

**Final Report
Focused Audit of Affiliated Transactions
and Management Audit
of the New Jersey Natural Gas Company**

EDECA Affiliate Standards

Volume Four

**Public Version
(No Confidential Version Exists)**

Presented to the:

**Division of Audits
New Jersey Board of Public Utilities**

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*EDECA Affiliate Standards
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I. Background

A. Introduction

This chapter of Liberty's report describes the results of its audit of NJNG/NJR performance under the affiliate standards (*Standards*) that the Board has adopted to enforce the New Jersey Electric Discount and Energy Competition Act, N.J.S.A. 48:3 -49 *et seq.* (*EDECA*). Liberty also conducted a detailed examination of cost allocation and assignment, which form a principal focus of EDECA. The report of that examination addresses the cost allocation and assignment portions of the Standards. The specific categories into which Liberty divided the audit work addressed by this report include:

- NJR's Retail Competitive Services
- General Administration of the Standards
- Employees Guidance and Training
- Non-Discrimination
- Information Disclosure
- Separation
- Follow-up from Prior EDECA Audit.

The Standards contemplate five principal types of entities:

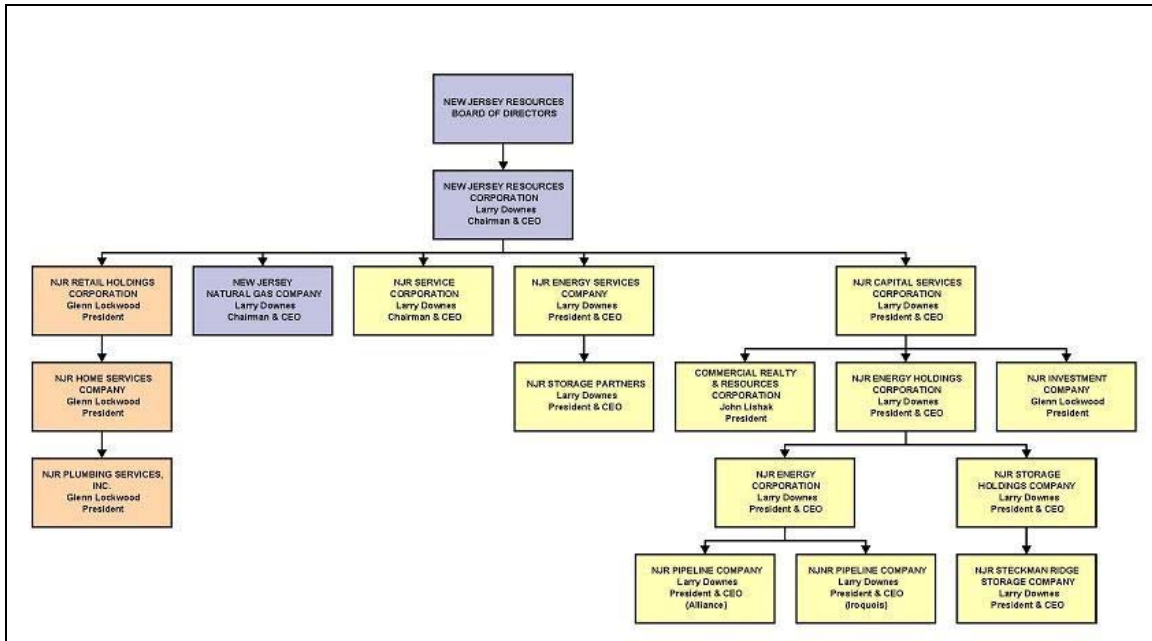
- Electric or gas public utilities
- Related competitive business segments of the electric or gas public utilities
- Public utility holding companies
- Related competitive business segments of the public utility holding companies
- Service companies.

The principal components of the Standards fall into four main categories:

- Non-Discrimination (Section 14:4-5.3)
- Information Disclosure (Section 14:4-5.4)
- Separation (Section 14:4-5.5)
- Utility Retail Competitive Business Segment Standards (Section 14:4-5.6).

These four components do not apply to the same types of transactions. For example, the standards set forth in Sections 14:4-5.3, 14:4-5.4 and 14:4-5.5 apply to transactions between the utility, on the one hand, and its public utility holding company or a related competitive business segment (*RCBS*) of its public utility holding company that is offering or providing retail services to customers in New Jersey, on the other hand. These three components do not apply to transactions between a utility and an *RCBS* under its ownership, however. Conversely, the Section 14:4-5.6 standards do apply to transactions between a utility and its own *RCBS*; however, they do not apply to transactions between the utility and its public utility holding company or an *RCBS* of its public utility holding company. There is substantial overlap among the standards set forth in Sections 14:4-5.3, 14:4-5.4, and 14:4-5.5, however. Similarly, there is overlap among them and the Section 14:4-5.6 standards.

The following chart shows NJR's Corporate Structure and Company Officers:



B. Summary of Recommendations

ED-1. Treat CR&R as an NJR holding company RCBS for purposes of applying the standards.

ED-2. Update the Compliance Plan to include which individuals or departments have responsibility for enforcement of each section of the Standards. (Conclusion #1)

ED-3. Make the disclaimer on the NJRHS pages of the website visible within the range of information and links that viewers can observe without scrolling to a point below the normal range of view and eliminate the visual bar above the disclaimer.

ED-4. Promptly address the question of NJNG's provision of billing, remittance processing, and credit and collections services and accounts receivable purchasing for NJRHS.

ED-5. Provide a more comprehensive description of what constitutes customer-proprietary information subject to protection under Section 14:4-5.4(a).

ED-6. Establish a program for periodic monitoring calls to assure that there is no improper use of utility customer information by or for NJRHS.

ED-7. Provide a more comprehensive description of what constitutes other non-public information subject to protection under Section 14:4-5.4(b).

ED-8. Update Compliance Plan Exhibit Q, "Information Systems Access Guidelines," to provide the proper link to the information required by this section of the Standards.

ED-9. Develop and maintain a current list of data bases as well as a master list of which departments and which employees have access to them; institute effective controls for limiting access to authorized persons.

ED-10. Update the Compliance Plan to include guidance on the Utility providing structured joint product or service offerings with an RCBS.

ED-11. Review all NJRHS marketing materials and communications to verify that the required disclaimer is sufficiently prominent and make appropriate changes.

ED-12. Update the Compliance Plan to specifically address the Standards' provision against advertising in utility bill inserts.

ED-13. End NJRHS's display in the lobby that customers use to gain access to NJNG customer representatives.

ED-14. Provide for competitor participation in programs by which NJNG offers financing, payment deferral, or any other concession on or related to a customer's utility account or bill.

ED-15. Route NJRHS calls through a number that does not identify NJNG; or secure a BPU order permitting the practice.

ED-16. Preclude the sharing of utility customer satisfaction results with NJRHS.

ED-17. Ensure that NJNG financial policies and decisions are not overseen by the NJR CFO, or alter the officer structure of NJRHS and CR&R to exclude him.

ED-18. Change the officers of CR&R in order to reach compliance with this section of the Standards.

ED-19. Make the required annual reporting to the BPU of covered employee transfers.

ED-20. Include in job postings, where applicable, a notice of the need for preservation of the confidentiality of protected information.

ED-21. Include in the Compliance Plan a specific reference to the need for preservation of the confidentiality of protected information for transferred employees.

ED-22. Make explicit the Compliance Plan's inclusion of intellectual property in asset transfer provisions and provide a sufficient explanation of what is covered to put all employees on notice of the types of intangible property that is covered.

II. NJR's Retail Competitive Services

A. Background

NJR is a New Jersey corporation that serves as a holding company. NJR now has five major subsidiaries:

- New Jersey Natural Gas Company (*NJNG*) is the local-distribution public-utility company, of which NJR owns all the outstanding common stock
- NJR Energy Services (*NJRES*) is NJR's principal non-utility subsidiary, founded in 1996. NJRES provides non-utility wholesale energy services including natural gas supply, pipeline capacity, storage management, capacity release, balancing, optimization, and hedging and options.
- NJR Service Corporation was formed in August 2000 as a non-utility, wholly-owned subsidiary of NJR. NJR Service Corporation provides shared administrative services, including corporate communications, financial and administrative services, internal audit, legal, human resources, and technology services for NJR and its subsidiaries.
- NJR Retail Holdings was formed in 2001 as a non-utility sub-holding company of NJR in order to consolidate NJR's non-utility retail operations. NJR Home Services (*NJRHS*), formed in 1998, operates as the principal arm of NJR Retail Holdings. It was formed to provide home-appliance service, sales, and installations to customers in Ocean, Monmouth, Morris and Middlesex counties. NJNG transferred its appliance service business to NJRHS in 2001. NJRHS services include installation, repair, and maintenance of appliances, duct cleaning, and services contracts. NJRHS formed NJR Plumbing Services as a subsidiary in 2001, to provide plumbing services.
- NJR Capital Services was formed as a non-utility affiliate and sub-holding company to consolidate NJR's energy-related and real estate investments. Capital Services includes the following wholly-owned subsidiaries:
 - Commercial Realty & Resources (*CR&R*), which was formed in May 1966 to hold and develop commercial real estate
 - NJR Energy Holdings, which invests primarily in energy-related ventures through an operating subsidiary, NJNR Pipeline, which holds the Company's 5.53 percent interest in Iroquois Gas and Transmission System, LLP; NJR Energy Holdings also includes NJR Energy
 - NJR Investment, which was formed in October 2000 to make energy-related equity investments.

