement
31 between the disclosing party and the receiving party and the
32 creation of a mechanism for the recovery by the disclosing electric
33 public utility or gas public utility of its reasonable incremental costs
34 of providing such information if such costs are not covered in an
35 existing third party supplier agreement.

36 (5) An electric power supplier, a gas supplier, a gas public
37 utility, or an electric public utility may use individual proprietary
38 information that it has obtained by virtue of its provision of electric
39 generation service, electric related service, gas supply service, or
40 gas related service to:

41 (a) Initiate, render, bill, and collect for such services to the
42 extent otherwise authorized to provide billing and collection
43 services;

44 (b) Protect the rights or property of the electric power supplier,
45 gas supplier, or public utility; and

46 (c) Protect consumers of such services and other electric power
47 suppliers, gas suppliers, or electric and gas public utilities from

1 fraudulent, abusive or unlawful use of, or subscription to, such
2 services.

3 c. The board shall establish and maintain a database for the
4 purpose of recording customer complaints concerning electric and
5 gas public utilities, electric power suppliers, gas suppliers, private
6 aggregators, and energy agents.

7 d. The board, in consultation with the Division of Consumer
8 Affairs in the Department of Law and Public Safety, shall establish,
9 or cause to be established, a multi-lingual electric and gas consumer
10 education program. The goal of the consumer education program
11 shall be to educate residential, small business, and special needs
12 consumers about the implications for consumers of the restructuring
13 of the electric power and gas industries. The consumer education
14 program shall include, but need not be limited to, the dissemination
15 of information to enable consumers to make informed choices
16 among available electricity and gas services and suppliers, and the
17 communication to consumers of the consumer protection provisions
18 of ~~the act~~ P.L.1999, c.23 (C.48:3-49 et al.).

19 The board shall ensure the neutrality of the content and message
20 of advertisements and materials.

21 The board shall promulgate standards for the recovery of
22 consumer education program costs from customers which include
23 reasonable measures and criteria to judge the success of the
24 program in enhancing customer understanding of retail choice.

25 e. (Deleted by amendment, P.L.2003, c.24).

26 f. (1) In addition to the advertising standards adopted by the
27 board pursuant to paragraph (3) of subsection a. of this section, and
28 notwithstanding any provisions of the "Administrative Procedure
29 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), or any other law, rule,
30 regulation, or order to the contrary, the board, in consultation with
31 the Division of Consumer Affairs in the Department of Law and
32 Public Safety, shall initiate a proceeding and shall adopt, after
33 notice, provision of the opportunity for comment, and public
34 hearing, interim advertising and marketing standards for electric
35 power suppliers, within 90 days of the effective date of P.L. _____,
36 c. _____) (pending before the Legislature as this bill), which
37 standards shall include, but not limited to, prohibiting an electric
38 power supplier from purposely and knowingly: (a) making false or
39 misleading advertising claims to a potential customer; or (b)
40 contacting a potential customer via telephone more than once per
41 calendar year for the purpose of making an unsolicited
42 advertisement if the electric power supplier does not have an
43 existing business relationship with the potential customer. Such
44 standards shall be effective as regulations immediately upon filing
45 with the Office of Administrative Law and shall be effective for a
46 period not to exceed 18 months, and may, thereafter, be amended,
47 adopted, or readopted by the board in accordance with the
48 provisions of the "Administrative Procedure Act."

1 (2) In addition to any other penalties, fines, or remedies
2 authorized by law, any electric power supplier that violates this
3 subsection and collects charges for electric power supply services
4 supplied to a customer shall be shall be liable to the customer an
5 amount equal to all charges paid by the customer after such
6 violation in accordance with any procedures as the board may
7 prescribe. Any electric power supplier that violates this subsection
8 shall also be liable for a civil penalty pursuant to section 34 of
9 P.L.1999, c.23 (C.48:3-83). The board is hereby authorized to
10 revoke the license of any electric power supplier that violates this
11 subsection.

12 (cf: P.L.2003, c.24, s.3)

13

14 3. This act shall take effect immediately.

15

16

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STATEMENT

18

19 This bill requires the Board of Public Utilities (“BPU”) to adopt
20 advertising and marketing standards for electric power suppliers
21 which would prohibit suppliers from purposeful and knowing: 1)
22 making of false or misleading advertising claims to a potential
23 customer; or 2) initiation of contact with a potential customer via
24 telephone more than once per calendar year for the purpose of
25 making an unsolicited advertisement if the electric power supplier
26 does not have an existing business relationship with the potential
27 customer. The terms “unsolicited advertisement” and “existing
28 business relationship” are both defined in the bill.

