

SPECIAL ADOPTION

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Third Party Suppliers Advertising and Marketing Standards

Special Adopted Amendments: N.J.A.C. 14:47.2, 7.3, and 7.4

Special Adopted New Rule: N.J.A.C. 14:4-7.13

Special Amendments and New Rules Adopted: September 30, 2014, by the New Jersey Board of Public Utilities, Dianne Solomon, President, Joseph L. Fiordaliso and Mary-Anna Holden, Commissioners.

Filed: September 30, 2014, as R.2014 d.159.

Authority: N.J.S.A. 48:3-51 and 48:3-85 et seq.

BPU Docket Number: EX14060610

Effective Date: September 30, 2014.

Expiration Date: March 30, 2016.

Take notice that the Board of Public Utilities has adopted amendments at N.J.A.C. 14:4-7.2, 7.3, and 7.4 and new rule at N.J.A.C. 14:4-7.13, to codify new statutory requirements enacted through P.L. 2013, c. 263, which amended N.J.S.A. 48:3-51 and 48:3-85. The rules are designed to prohibit certain energy suppliers from making false and misleading claims to potential customers and to prohibit suppliers' calls to customers where no business relationship exists if those individuals are on the Do Not Call list.

These specially adopted new rules will remain in effect until March 30, 2016 or until the rules are proposed for public comment and readopted through standard rulemaking procedures.

Full text of the special adoption follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 4. RETAIL CHOICE CONSUMER PROTECTION

14:4-7.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. In addition, definitions set forth at N.J.A.C. 14:4-1.2 and 14:3-1.1 shall apply to this subchapter, unless the context clearly indicates otherwise.

"Existing business relationship" means a relationship formed by a voluntary two-way communication between an electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer and a customer regardless of an exchange of consideration, on the basis of an inquiry, application, purchase, or transaction initiated by the customer regarding products or services offered by the electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer; however, a customer's use of electric generation service or gas supply service through the customer's electric public utility or gas public utility shall not constitute or establish an existing business relationship.

...

"Sales representative" means a person employed by, acting on behalf of, or as an

independent contractor for, an electric power supplier, gas supplier, broker, energy agent, marketer, or private aggregator who, by any means, solicits a potential residential customer for the purpose of providing electric generation service or gas supply service to that customer.

“Telemarketer” shall have the same meaning as set forth in N.J.S.A. 56:8-120.

“Telemarketing sales call” means a telephone call made by a telemarketer to a potential residential customer as part of a plan, program, or campaign to encourage the customer to change the customer’s electric power supplier or gas supplier. A telephone call made to an existing customer of an electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, or sales representative, for the sole purpose of collecting on accounts or following up on contractual obligations, shall not be deemed a telemarketing sales call. A telephone call made in response to an express written, electronic, or telephonic request of a customer shall not be deemed a telemarketing sales call.

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

14:4-7.3 Advertising standards

(a)-(c) (No change.)

(d) In the advertisement of their services, electric power suppliers, gas suppliers, brokers, energy agents, marketers, private aggregators, sales representatives, and telemarketers are prohibited from:

1. Making false or misleading advertising claims to a potential residential customer;

2. Contacting a potential residential customer by telephone for the purpose of making an unsolicited advertisement, if the electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer does not have an existing business relationship with the potential residential customer and the residential customer's telephone number appears on the no telemarketing call list established and maintained by the Division of Consumer Affairs, pursuant to N.J.S.A. 56:8-127 or any successor statute, or the national do-not-call registry as maintained by the Federal Trade Commission.

(e) Any complaints related to violations of (d)2 above shall be forwarded to the Division of Consumer Affairs for further investigation.

14:4-7.4 Marketing standards

(a)-(m) (No change.)

(n) In the marketing of their services, electric power suppliers, gas suppliers, brokers, energy agents, marketers, private aggregators, sales representatives, and telemarketers are prohibited from:

1. Making false or misleading marketing claims to a potential residential customer;

2. Contacting a potential residential customer by telephone for the purpose of the marketing of their services, if the electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer does not have an existing business relationship with the potential residential customer and the residential customer's telephone number appears on the no telemarketing call list established and maintained by the Division of Consumer Affairs or the national do-not-call registry as maintained by the Federal Trade Commission.

(o) Any complaints related to (n)2 above shall be forwarded to the Division of Consumer Affairs for further investigation.

14:4-7.13 Penalties

(a) In addition to any other penalties, fines, or remedies authorized by law, an electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer that violates the provisions of N.J.A.C. 14:4-7.3(d)1 and 7.4(n)1 and collects charges for electric generation service or gas supply service from a residential customer who was subjected to false or misleading advertising or marketing claims by the electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer in violation of the provisions of N.J.A.C. 14:4-7.3(d)1 and 7.4(n)1:

1. Shall be liable to the residential customer in an amount equal to all charges paid by the residential customer after such violation occurs in accordance with any procedures as the board may prescribe, whether the electric power supplier or gas supplier provided the electric generation service or gas supply service to that customer,

or the electric generation service or gas supply service was provided to the customer by a broker, energy agent, marketer, private aggregator, sales representative, or telemarketer who contacted the customer on behalf of the electric power supplier or gas supplier; and

2. Shall be liable for a civil penalty pursuant to N.J.S.A. 48:3-83.

(b) The Board is hereby authorized to revoke the license of any electric power supplier, gas supplier, broker, energy agent, marketer, or private aggregator found in violation of N.J.A.C. 14:4-7.3(d) or 7.4(n).