NJR had a number of discontinued businesses during the audit period. The following table summarizes these affiliates, their date of inception, and date of dissolution:

NJR Discontinued Subsidiaries

<i>Name</i>	<i>Formed</i>	<i>Dissolved</i>
Lighthouse One, Inc.	4/19/1993	6/1/2004
Natural Resources Compressor Company	8/10/90	6/14/2005
NJR Natural Energy Company	6/2/1995	4/7/2006

New Jersey Natural Resources Company	9/30/1976	2/14/2005
NJR Power Services Corporation	5/1/2000	6/2/2005
NJR Storage Company	7/24/2002	6/1/2005
Paradigm Power, Inc.	3/25/1992	6/14/2005

Liberty's first effort in this portion of its examination of NJNG/NJR was to determine which affiliates the company considered to be covered by the Standards.

B. Findings

NJR provided a list of products and services provided by each NJR business, and how it classifies each entity:

- New Jersey Resources: Parent holding company
- New Jersey Natural Gas Company (Utility): Energy services to residential, commercial, and industrial customers in Monmouth and Ocean counties, and part of Morris and Middlesex counties
- NJR Service Corporation (Non-retail affiliate): Shared administrative services for all affiliates
- NJR Retail Holdings (Retail affiliate): Owns NJR Home Services Company and NJR Natural Energy Company
- NJR Home Services Company (Retail affiliate): Appliance installation, sales, and repair services; owns NJR Plumbing Services
- NJR Plumbing Services, Inc. (Retail affiliate): Plumbing services for customers of NJR Home Services
- NJR Energy Services Company (Non-retail affiliate): Unregulated wholesale energy services, including natural gas supply, pipeline capacity, and storage management; owns NJR Storage Partners
- NJR Storage Partners (Non-retail affiliate): Natural gas storage capacity and wholesale natural gas marketing
- NJR Capital Services Corporation (Non-retail affiliate): Owns Commercial Realty & Resources Corporation, NJR Investment Company, and NJR Energy Holdings Corporation
- Commercial Realty & Resources Corporation (Non-retail affiliate): Development and ownership of commercial office and mixed use commercial and industrial real estate projects
- NJR Investment Company (Non-retail affiliate): Energy-related equity investments
- NJR Energy Holdings (Non-retail affiliate): Owns NJR Energy Corporation
- NJR Energy Corporation (Non-retail affiliate): Investment in energy-related ventures through two wholly-owned subsidiaries, NJR Pipeline Company and NJNR Pipeline Company
- NJR Pipeline Company (Non-retail affiliate): Pipeline investments
- NJNR Pipeline Company (Non-retail affiliate): Ownership of percentage of Iroquois Gas Transmission System, L.P., an interstate pipeline subject to FERC jurisdiction.

NJR considered the services provided by NJRHS to be the only competitive service that any NJR affiliate provided during the audit period. NJNG has no RCBS.

C. Conclusions

1. NJR operates an RCBS (CR&R) that it does not acknowledge as such. (*Recommendation #1*)

CR&R provides retail services to end-use customers. The Company's position that CR&R does not provide a retail competitive service to end-use customers and, therefore, is not an RCBS misconstrues the intent of EDECA and the Standards. The Standards have the clear intent of protecting third-party competitors against showing affiliates and subsidiaries forms of favoritism that arise from utility operations and relationships with customers. The effectiveness of the Standards in meeting this goal would substantially diminish under the Company's interpretation. It would make the application of the protections effective only where a holding company chose to make the same products and services available both through utility and non-utility affiliates. A holding company could make it lawful to use utility operations to favor or subsidize a non-utility affiliate simply by discontinuing or never initiating similar services through its utility. No language in the Standards supports such a distinction. That lack, and the fact that the Company's interpretation would allow facile frustration of the central purposes of the Standards, makes the Company's interpretation inappropriate.

D. Recommendations

1. Treat CR&R as an NJR holding company RCBS for purposes of applying the standards. (*Conclusion #1*)

NJR does not recognize CR&R as an RCBS; however, it does seek to prevent cross subsidization of its business directly or indirectly by NJNG. Moreover, apart from common senior management, CR&R operates largely without significant utility interaction or support needs. Adoption of the recommendation is not necessary to address cross subsidization issues; the primary impact would be in the structural and information-disclosure areas addressed by the standards.

In addition, Liberty understands that CR&R is not engaging in additional acquisitions, but instead is working to develop or sell its existing inventory or real-estate assets. Should NJR adopt a plan with reasonably near term dates for the completion of CR&R business activities, it may be appropriate for the BPU to consider a waiver of the standards in order to facilitate a wind-down of CR&R.

III. General Administration of the Standards

This section of Liberty's report addresses how NJNG/NJR generally administers the Standards. Sound administration of the Standards requires a formal approach, a focus on training and communication, and the dedication of resources sufficient to assuring a proper environment for assuring compliance with the Standards.

A. Findings

Initially NJR developed a cross-departmental team to ensure compliance with the Standards. The Regulatory Affairs Department and Legal Department have the primary responsibility for preparing the Compliance Plan. Presently the Director, Regulatory Affairs Counsel has general responsibility for the Compliance Plan. The finance and accounting group in the Service Company has primary responsibility for maintaining the CAM.

The company prepares routine reports providing management with summary information about the level of services and charges being made among affiliates. Each quarter, the finance group prepares and issues a report titled "Allocation Statements to Affiliates." Each affiliate (but not NJR Corporate) receives a report showing:

- Charges from the Service Company showing major expense categories
- Detail of the labor allocation from the Service Company, showing departmental sources of labor
- Allocations from the NJNG general services pools.

The report shows the allocated and direct charges from NJNG to Home Services for shared services. It also lists charges from NJNG for energy services to NJRES and NJR Energy. The report does not show direct charges, such as those from NJRES to NJNG for energy-related employees.

The Company audits compliance with the Standards on a five-year cycle, with the most recent audits completed in 2001 and 2006. As a general rule, the auditing group tries to avoid duplicating the same areas as the BPU's EDECA audits, instead selecting specific cost allocation and operational issues on which to focus. The 2001 audit, for example recalculated cost pool allocations, tested automated journal entries associated with Service Company allocations, traced Service Company charges to supporting documentation, reconciled labor charges to supporting time sheets, and substantiated documentation underlying charges to NJRHS.

The 2006 audit reviewed cost allocations for reasonableness, including a review of underlying work sheets used to calculate allocation percentages. The EDECA audit in 2003 had reviewed cost allocations in some detail; therefore, the Company decided to place a stronger emphasis in the 2006 audit on operational issues. Work completed as part of the 2006 audit included:

- Reviewing NJR's department and management structure to ensure that NJRHS and NJNG as truly separate
- Determining whether employees have access to the either the NJNG or NJRHS JD Edwards system, but not both
- Ensuring that customer service representative serving both NJNG and NJRHS are properly trained in fair competition guidelines

- Reviewing service agreements to make sure they are current and signed by appropriate corporate officers
- Reviewing employee transfers and affiliate rules regarding external complaint procedures.

The 2006 audit also included follow-up to the 2003 EDECA audit. In response to Liberty's current audit, the internal audit group has added to its schedule a yearly audit of gas supply transactions and employee time charges between NJRES and NJNG.

NJNG/NJR received one complaint during the audit period regarding facilities, employees, marketing information, products, and services. Competitors complained about promotions for heater conversions. Liberty addresses the complaint later in Chapter V.M. of this report, which addresses Section 14:4-5.3(m) of the Standards.

B. Conclusions

1. The Company has made a sufficiently senior person responsible for the Compliance Plan.

The Director, Regulatory Affairs Counsel has general responsibility for the Compliance Plan.

2. The Company conducts regular audits of compliance with selected requirements of the Standards.

The scope of these audits complements the BPU's EDECA audits and varies to address issues of emerging importance.

3. The Compliance Plan does not always address who is responsible for enforcement of each section the Standards. (Recommendation #1)

The plan does identify responsibility in most cases, but not all.

C. Recommendations

1. Update the Compliance Plan to include which individuals or departments have responsibility for enforcement of each section of the Standards. (Conclusion #1)

IV. Employee Guidance and Training

This section of Liberty's report addresses NJNG/NJR's use of employee guidance and training to help its employees understand the rules, to stress the importance of meeting them, and to provide specific guidance in adhering to them.

A. Findings

The Legal Department conducts an annual training program that addresses employee obligations that must be met to satisfy the Standards. This training is part of the annual Code of Conduct training, and is mandatory for all employees. Additionally, the annual Compliance Plan is periodically provided to all employees. Liberty reviewed the 2006 Code of Conduct and the 2006 Affiliates Standard Overview package from the Code of Conduct training in order to assess its sufficiency and completeness in making employees aware of the requirements of the Standards, of the specific actions and prohibitions that they must take to assure compliance, and of the importance that NJNG attaches to remaining in compliance.

The 2006 Affiliate Standards Overview document includes:

- Background on the EDECA Standards
- The goal of the Standards and why they were established
- Approved and forbidden interaction between NJNG and NJRHS (the RCBS)
- What departments are impacted by the Standards

The document concludes by reminding employees of the importance of the Standards, reminding them that they are responsible for understanding and adhering to the Affiliate Rules, and stressing to them to ask their supervisor if they have any questions. The 2006 Overview includes an additional package apparently aimed at customer service personnel that was not part of training materials in 2003, 2004, or 2005. This package contains a more focused discussion of the actions customer service personnel should avoid when fielding service calls, as well as a discussion about keeping customer and utility confidential information from going to inappropriate parties both inside and outside of the company.