29 The bill provides that any electric power supplier that violates
30 the above provisions and, in doing so, collects charges for electric
31 power supply services from a customer, shall be liable to the
32 customer in an amount equal to all charges paid by the customer
33 after such violation in accordance with any procedures as the BPU
34 may prescribe. Further, any electric power supplier that violates the
35 above provisions shall be liable for a civil penalty of not more than
36 \$10,000 for the first offense, and not more than \$25,000 for the
37 second and each subsequent offense, for each day that the violation
38 continues. Any civil penalty which may be imposed may be
39 compromised by the BPU. In determining the amount of the
40 penalty, or the amount agreed upon in compromise, the BPU shall
41 consider: 1) the nature, circumstances and gravity of the violation;
42 2) the degree of the violator's culpability; 3) any history of prior
43 violations; 4) the prospective effect of the penalty on the ability of
44 the violator to conduct business; 5) any good faith effort on the part
45 of the violator in attempting to achieve compliance; 6) the violator's
46 ability to pay the penalty; and 7) other factors the BPU determines
47 to be appropriate. Similar penalty provisions currently apply to
48 those electric power and gas suppliers who have been found guilty

S2308 GREENSTEIN

22

1 of making unauthorized changes to a customer's electric power
2 supplier or gas supplier, a practice commonly known as
3 "slamming."

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 2308

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 24, 2013

The Senate Economic Growth Committee reports favorably Senate Bill No. 2308 with committee amendments.

As amended and reported, this bill requires the Board of Public Utilities (BPU) to adopt advertising and marketing standards for electric power and natural gas suppliers (suppliers) and its agents, which would prohibit suppliers and its agents from: 1) making false or misleading advertising claims to a potential residential customer; or 2) initiation of contact with a potential residential customer via telephone more than once per calendar year for the purpose of making an unsolicited advertisement if these suppliers or their agents do not have an existing business relationship with the potential residential customer. The terms "unsolicited advertisement" and "existing business relationship" are both defined in the bill. "Electric power supplier," as defined under current law, includes electric load serving entities, marketers, and brokers that also offer or provide electric generation service to retail customers, but excludes electric public utilities that provide electric generation service only as a basic generation service. "Gas supplier," as defined under current law, means a person that is duly licensed to offer and assume the contractual and legal obligation to provide gas supply service to retail customers, and includes, but is not limited to, marketers and brokers.

The bill provides that suppliers or its agents that violate the bill's provisions prohibiting the making of false or misleading advertising claims to a potential residential customer and, in doing so, collect charges for electric power or gas supply services from a residential customer, is to be liable to the customer in an amount equal to all charges paid by the residential customer after such violation in accordance with any procedures as the BPU may prescribe. Suppliers and its agents that violate the bill's provisions are to be liable for a civil penalty of not more than \$10,000 for the first offense, and not more than \$25,000 for the second and each subsequent offense, for each day that the violation continues. Any civil penalty which may be imposed may be compromised by the BPU. In determining the amount of the penalty, or the amount agreed upon in compromise, the BPU shall consider: 1) the nature, circumstances and gravity of the

violation; 2) the degree of the violator's culpability; 3) any history of prior violations; 4) the prospective effect of the penalty on the ability of the violator to conduct business; 5) any good faith effort on the part of the violator in attempting to achieve compliance; 6) the violator's ability to pay the penalty; and 7) other factors the BPU determines to be appropriate. Similar penalty provisions currently apply to those suppliers who have been found guilty of making unauthorized changes to a customer's electric power or gas supply services, a practice commonly known as "slamming." Further, the bill authorizes the BPU to revoke the license of suppliers that violate the provisions of the bill.

The committee amended the bill to: 1) add gas suppliers and agents of electric power and gas suppliers to the bill's provisions; 2) clarify that the prohibitions placed on suppliers and its agents apply to their interactions with residential customers only; 3) clarify that suppliers and its agents that violate the bill's provisions prohibiting the making of false or misleading advertising claims to a potential residential customer and, in doing so, collect charges for electric power or gas supply services from a residential customer, are to be liable to that customer in an amount equal to all charges paid by the residential customer after such violation in accordance with any procedures as the BPU may prescribe; 4) remove the term "purposely and knowingly" from the condition by which suppliers or its agents could violate the BPU's advertising and marketing standards; and 5) extend the period of time given to the BPU and the Division of Consumer Affairs in the Department of Law and Public Safety to adopt interim advertising and marketing standards from 90 days to 270 days. The committee also made technical amendments to correct punctuation and grammar in the bill.

STATEMENT TO
[First Reprint]
SENATE, No. 2308

with Senate Floor Amendments
(Proposed by Senator GREENSTEIN)

ADOPTED: DECEMBER 19, 2013

These Senate floor amendments: 1) add the entities “brokers,” “energy agents,” “marketers,” “private aggregators,” “sales representatives,” and “telemarketers” to the bill’s provisions and provide that they are treated in the same manner as electric power suppliers; 2) provide definitions for the terms “sales representative,” “telemarketer,” and “telemarketing sales call”; 3) provide in the definition of “existing business relationship” that a customer receiving electric or gas supply services through the customer’s electric or gas public utility is not sufficient on its own to establish an existing business relationship; 4) remove contacting a potential residential customer by telephone more than once per calendar year from the condition by which an electric power or gas supplier or its agents could violate the Board of Public Utilities’ (BPU) advertising and marketing standards; 5) add the condition applicable to electric power and gas suppliers, brokers, energy agents, marketers, private aggregators, “sales representatives,” and telemarketers of contacting by telephone a potential residential customer whose telephone number appears on the State or federal do-not-call lists as a violation of those advertising and marketing standards; and 6) have the BPU adopt interim advertising and marketing standards applicable to electric power suppliers, gas suppliers, brokers, energy agents, marketers, private aggregators, sales representatives, and telemarketers pursuant to the "Administrative Procedure Act."