The 2006 NJR Code of Conduct is a 30-page document that all employees must sign, acknowledging that they read and understand the document, and agree to abide by its provisions. It contains a one paragraph section called "Affiliate Rules" which reads:

The Company is committed to strict compliance with the Affiliate Relations, Fair Competition and Accounting Standards and Related Reporting Requirements (the "Affiliate Rules"), which are designed to promote vigorous and fair competition. The Company has developed internal guidelines and procedures entitled "Fair Completion Guidelines", to ensure that all employees have a clear understanding of the Affiliate Rules. A copy of the company's biannual update of these guidelines is distributed to each employee. As with all Company policies, compliance with these guidelines is mandatory.

The Code of Conduct also includes a Confidential Information section that discusses the release of confidential information, including customer information, to third parties and to others within the company.

The NJR Compliance Plan is a nine-page document that discusses Affiliate Rules regarding Training, Company Organization, Non-Discrimination, Information Disclosure, Separation, Competitive Services Offered by Affiliates, Regulatory Oversight, Dispute Resolution, and Penalties. The Compliance Plan also has following attachments:

- Exhibit A – New Jersey Resources Corporation Corporate Structure: A list of each company in the NJR family and its officers
- Exhibit B – Fair Competition Guidelines: A six-page document detailing specific rules for Market-Sensitive or Confidential Information, Requests for Products or Services Offered by Retail Affiliates, Requests for Transportation Services offered by NJNG, Separation of Products and Services, Dealings with Competitors, and Accounting issues
- Exhibit C – Do's and Don'ts for Customer Service Representatives
- Exhibit D – Do's and Don'ts for First Responders and Utility Services Technicians
- Exhibit E – Do's and Don'ts for Marketing Services
- Exhibit F – Do's and Don'ts for Supplier Relations Consumer Consultants
- Exhibit G – Joint Purchasing Guidelines
- Exhibit H – New Jersey Resources Code of Conduct
- Exhibit I – Service Agreements
- Exhibit J – Shared Service Guidelines
- Exhibit K – New Jersey Resources Corporation Time Sheet Policy and Procedure
- Exhibit L - New Jersey Resources Corporation Employee Time Sheet
- Exhibit M – Section 5(5) (b) Affidavit
- Exhibit N – External Complaint Procedure
- Exhibit O – Corporate Communication and Public Relations Policy
- Exhibit P – Inter-company Transfer of New Jersey Natural Gas Company Employees
- Exhibit Q – Information Systems Access Guideline
- Exhibit R – Inter-company Asset Transfer Policy and Procedure.

The Compliance Plan and its attachments did not significantly change during the audit period.

B. Conclusions

1. NJR provides a focused and reasonably comprehensive approach to training employees in Standards compliance.

The training materials are comprehensive, focus on key Standards provisions that relate to everyday employee performance, and provide specific guidance. All employees affected by the Standards get training that tells them how the Standards affect their work performance and what they need to do to comply.

2. The cycle of training provided is adequate to cover new employees and to refresh the training of incumbents.

The company reasonably assures that all employees get timely training. Its use of a regular cycle constitutes a particular strength. The company provides to its employees reasonably comprehensive training that helps to instill in them the value of compliance and to tell them specifically what types of conduct or statements to avoid.

C. Recommendations

Liberty has no recommendations in this area.

V. Non-Discrimination Standards (Section 14:4-5.3)

Section 14:4-5.3 of the Standards applies to interactions between a utility and an RCBS of its holding company or the holding company itself if it offers or provides competitive services to retail customers in New Jersey. These standards do not apply, however, in cases where an internal RCBS exists within the utility itself and where there are transactions between the utility and such an RCBS. Separate standards, which Chapter VIII of this report addresses, apply to interactions between utilities and their internal RCBSs.

A. Affiliate Preferences

1. Statement of Applicable Requirements

Section 14:4-5.3(a) of the Standards provides that:

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

- 1. An electric or gas public utility shall not represent that, as a result of the relationship with the electric and or gas public utility or for any other reason, a related competitive business segment of its public utility holding company, or customers of a related competitive business segment of its public utility holding company will receive any different treatment by the electric and/or gas public utility than the treatment the electric and/or gas public utility provides to other, unaffiliated companies or their customers; and*
- 2. An electric or gas public utility shall not provide a related competitive business segment of its public utility holding company, or customers of a related competitive business segment of its public utility holding company, any preference (including, but not limited to, terms and conditions, pricing, or timing) over non-affiliated suppliers of their customers in the provision of products and/or services offered by the electric and/or gas public utility.*

2. Summary of Audit Activities

This standard set forth in Section 5.3(a) and many of the standards that follow it address the issue of discrimination. Those that follow tend to apply to specifically-designated cases (see for example the requirements of Section 5.3(c), which later sections of this report address), while this subsection (a) sets forth two, more general rules. Specifically, this subsection of the Standards prohibits two specific forms of favoritism to affiliates:

- Making representations that any RCBS of its holding company or that any customers of such an RCBS will be treated differently by the utility
- Providing preferences to any RCBS of its holding company or RCBS customers with respect to terms, conditions, pricing, timing, or other aspects of utility services.

Liberty's examination of discrimination under this subsection included the application of the following criteria:

- Whether the general paths used for regular customer communications make any direct or implied representations that selection of an RCBS would bring advantage to the customer in terms of utility service
- Whether the utility web-site makes any direct or implied representations that selection of an RCBS would bring advantage to the customer in terms of utility service
- Whether the utility compliance plan adequately addresses the requirements of this subsection.

Liberty identified what regular communications channels the utility used to communicate with customers during the audit period, and then gathered documents displaying the substance of those communications in order to examine them for evidence of prohibited discrimination. Liberty also reviewed the Compliance Plan to determine what standards of conduct it imposed with respect to employee representations to customers. Liberty examined the websites of the holding company, utility, and affiliates.

3. Findings

No affiliate has used television or radio advertisements. Liberty reviewed the print advertisements used during the audit period. They did not make any prohibited references, recommendations, or suggestions of preference.

One gains access to the NJNG webpage from the NJR home page, at *www.njliving.com*. The parent's home page consists predominantly of links to affiliates. The bulk of the page is comprised of pictures and text describing the company's "Conserve to Preserve" efforts. Across the top of the page, there are links to, in order, NJR, NJNG, NJRES, and NJRHS. At the bottom of the page there are larger links and logos for Account Services, NJRHS, and NJNG.

Liberty observed the following from examining the web page:

- There is a link at the bottom of the page to a disclaimer reading, "NJR Home Services is not the same company as New Jersey Natural Gas, the utility, and is not regulated by the New Jersey Board of Public Utilities. You do not have to buy products from NJR Home Services in order to continue receiving regulated services from New Jersey Natural Gas."
- Selecting the NJR link takes visitors to www.njresources.com
- Selecting the NJNG link takes visitors to www.njng.com
- Selecting the NJRES link takes visitors to www.njrenergyservices.com
- Selecting the NJRHS link takes visitors to www.njrhomeservices.com
- Selecting the Community link takes visitors to <http://www.njliving.com/community>
- Each of the NJR Companies uses the same identical logo prominently displayed at the top of its own website.

Each page of the NJRHS site has a disclaimer identical to the one listed above. The disclaimer is not visible unless one scrolls to the very bottom of the page, and looks beneath a horizontal bar

that suggests the end of material content on that page. One can access all of the operative links on the page without scrolling down far enough to see the disclaimer below the bar.

The Compliance Plan states that it is the Company's policy not to discriminate against any competitor in favor of any NJR affiliates. The Plan also refers to Attachment B "Fair Competition Guidelines" which is described in section IV.A of this report.

4. Conclusions

- 1. NJNG did not during the audit period represent in its print or television ads or in any other written customer communications that its PUHC RCBS or the customers of the PUHC RCBS would receive any type of preferential treatment.**
- 2. The website creates no affirmative implication of preference and the NJRHS pages of the website all set forth an appropriate disclaimer, but they do so in a fashion that makes it very unlikely that the viewer will observe it. (Recommendation #1)**

The website does not create any impression of preference and it includes a disclaimer of any connection between taking service from an RCBS and preference in utility service. The disclaimer, however, is not presented in a fashion that makes it likely to be observed.

- 3. The NJNG Compliance Plan adequately addresses this section of the Standards.**
- 4. Liberty found no evidence of preferential treatment by the utility in favor of any PUHC RCBS or customers of the PUHC RCBS.**

Liberty's examination of NJNG conduct during the audit period disclosed no evidence of actual favoritism toward an RCBS.

5. Recommendations

- 1. Make the disclaimer on the NJRHS pages of the website visible within the range of information and links that viewers can observe without scrolling to a point below the normal range of view and eliminate the visual bar above the disclaimer. (Conclusion #2)**

B. Prohibited Transactions

1. Statement of Applicable Requirements

Section 14:4-5.3(b) of the Standards provides that:

Transactions between an electric and/or gas public utility and a related competitive business segment of its public utility holding company shall be prohibited, except for the following...

Subsection (b) then goes on to list the following exceptions to the prohibition on transactions:

- Tariffed products or services
- Sales and purchases made generally available to all market participants through open and competitive bidding

- Joint purchases allowed by Sections 14:4-5.5(g) and (h)
- “Shared corporate support functions” allowed by Sections 14:4-5.5, which extend to the sharing of “joint corporate oversight, governance, support systems and personnel”
- Competitive products or services offered by an RCBS within the utility, as allowed by Sections 14:4-5.6(a) through (f).

“Corporate support” is not a defined term. The definitions section (14:4-2.1) of the standards contains definitions of two related terms:

- “Services that may not be shared” means those services which involve merchant functions, including, by way of example: hedging and financial derivatives and arbitrage services, gas and/or electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.
- “Shared services” means administrative and support services that do not involve merchant functions, including by way of example: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.

2. Summary of Audit Activities

The effect of this section is to prohibit a utility and an RCBS of its holding company from engaging in any form of transaction not specifically authorized by the Standards. The first, second, and fifth exceptions have in common the fact that transactions generally available to all comers, whether affiliated or not, are acceptable to the extent that they are governed by standard or uniform prices, terms, and conditions. The third and fourth exceptions recognize the right to use internal economies of scale or scope to provide an affiliate with services that are not made available to outsiders. Liberty’s examination of this standard focused on whether non-tariffed transactions (except for permitted common services for purchasing and corporate support) were made available to all market participants. Pricing questions were not examined here, but under Sections 5.3(f) through (i), which cover discounts, charge waivers, and strict tariff enforcement in transactions between the utility and a holding company RCBS. Therefore, the criterion that Liberty applied here was:

- Whether the utility made available to a holding company RCBS opportunities to purchase or sell goods or services (apart from the allowed common purchasing and support service) not also made available to other market participants.

Liberty’s audit included efforts to identify the flow of goods and services between the utility and its affiliates. Liberty examined the transaction information provided by the utility for compliance with this criterion. Liberty supplemented these efforts by questioning the utility as to its involvement in any audit period transactions other than those allowed.

3. Findings

During interviews and document reviews, Liberty consultants obtained information about many transactions between NJNG and affiliates. Liberty checked to see if those transactions violated the requirements of this section of the Standards. During Liberty’s transaction testing, Liberty similarly checked to see if any of the transactions violated those same requirements. During

transaction testing, Liberty found that the transactions it reviewed between NJNG and NJR Home Services and CR&R fit into shared services allowed by Sections 14:4-5.5(i) and (j).

Liberty asked NJNG to list each instance in which the utility provided customer proprietary information to an affiliate during the audit period. NJNG stated that it released no proprietary customer information, either authorized or unauthorized, during the audit period. It also released no non-proprietary information. NJNG reports that the only customer information provided to any affiliates during the audit period involves customer-approved releases as a customer agrees to an appliance contract with NJRHS.

As part of its shared services contract with Home Services, NJNG provides billing, remittance processing, and credit and collections services. NJNG does not provide any such services for any competitors of NJRHS. Pursuant to the EDECA Standards, NJNG does provide some billing services to third party suppliers in their service territory. NJRHS has not requested any special treatment of its customers, and expects that it is getting the same response as utility customers.

4. Conclusions

1. NJNG does not post the availability of billing, remittance processing, and credit and collections services and accounts receivable purchasing it provides for NJRHS.
(Recommendation #1)

Unless covered by an exception, NJNG is obligated to make available services it sells to an RCBS to all market participants through open and competitive bidding. NJNG relies upon the corporate oversight, governance, support systems and personnel exception in deciding not to make these services available to competitors in NJRHS's markets. Billing, remittance processing, and credit and collections are generally construed to be operating services and are accounted for under O&M expenses. Support services of the type listed, by contrast, generally are classified as A&G expenses and are classified as such. The definitions section of the standards provides examples of what are and what are not permitted support services. The services at issue here are not listed as examples of either type. The listing, however, generally (although perhaps not fully) conforms to the O&M versus A&G classification.

These services are not the corporate services contemplated by the only potential applicable exceptions. At most, the services should be made available if NJNG continues to provide them to NJRHS. At least, clarification from the BPU is appropriate under the circumstances. These services certainly provide a material benefit to NJNG's affiliate in competing against third party participants in NJRHS's markets.

2. The Compliance Plan adequately addresses this section of the Standards.

3. NJNG did not provide unauthorized customer information to affiliates during the audit period.

5. Recommendations

1. Promptly address the question of NJNG's provision of billing, remittance processing, and credit and collections services and accounts receivable purchasing for NJRHS. (Conclusion #1)

C. Access to Information and Services

1. Statement of Applicable Requirements

Section 14:4-5.3(c) of the Standards provides that:

An electric and/or gas public utility shall provide access to utility information, services, and unused capacity or supply on a non-discriminatory basis to all market participants, including affiliated and non-affiliated companies...

Listed exceptions are for:

- Joint purchases (Section 14:4-5.5)
- Corporate support (Section 14:4-5.5)
- Competitive products or services offered by an RCBS within the utility, as allowed by Sections 14:4-5.6.

2. Summary of Audit Activities

This section's anti-discrimination provisions generally are the same as those set forth in Section 14:4-5.3(a). What makes it particularly different is the imposition of the following requirement regarding public posting of offerings made by the utility:

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

This standard also, unlike the one set forth in preceding subsection (a), introduces the concept of utility provision of "information" as a possible source of preference or discrimination. This audit's examination of utility performance in making information available is addressed in other sections of this report, e.g., 5.3(m), 5.4(a), 5.4(b), 5.4(d), 5.4(e), 5.5(e), 5.5(j), 5.5(s), which address the sharing of information among affiliates.

Given the relationship of this subsection with the preceding one, Liberty carried out its audit work on the two provisions together. The work relevant here, which the previous section of this report discusses in detail, used the following criterion:

- Whether the utility made a public posting of all offerings of services (if any) that it made available to a holding company RCBS.

3. Findings

Liberty's findings for this provision are subsumed in the conclusions set forth for Section 14:4-5.3(b), a discussion of which Liberty provides in the report section immediately preceding this one.

4. Conclusions

Liberty's conclusions for this provision are subsumed in the conclusions set forth for Section 14:4-5.3(b), a discussion of which Liberty provides in the report section immediately preceding this one.

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision, apart from the relevant ones set forth in the recommendations for Section 14:4-5.3(b), a discussion of which Liberty provides in the report section immediately preceding this one.

D. Short-Term Sales of Surplus Energy or Capacity

1. Statement of Applicable Requirements

Section 14:4-5.3(d) of the Standards provides that:

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

2. Summary of Audit Activities

These provisions require that if the utility offers to sell surplus energy or capacity to its PUHC or an RCBS of its PUHC on a short-term basis (transactions of 31 days or less), the utility must make the offering available to non-affiliated companies via a public posting. Because the requirements for short- and long-term sales are similar, Liberty examined both types through the same audit activities.

Liberty first sought information from NJNG about its selling of excess energy and capacity on both a short-term and long-term basis. Liberty also reviewed the Compliance Plan, specifically any portions dealing with surplus energy and capacity.

Liberty applied the following criteria in its evaluation of performance under this standard:

- Whether the utility's compliance plan adequately addresses the requirements applicable to offerings made to an RCBS
- Whether the utility made a public posting of all offerings (if any) made available to a holding company RCBS.

3. Findings

The Compliance Plan restates the Standards, and notes the location where any public postings would be made. NJR Energy Services is responsible for posting notice of supply capacity, services or information that NJNG provides within 24 hours, and is also responsible for posting within that same time frame any offer by NJNG to sell surplus energy to a retail affiliate on either a short-term or long-term basis.

NJNG's website includes an area where postings of NJNG offerings of surplus energy to one or more of its affiliates can be posted. There were no direct transactions between energy affiliates during the audit period; thus no postings were made. Moreover, NJNG has no RCBS that operates in the energy business.

Liberty conducted detailed examinations of capacity and supply transactions between NJNG and its affiliates. Liberty's report on *Gas Supply* describes this test work in detail. NJR no longer has a retail energy affiliate.

4. Conclusions

1. The Compliance Plan adequately addresses this section of the Standards.

2. NJNG no longer has a retail energy affiliate.

3. NJNG did not engage in any transactions that required posting.

NJNG's website has a section for such postings in the event that they may occur.

5. Recommendations

Liberty has no recommendations in this area.

E. Long-Term Sales of Surplus Energy or Capacity

1. Statement of Applicable Requirements

Section 14:4-5.3(e) of the Standards provides that:

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

2. Summary of Audit Activities

These provisions require that if the utility offers to sell surplus energy or capacity to its PUHC or an RCBS of its PUHC on a long-term basis (transactions of greater than 31 days), the utility must make the offering available to non-affiliated companies via a public posting.

Liberty's audit activities were the same as those set forth for Section 14:4-5.3(d), which the immediately preceding section of this report addresses.

3. Findings

Liberty's audit activities were the same as those set forth for Section 14:4-5.3(d), which the immediately preceding section of this report addresses.

4. Conclusions

Liberty's conclusions are the same as those set forth for Sections 14:4-5.3(d), which the immediately preceding section of this report addresses.

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

F. Discounts or Waivers of Fees or Charges

1. Statement of Applicable Requirements

Section 14:4-5.3(f) of the Standards provides that:

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

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

2. Summary of Audit Activities

This section prohibits a utility from offering a discount or waiver of any charge to or for the benefit of an RCBS of its holding company, unless it makes the same concessions to non-affiliates.

Liberty first sought to identify any instances during the audit period when NJNG may have offered a discount or waiver to an RCBS. In the event that there were any, Liberty then intended to determine whether the utility made the same concessions available to non-affiliates through an open process.

As a first step, Liberty formally asked whether the utility provided any discounts, waivers, or the like to its holding company or to an RCBS of its holding company during the audit period.

During interviews and document reviews addressing transactions among affiliates, Liberty also obtained substantial information about transactions between the utility and its affiliates. Liberty examined that information for evidence of any discount, waiver, rebate, etc. to an affiliate. In the event that any discounts or waivers were found, Liberty then intended to examine whether they were similarly offered to non-affiliates.

The criteria that Liberty applied in examining performance under this standard were:

- Whether the utility compliance plan adequately addresses its obligations under this standard
- Whether, in the event that there were any covered transactions, similar offerings were made to non-affiliates.

3. Findings

NJNG provided tariffed sales of natural gas for two locations at which an affiliate (NJRHS) leased property; no waivers or discounts were provided. The Compliance Plan restates this section, and notes that it is the company's policy not to offer discounts or discretionary waivers to any retail affiliates.

4. Conclusions

1. NJNG offered no discounts or waivers to tariffed services provided to affiliates.

2. The Compliance Plan adequately addresses this section of the Standards.

The Plan states the Company's policy of not offering discounts or discretionary waivers to any retail affiliates.

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

G. Documentation of Discount Bases

1. Statement of Applicable Requirements

Section 14:4-5.3(g) of the Standards provides that:

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

2. Summary of Audit Activities

This section requires the utility to document the basis for any discount offered to the holding company or an RCBS of its holding company. Liberty first sought to determine those instances

during the audit period when NJNG may have offered a discount or waiver to its holding company or to an RCBS of a holding company. In the event that there were any, Liberty then intended to determine whether the company properly documented the basis for any discount offered to the RCBS.

3. Findings

As discussed with respect to Section 14:4-5.3(f), NJNG did not offer discounts or waivers to RCBSs of NJR. Therefore, documentation of such discounts was not required. The Compliance Plan restates this section

4. Conclusions

1. NJNG offered no discounts or waivers to tariffed services provided to affiliates.

2. The Compliance Plan adequately addresses this section of the Standards.

The Plan states the Company's policy of not offering discounts or discretionary waivers to any retail affiliates.

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

H. Non-Discriminatory Tariff Enforcement

1. Statement of Applicable Requirements

Section 14:4-5.3(h) of the Standards provides that:

An electric and/or gas public utility shall apply tariff provision(s) on a non-discriminatory basis to its PUHC or related competitive business segments of its public utility holding company and to other market participants and their respective customers if the tariff provision allows for discretion in its application.

2. Summary of Audit Activities

These provisions prohibit a public utility from discriminating in favor of its holding company or an RCBS of its holding company in the following two ways:

- Failing to enforce tariff requirements fully
- Giving an affiliate relatively greater benefit where a tariff may allow the exercise of latitude.

As a threshold matter, Liberty sought to determine the full extent of tariff services provided by NJNG to affiliates during the audit period. Liberty would use this information to determine whether the utility had engaged in any activity covered by the requirements imposed by this section of the Standards. Liberty would then identify and carry out any test activities considered appropriate in testing compliance with those requirements.

Liberty applied the following criteria in evaluating utility performance in areas related to this provision of the Standards:

- Whether the utility compliance plan adequately addresses its obligations under this standard
- Whether, in the event that there were any covered transactions, similar offerings were made to non-affiliates.

3. Findings

The Compliance Plan restates this section, but does not specify which department or individuals have responsibility for enforcing compliance. The only tariffed services provided by NJNG to an affiliate were sales of natural gas for two locations where NJRHS leased property. No tariffed services were provided by NJNG to the holding company. No waivers or discounts were applied to these services.

4. Conclusions

1. NJNG offered no discounts or waivers to tariffed services provided to affiliates.

2. The Compliance Plan adequately addresses this section of the Standards.

The Plan states the Company's policy of not offering discounts or discretionary waivers to any retail affiliates.

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

I. Strict Tariff Enforcement

1. Statement of Applicable Requirements

Section 14:4-5.3(i) of the Standards provides that:

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

2. Summary of Audit Activities

This provision corresponds to the previous standard set forth in Section 14:4-5.3(h). The difference is that the previous standard applies to enforcement of tariff provisions that allow the utility to exercise discretion, while this one applies to the enforcement of tariff provisions whose implementation does not allow utility discretion. Given the similarity in requirements, Liberty's audit activities and evaluation criteria were the same as those set forth for Section 14:4-5.3(h).

3. Findings

The Compliance Plan states that NJNG's policy requires application of its tariff provisions to all market participants on a non-discriminatory basis. The plan does not specify which department or individuals are responsible for compliance with this section of the standards. NJNG provided no discounts or waivers to tariffed services during the audit period.

4. Conclusions

- 1. NJNG offered no discounts or waivers to tariffed services provided to affiliates.**

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

J. Processing Affiliate Service Requests

1. Statement of Applicable Requirements

Section 14:4-5.3(j) of the Standards provides that:

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

2. Summary of Audit Activities

These provisions prohibit a public utility from discriminating in favor of its holding company by giving affiliates faster, cheaper, or technically superior service when they request new service, changes in existing service, or eliminations of current service. As a threshold matter, Liberty sought to identify all service requests from affiliates during the audit period. Liberty would use this information to determine whether the utility engaged in any activity covered by the requirements imposed by this section of the Standards. Liberty would then identify and carry out any test activities considered appropriate in determining compliance with those requirements.

The criteria that Liberty applied in examining utility performance under this standard were:

- Whether the utility compliance plan adequately addresses its obligations under this section of the standards
- Whether there is any evidence that the utility offered its holding company or any holding company RCBS a preference in responding to service requests.

3. Findings

Liberty asked NJNG for a list of each request for new or changed services received from and RCBS during the audit period. NJNG reports the only changes involved the transfer of dispatch services and training services from NJNG to NJRHS. These changes occurred prior to the audit period. The Compliance Plan recites this provision of the standards, but does not indicate which department is responsible for compliance.

4. Conclusions

- 1. NJNG was in compliance with this section of the standards.**
- 2. The Compliance Plan adequately addresses this section of the Standards.**

The Plan states that all requests for similar services from an affiliate or any other market participant will be provided by NJNG on a non-discriminatory basis.

5. Recommendations

Liberty has no recommendations regarding this section of the Standards.

K. Tying Arrangements

1. Statement of Applicable Requirements

Section 14:4-5.3(k) of the Standards provides that:

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

2. Summary of Audit Activities

This section prohibits the utility from tying the provision of goods or services, discounts, rebates or waivers to the taking of products or services from its PUHC RCBS. The criteria that Liberty employed in examining utility performance with respect to this standard were:

- Regular customer communications should not directly or indirectly indicate that the availability of or the conditions associated with taking any utility service have any connection to the taking of service from an affiliate.
- The utility compliance plan should offer employees explicit instructions with respect to avoiding direct or implied statements that tying is necessary for securing utility services or advantageous with respect to the terms and conditions applicable to utility service.

Liberty reviewed utility customer communications, including information provided to customers inquiring about Energy Choice, utility bill inserts, advertising, and the Company website for any representation or implication with respect to tying the taking of goods or services from a PUHC RCBS to the provision of utility services. Liberty also reviewed the Compliance Plan to ensure that the action of tying utility products or services to the taking of products or services from an affiliate is specifically prohibited.

3. Findings

As noted above regarding Section 14:4-5.3(a) of the Standards, NJNG does not represent in its customer communications or on its website any implication of preferential treatment for any PUHC RCBS or the customers of any PUHC RCBS. These conclusions also apply to any conditions or tying of the provision of utility services or discounts to the taking of any products from a PUHC RCBS. The Compliance Plan recites this provision of the standards.

4. Conclusions

1. NJNG does not specify or imply in its customer communication the tying of the provision of utility goods and services to the taking of products and services from its PUHC RCBS.
2. Liberty found no evidence of the tying of the provision of utility products and services to the taking of goods and services from its PUHC RCBS.
3. The NJR web site does not specify or imply the tying of the provision of utility products and services to the taking of goods and services from its PUHC RCBS.
4. NJNG's Compliance Plan treats this provision adequately.

NJNG's policy is that the provision of any products or services and the availability of any discounts, rebate or waivers will not be tied to the receipt of products or services from any retail affiliate.

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

L. Customer Assignments

1. Statement of Applicable Requirements

Section 14:4-5.3(1) of the Standards provides that:

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

2. Summary of Audit Activities

This provision prohibits a public utility from discriminating in favor of RCBSs of its holding company when assigning customers. The criteria that Liberty employed in examining utility compliance with this requirement were:

- The utility compliance plan should adequately inform employees about their obligations under this section
- In the event that any customer assignments took place during the audit period, there should be clear and convincing evidence that there was no discrimination against competitors in making such assignments.

Liberty reviewed the Compliance Plan. Then, Liberty sought to identify all cases where the utility may have assigned customers to any party, affiliated or not, during the audit period. Liberty would use this information to determine whether the utility engaged in any activity covered by the requirements imposed by this section of the Standards. Liberty would then

identify and carry out any test activities considered appropriate in examining testing compliance with those requirements.

3. Findings

NJNG did not did make any assignments of customers to any party during the audit period. The Compliance Plan recites this provision of the Standards.

4. Conclusions

1. During the audit period, NJNG engaged in no activity concerning which the requirements of Standards Section 14:4-5.3 (l) would apply.

2. The Compliance Plan adequately addresses this section of the Standards.

The Plan states that NJNG will not assign current utility customers to a retail affiliate of NJR unless such assignment is made available to all competitors on a non-discriminatory basis, or pursuant to a Board Order.

5. Recommendations

Liberty has no recommendations regarding this section of the standards.

M. Customer Enrollment, Marketing, and Business Development

1. Statement of Applicable Requirements

Section 14:4-5.3(m) of the Standards provides that:

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

2. Summary of Audit Activities

The section lists the following examples of assistance to the PUHC or to an RCBS of the PUHC

- Providing leads
- Soliciting business
- Acquiring information on behalf of the PUHC or an RCBS of the PUHC
- Sharing market analysis reports or other types of proprietary reports
- Sharing customer usage or end-use equipment information
- Requesting authorization from its customer to pass on customer information exclusively
- Representing or implying that the utility speaks on behalf of the RCBS or that the customer will receive preferential treatment as a consequence of conducting business with the RCBS
- Representing or implying that the RCBS speaks on behalf of the public utility.

These provisions prohibit a public utility from assisting its holding company or the RCBSs of its holding company in customer enrollment, marketing, and business development. Liberty reviewed the Compliance Plan for adherence to these provisions. In addition, Liberty reviewed business plans, training for customer-service representatives, information recipients, marketing materials, bill inserts, customer and competitor complaints, and information acquisition and dissemination. This review was to ensure that the utility was not participating in any prohibited activity involving its holding company or holding company RCBSs.

The criteria that Liberty employed in examining compliance with this standard were:

- The utility compliance plan should adequately address the requirements of this provision of the Standards
- There should exist controls adequate for assuring compliance with the requirements of this provision of the Standards
- The utility should scrupulously avoid conduct that provides assistance, support, or services that aid RCBSs, unless offered to other market participants.

3. Findings

Liberty reviewed the NJNG Compliance Plan. The plan recites this provision, and cites the relevant exhibits addressing this standard. In 1993 NJNG adopted an “Employee Lead Program” which provides employees the following cash bonuses for selling heat conversions:

Activity	Bonus
Residential On Main Heat Conversion	\$25
Residential Existing Customer Heat Conversion	\$50
Commercial On Main Heat Conversion	\$50
Commercial Existing Customer Heat Conversion	\$75

The Employee Lead Program has paid out the following amounts during the audit period:

Fiscal Year	# of Conversions	Total Bonuses
2002	150	\$5,175
2003	78	\$2,675
2004	85	\$2,850
2005	44	\$1,575
2006	50	\$1,595

Liberty reviewed the detailed description of the program. It deals only with conversions to gas heat; it contains no reference to or added incentives for appliance sales or services by NJRHS.

Liberty reviewed NJR, NJNG, and affiliate strategic and business plans for adherence to these provisions, and found that the plans complied with this provision of the Standards. Liberty also reviewed the information provided during the planning process to ensure that competitively sensitive information such as market analysis, customer usage information, and end use information are not inappropriately shared. Liberty found that during the planning process each of the affiliated companies prepares its own business plan.

NJNG does not provide customer information unless requested by the customer. Liberty also found that during the period of the audit, NJNG has not had a competitor or consumer complaint concerning the improper release of information.

Liberty reviewed the printed marketing materials covering 2002 through 2006 for the NJNG heater-conversion incentive program. All made clear that NJNG was the sponsor of the program, and made no direct or indirect mention of the use of its affiliate to perform installations or to maintain equipment after installation. The material noted that customers must arrange for installation through one of NJNG's independent participating contractors.

The following table shows the number of independent contractors participating in the seasonal programs, the total number of conversions, and the number accomplished by NJRHS.

NJNG Heater Conversion Program Statistics

	# of Contractors	# of conversions	# by NJRHS
Spring 2002	24	118	4
Fall 2002	33	186	3
Spring 2003	38	285	7
Summer 2003	15	38	2
Fall 2003	44	450	16
Fall 2004	17	114	0
Spring 2004	34	349	10
Summer 2004	9	25	0
Winter 2005	23	159	5
Spring 2005	26	648	15
Summer 2005	26	500	0

NJRHS' share of installations was typically well below five percent in each program. Contractors become part of the approved supplier list by entering into a Master Service agreement with NJNG. The agreement describes program procedures, and prohibits the contractor from advertising the program. The company indicated that it conducted outreach programs with contractors through various on-site seminars, forums, and meetings.

4. Conclusions

1. The Compliance Plan adequately addresses this section of the Standards.

The Plan forbids NJNG from providing any assistance to a retail affiliate that relates to customer enrollment, marketing or business development, unless such assistance is provided to all competitors on a non-discriminatory basis.

2. The planning processes of NJNG and the RCBSs of its holding company are reasonably distinct and separate.

Liberty found no indication that the planning processes serve as a conduit for the sharing of information that this provision of the Standards addresses.

3. NJNG appeared to conduct the heater conversion program appropriately.

The only EDECA-related complaints that NJNG received during the audit period from third-parties with whom they compete concerned the heater conversion program. The complaint implied that NJRHS had a distinct advantage. Liberty conducted a review of this program. Liberty found that NJNG led the planning and design of the program. NJNG conducted the contractor referrals in an arms'-length manner. It publicized the availability of the program to the contractor community, it imposed reasonable conditions on qualification for referrals, it applied those conditions equally to NJRHS, and it did not favor NJRHS in the number of referrals provided. The data that Liberty examined show that NJRHS did not garner more than five percent of conversions in any given program. Liberty saw no evidence that NJRHS had a distinct advantage over other approved contractors.

4. The incentive program for sales leads for conversion to gas heat involved no direct or indirect ties to NJRHS appliance sales or services.

5. Recommendations

Liberty has no recommendations relating to this section of the Standards.

N. Customer Advice or Assistance

1. Statement of Applicable Requirements

Section 14:4-5.3(n) of the Standards provides that:

Provided it is in compliance with these standards, and subject to the provisions of N.J.A.C. 14:4-5.4(g), an electric and/or gas public utility may offer or provide customers advice or assistance with regard to a related competitive business segment of its public utility holding company and/or other product and/or service providers upon the unsolicited request of the customer, so long as such advice or assistance is provided with regard to other competitors on a non-discriminatory basis.

2. Summary of Audit Activities

These provisions assure equal treatment of all providers of goods and services offered by an RCBS of the PUHC, and that the public is made aware of the existence of alternative suppliers of utility-related products and services or of products and services of any related competitive business segment of its holding company. Liberty applied the following criteria in examining performance under this standard:

- Regular customer communications should not offer advice or assistance about any RCBS of its holding company.
- The utility compliance plan should offer employees explicit instructions that: (a) limit them to providing such advice or assistance to cases where it is solicited by customers, and (b) instruct them that such advice must be provided with regard to other competitors on a non-discriminatory basis.

Liberty reviewed the utility's website, materials that it provides in response to customer inquiries about Energy Choice, and the Compliance Plan with regard to this portion of the Standards.

3. Findings

One gains access to the NJNG webpage from the NJR home page, at *www.njliving.com*. The parent's home page consists predominantly of links to affiliates. The bulk of the page is comprised of pictures and text describing the company's "Conserve to Preserve" efforts. Across the top of the page, there are links to, in order, NJR, NJNG, NJRES, and NJRHS. At the bottom of the page there are larger links and logos for Account Services, NJRHS, and a link that changes every few seconds providing access to the NJR, NJNG, NJRES, and NJRHS sites.

The main NJNG page does not highlight customer choice. It consists of graphics and a series of buttons, which consist of:

- About NJNG
- My Account Services
- Customer Center
- Business Partners
- Conservation
- Safety
- Regulatory Info.

One must click the *Customer Center* button, and then scroll down to the table of contents, which lists *Energy Choice* as the tenth topic. The narrative under that explains basic information about supplier choice. There is a link to a list of third-party suppliers.

Liberty reviewed the information that NJNG provides to customers interested in the Energy Choice program.

Liberty reviewed the NJNG Compliance Plan. The plan does not specifically recite this provision. The current version of the plan contains an operating procedure that describes permitted and prohibited communications by NJNG customer care representatives when handling customer calls. The procedure specifically allows a customer care representative to respond to questions about its affiliate appliance service business, provided that there is no recommendation or implication of preferential treatment.

4. Conclusions

1. **The Compliance Plan adequately addresses this section of the Standards.**
2. **Regular communications do not offer advice or assistance relating to an RCBS of NJNG.**
3. **Adequate procedures exist to inform customer care representatives of the need to limit advice and assistance consistently with this provision.**

5. Recommendations

Liberty has no recommendations with respect to this provision of the Standards.

O. Posting Discounts, Rebates, and Waivers

1. Statement of Applicable Requirements

Section 14:4-5.3(o) of the Standards provides that:

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

- 1. The name of its PUHC or related competitive business segment of its public utility holding company involved in the transaction;*
- 2. The rate charged;*
- 3. The maximum rate;*
- 4. The time period for which the discount, rebate, or waiver applies;*
- 5. The quantities involved in the transaction;*
- 6. The delivery points involved in the transaction;*
- 7. Any conditions or requirements applicable to the discount, rebate or waiver, and a documentation of the cost differential underlying the discount as required in (d) or (e) above; and*
- 8. Procedures by which a non-affiliated entity may request a comparable offer.*

2. Summary of Audit Activities

These provisions ensure that the details of any discount, rebate, or other waiver of any charge provided by a utility to RCBSs of its PUHC are made available by a public posting to non-affiliated entities. The posting must include information on how a non-affiliate can request a comparable offer.

The criteria that Liberty used to examine performance under this standard were:

- The utility compliance plan should offer employees explicit instructions that address compliance with this provision
- Any discounts, rebates, or waivers offered should be posted as required.

Liberty asked for information about any discounts, rebates or waivers offered by the utility. Liberty requested copies of any posting required to comply with this section, and also searched the company's website for any relevant postings.

Liberty also reviewed the utility compliance plan to examine the company's intended method of complying with this section of the Standards.

3. Findings

In its response to the data request, NJNG indicated that it did not offer any form of fee waivers or discounts from NJNG to any affiliate. The Compliance Plan does not recite this section of the Standards.

4. Conclusions

1. NJNG did not offer a discount or waiver to any affiliate during the audit period to which Section 14:4-5.3(o) would apply.

2. The Compliance Plan does not adequately address this section of the Standards.

Liberty reviewed the Company's Compliance Plan and found no mention of this section of the Standards. However, the Plan does state that the Company's policy is not to offer discounts or discretionary waivers to any retail affiliates.

5. Recommendations

Liberty has no recommendations relating to this section of the Standards.

P. Information Retention for Discounts, Rebates, and Waivers

1. Statement of Applicable Requirements

Section 14:4-5.3(p) of the Standards provides that:

An electric and/or gas public utility that provides its PUHC or a related competitive business segment of its public utility holding company a discounted rate, rebate, or other waiver of a charge, penalty or fee associated with services offered by the electric and/or gas public utility shall maintain, in compliance with N.J.A.C. 14:4-5.2 or longer if required by another government agency, for each billing period, the following information:

The standard goes on to recite seven categories of information that must be retained.

2. Summary of Audit Activities

These provisions ensure that the utility maintain adequate documentation regarding details of any discount, rebate, or other waiver of any charge provided by a utility to its PUHC or to RCBSs of its PUHC.

Liberty's criteria and audit activities were the same as those set forth for Section 14:4-5.3(o).

3. Findings

Liberty's findings are the same as those set forth for Section 14:4-5.3(o).

4. Conclusions

Liberty's conclusions are the same as those set forth for Section 14:4-5.3(o).

5. Recommendations

Liberty's recommendation is the same as that set forth for Section 14:4-5.3(o).

Q. Compliance with FERC Record Keeping Requirements

1. Statement of Applicable Requirements

Section 14:4-5.3(q) of the Standards provides that:

All records maintained pursuant to the standards in (o) and (p) above shall also conform to FERC rules where applicable.

2. Summary of Audit Activities

This provision requires that records maintained regarding discounts, waivers and rebates offered by a utility to its PUHC or to an RCBS of its RCBS conform to FERC rules. Liberty's audit activities were the same as those set forth for Section 14:4-5.3(o).

3. Findings

NJNG has offered no discounts, rebates, or waivers to any customers, including its PUHC and RCBSs of its PUHC, during the audit period, therefore Section 14:4-5.3(q) is not applicable. Liberty reviewed the Company's Compliance Plan and found no reference to this section of the Standards. The Plan contains a statement that "all NJNG accounts are recorded in accordance with FERC Uniform System of Accounts."

4. Conclusions

1. NJNG did not offer a discount or waiver to any RCBS of the holding company during the audit period to which Section 14:4-5.3(q) would apply.
2. The Compliance Plan adequately addresses this section of the Standards.

5. Recommendations

Liberty has no recommendations relating to this section of the Standards.

VI. Information Disclosure Standards (Section 14:4-5.4)

Section 14:4-5.4 of the Standards applies to interactions between a utility and an RCBS of its holding company or the holding company itself if it offers or provides competitive services to retail customers in New Jersey. These standards do not apply, however, in cases where an internal RCBS exists within the utility itself and where there are transactions between the utility and such an RCBS. Separate standards, which Chapter VIII of this report addresses, apply to interactions between utilities and their internal RCBSs.

A. Providing Customer Proprietary Information

1. Statement of Applicable Requirements

Section 14:4-5.4(a) of the Standards provides that:

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

2. Summary of Audit Activities

These provisions provide protection to customers and competitors by preventing affiliate exploitation of information and data generated by the public utility. The holding company and its RCBSs could gain competitive advantage by:

- Inappropriately sharing customer specific information
- Using information gained through the operation of the utility system to gain competitive advantage in identifying market opportunities or problems
- Using non-public information provided to the public utility by unaffiliated suppliers to gain competitive advantage
- Inappropriately using or exclusively exchanging proprietary data to preclude unaffiliated suppliers from obtaining information available to the PUHC and its related competitive business segment.

The criteria that Liberty applied in examining performance under this standard were:

- The utility should have adequate methods for controlling the release of customer information in accord with the standard
- The utility compliance plan should adequately address employee obligations under this standard.

In its initial review of customer proprietary information, Liberty sought via data requests and interviews to determine if the utility released customer proprietary information to either a holding company or RCBS during the audit period. Liberty then sought to determine if all customer-proprietary information releases that had occurred came after proper customer authorization or other approval of by the BPU. Liberty also requested information regarding any formal or informal complaints concerning the use or release of customer proprietary information that occurred during the audit period.

Liberty also reviewed utility customer-service processes to ensure that adequate methods existed to control access and protect customer proprietary information from inappropriate disclosure or access. In particular, Liberty reviewed training material for customer service personnel and customer service personnel aids, along with controls on access to customer information.

3. Findings

The Compliance Plan recites this provision of the Standards. Sections V.B. and VI.I.F. of this report discusses controls that NJNG applies to requests by affiliates for access to customer information databases.

NJNG reports that the only customer information provided to any affiliates during the audit period involves customer-approved releases as a customer agrees to an appliance contract with NJRHS.

NJNG considers any customer information confidential. The company reported that no customer information is shared with any affiliate other than NJRHS. When NJNG confirms that a service agreement between a customer and NJRHS has been reached, certain confidential information is provided. The Affiliates Standards training that employees receive includes discussions of confidential information. The company reports that no unauthorized customer information was released during the audit period. Additionally, NJNG reports that at no time during the audit period did it solicit non-public information from unaffiliated suppliers for release to NJR or NJRHS. NJNG reports that it made no release of non-proprietary information during the audit period, and that NJNG did not provide any non-public information obtained from unaffiliated suppliers to NJR or NJRHS.

Call center representatives use the same screens to handle both NJNG and NJRHS calls. Representatives may handle calls from the customers of each company. However, calls to NJRHS are routed through a common NJR toll-free number by pressing “2” when prompted. Calls that take this route are controlled so that the representative only sees a screen providing NJRHS data; *i.e.*, not NJNG customer data. A customer can, however, get through the NJNG routing either in error, or perhaps intentionally, to discuss what prove to be appliance repair or sales issues. In those cases, representatives operate under instructions not to promote NJRHS. Should those callers seek anyway to talk with NJRHS representatives, the calls are routed back through the system to a responder who will not have access to utility customer data. This approach provides for a proper insulation of utility customer information, except in cases where representatives do not follow applicable instructions. NJNG does not operate a formal program for verifying the compliance of representatives with the instructions.

4. Conclusions

1. The Company’s Compliance Plan adequately addresses this section of the Standards.

The Compliance Plan states that the company’s policy regarding the release of customer information states that proprietary customer information will only released to an affiliate or a non-affiliated entity upon receipt of customer signature or two pieces of specific information which can only be obtained from the customer directly, or through alternative measures or

regulations adopted by the Board. The company's Code of Conduct contains the following guidelines regarding confidential customer information:

- A statement that NJNG's customer list is confidential, and is not to be disclosed to either retail affiliates of the Company or any of its unaffiliated competitors
- Company employees should not provide leads to employees of retail affiliates, any information received from customers should not be disclosed to retail affiliates, and Company employees should not solicit business or acquire information on behalf of a retail affiliate
- A summary of the required information necessary in order to properly release information concerning individual customers to third party suppliers or a retail affiliate of the Company
- Company employees may only discuss customer confidential information with employees of a retail affiliate if the retail affiliate requires certain information to perform a shared service for NJNG pursuant to the Shared Services Guidelines, and in that instance the employee(s) of the retail affiliate must keep all such information disclosed confidential
- Non-public supplier information may only be relayed to a third party upon receipt of written authorization.

Exhibit C to the Compliance Plan, "Do's and Don'ts for Customer Service Representatives," contains instructions for these employees regarding NJNG's provision of customer account services for NJRHS. The document reminds employees that NJNG is providing these functions in a competitive environment, and that certain restrictions are in place. The document provides specific instructions regarding customer information, including:

- Unbundled Transportation and Sales Services offered by NJNG
- Products or Services Offered by a Retail Affiliate
- Customer Account Services.

Exhibit E to the Compliance Plan, "Do's and Don'ts for Marketing Services," pertains to customer inquiries regarding the competitive offerings of NJRHS. This document discusses the need for employees to treat any retail affiliate in the same manner that they treat non-affiliated companies, and spells out specific guidelines that employees should follow to remain compliant with the Standards.

Exhibit J to the Compliance Plan, "New Jersey Resources Corporation Affiliate Rules Compliance Plan Shared Services Guidelines," provides an "illustrative and not exhaustive" list of the shared services NJNG and NJR Service Company may perform for NJR or an RCBS, or shared services that NJR and NJR Service Company may perform for NJNG. The document reminds employee who performs a shared service for one NJR affiliate not to discuss confidential information with employees of another affiliate.

Exhibit O to the Compliance Plan, "Corporate Communications and Public Relations Guidelines and Corporate Identification and Advertising Guidelines," instructs employees that corporate communications and public relations services may not facilitate the transfer of confidential information from NJNG to any retail affiliate and that all employees must be continuously aware of the requirement to protect confidential information.

Exhibit Q to the Compliance Plan, "Information Systems Access Guidelines," discusses the allowance of certain shared services as long as the conduct of these activities does not violate the Affiliate Rules nor create an unfair advantage for an affiliated RCBS. The document includes reminders that all NJNG customer information is confidential and only accessible to NJNG employees, such information must not be stored on any public areas of any shared computer or information systems, and that there are specific protocols in place if and when an employee of a retail affiliate requires confidential customer information. Exhibit Q also contains guidelines pertaining to web site development and maintenance and public postings of certain information.

- 2. NJNG appropriately limited outside release of customer proprietary information during the audit period to cases where there was prior authorization of the customer.**
- 3. NJNG applied adequate processes to protect customer proprietary information from inappropriate internal release during the audit period.**

There was a controlled process for gaining access to databases including customer information. NJNG applied them in a manner that provided for proper authorization and limitation in the information ultimately provided.

- 4. Existing guidance to employees does not provide sufficient definition of what constitutes customer proprietary information or how to handle requests for its release.**

The policy of classifying "any customer information" as confidential is very general, and not particularly helpful in making clear to employees what is subject to release. Although the policy is not to release any customer information, more specific illustrations of what is protected would help to assure that employees have clear guidance. (*Recommendation #1*)

- 5. NJNG has improved controls over the use of utility customer information by representatives handling NJRHS calls, but does not monitor compliance with them formally. (*Recommendation #2*)**

5. Recommendations

- 1. Provide a more comprehensive description of what constitutes *customer-proprietary* information subject to protection under Section 14:4-5.4(a). (*Conclusion #1*)**

Guidance to employees in the Compliance Plan and underlying procedures needs to make clear what kinds of information fall within the disclosure limits.

- 2. Establish a program for periodic monitoring calls to assure that there is no improper use of utility customer information by or for NJRHS. (*Conclusion #5*)**

The program should be carried out on a recurring basis, should be structured to provide monitoring of a sufficient number of targeted call types, and should produce compliance reports to senior management. The repetition cycle should be based on the degree to which violations are found over time.

B. Providing Other Non-Public Information

1. Statement of Applicable Requirements

Section 14:4-5.4(b) of the Standards provides that:

An electric and/or gas public utility shall make available non-customer specific non-public information acquired as a result of operating the public utility's distribution system, including information about an electric and/or gas public utility's natural gas or electricity purchases, sales, or operations or about an electric and/or gas public utility's gas-related goods or services, electricity-related goods or services, to a related competitive business segment of its public utility holding company only if the electric and/or gas public utility makes such information available, via a public posting, to all other service providers on a non-discriminatory basis, and keeps the information open to public inspection.

- 1. An electric or gas public utility is permitted to exchange proprietary information on an exclusive basis with its PUHC or a related competitive business segment of its public utility holding company, provided it is necessary to exchange this information in the provision of the corporate support service permitted by N.J.A.C. 14.4-5.5(i) and (j).*
- 2. The PUHC's or related competitive business segment's use of such proprietary information is limited to its use in conjunction with the permitted corporate support services, and is not permitted for other use.*

2. Summary of Audit Activities

These provisions provide protection to competitors by preventing affiliate exploitation of information and data generated by the public utility. The PUHC and the related competitive business segments could gain competitive advantage in the following manner:

- Using information gathered through the operation of the utility system to gain competitive advantage in identifying market opportunities or problems
- Inappropriate use or exclusive exchange of proprietary data to preclude unaffiliated suppliers from obtaining information available to the PUHC and its related competitive business segment.

The criteria that Liberty applied in examining performance under this standard were:

- The utility compliance plan should adequately address employee obligations under this standard
- Any release of covered information should meet the posting and continuous availability requirements of the standard.

Liberty sought to determine if the holding company or a holding company RCBS received non-customer-specific information acquired by the utility in the operation of its distribution system, and whether it was then made available to other service providers via a public posting. To the extent that non-specific customer information resides on a website that is readily accessible by competitors, Liberty believes that the Company would meet the requirements of the standard. Liberty reviewed the utility's planning processes to determine if this non-specific information

was acquired by any RCBS during the planning process, and reviewed the Company's practices concerning the use of non-specific customer information.

As to the exclusive exchange of proprietary information between the utility and its holding company or an holding company RCBS necessary for corporate support services, Liberty sought to identify whether such information had been exchanged. To the extent that such data are required for the provision of support service pursuant to and permitted by N.J.A.C. 14.4-5.5(i) and (j) then it would meet the requirement.

3. Findings

The current Compliance Plan states that NJNG will not provide non-customer specific non-public information except in instances where a retail affiliate of NJR may need such information to provide corporate or shared services. For such instances, the Compliance Plan states that the company is required to provide such information on a public, non-discriminatory basis to all other service providers. The Compliance Plan also references Exhibit Q, "Information Systems Access Guidelines," which summarizes the Standards that relate to this issue. The document states that any such information gained from the operation of NJNG's distribution system that is made available to a retail affiliate must be made available to all other service providers via public posting within three business days and must be kept open for public inspection. Exhibit Q further states that the business unit responsible for the posting is the Gas Transportation and Marketing unit.

NJNG reports that the only customer information provided to any affiliates during the audit period involves customer-approved releases as a customer agrees to an appliance contract with NJRHS.

There is no procedure identifying the kind of information covered or for assuring that release occurs only as permitted by the Standards. NJNG reported to Liberty that it made no release of such information to affiliates during the audit period.

4. Conclusions

1. **The Compliance Plan addresses Section 14:4-5.4(b) of the Standards, but does not provide a useful description of what information is covered to assist employees in adhering to this section. (Recommendation #1)**
2. **NJNG made no releases of covered information other than those preceded by a customer release.**

5. Recommendations

1. **Provide a more comprehensive description of what constitutes *other non-public* information subject to protection under Section 14:4-5.4(b). (Conclusion #1)**

C. Providing Lists of Generation or Gas Service Providers

1. Statement of Applicable Requirements

Section 14:4-5.4(c) of the Standards provides that:

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

2. Summary of Audit Activities

This provision limits utility-provided lists of competitive suppliers of electric generation and gas service to those licensed by the Board and it precludes any form of emphasis on a particular supplier on such lists. The criteria that Liberty applied in evaluating utility performance under this standard were:

- Supplier lists should contain all those licensed by the Board and only those licensed
- There should be no emphasis by location or print and other identification features on any supplier on the list
- The utility compliance plan should adequately address the release requirements of this provision.

Sections 14:4-5.3(n), 14:4-5.4(c), 14:4-5.4(f), and 14:4-5.4(g) are related. Liberty's audit activities were the same as those set forth for Section 14:4-5.3(n).

3. Findings

The Compliance plan summarizes this provision, and references Exhibit Q, "Information Systems Access Guidelines," which restates the Standards, and indicates the posting of this information will be at the NJNG website, www.njliving.com. However, the website given is a site for the "NJR family of companies", not solely NJNG. The list of third-party suppliers is located on a page within NJNG's own website at www.njng.com/regulatory. The listing on the website complies with the provision's requirements for inclusion on the list, alphabetized order of names, and the preclusion of any highlighting or promotion of any supplier.

4. Conclusions

1. The supplier lists that NJNG used during the audit period complied with this provision.
2. The Compliance Plan and NJNG procedures adequately address the requirements of Section 14:4-5.4(c) of the Standards, but do not properly identify the location of the third-party supplier list on NJNG's website. (*Recommendation #1*)

5. Recommendations

1. **Update Compliance Plan Exhibit Q, “Information Systems Access Guidelines,” to provide the proper link to the information required by this section of the Standards.**
(Conclusion #1)

D. Providing Affiliates Information Concerning Unaffiliated Suppliers

1. Statement of Applicable Requirements

Section 14:4-5.4(d) of the Standards provides that:

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

2. Summary of Audit Activities

This provision provides protection to competitors by preventing exploitation of confidential non-public information and data provided by an unaffiliated supplier to the utility. The PUHC and related competitive business segments could gain competitive advantage by:

- Using non-public information provided to the public utility by unaffiliated suppliers to improve the holding company and RCBS understanding of market conditions
- Restricting the use of non-public information provided by an unaffiliated supplier to only the PUHC or related competitive business segment.

Liberty applied the following criteria in examining this provision of the Standards:

- Non-public information and data received from unaffiliated suppliers by the electric or gas public utility can be provided to either the holding company or a related RCBS only if the public utility is authorized by the non-affiliated supplier to release the information
- There should have been no provision of information received from unaffiliated suppliers absent written permission
- The utility compliance plan should adequately address the release requirements of this provision.

Liberty first determined if non-affiliated information and data are shared by the utility with the holding company or any holding company RCBS. If the information and data were shared with the holding company or RCBS, then Liberty would review the unaffiliated supplier’s written authorization for release of the information. To the extent that a signed release was provided, Liberty would then consider this provision met.

3. Findings

During the audit period, NJNG did not release any information or data from unaffiliated suppliers to NJR or an RCBS. The current Compliance Plan recites this provision of the Standards, and states that NJNG will not seek the exclusive release of such information to NJR or any retail affiliate in order to keep such information from unaffiliated suppliers.

4. Conclusions

1. During the period of the audit, NJNG did not provide or release non-public information subject to 14:4-5.4(d) from any unaffiliated supplier to affiliates.

2. The Compliance Plan adequately addresses Section 14:4-5.4(d) of the Standards.

The current Compliance Plan states that NJNG will not seek the exclusive release of such information to NJR or any retail affiliate in order to keep such information from unaffiliated suppliers.

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

E. Soliciting Release of Information Concerning Unaffiliated Suppliers

1. Statement of Applicable Requirements

Section 14:4-5.4(e) of the Standards provides that:

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

2. Summary of Audit Activities

This provision provides protection to competitors by preventing a utility from requesting asymmetric access to information requested from unaffiliated suppliers. Liberty first determined if non-affiliated information and data are shared by the utility with its holding company or holding company RCBS. If so, Liberty would then determine if the information and data were provided to other suppliers pursuant to the requirements of this provision. The solicitation could not be exclusively for the holding company or holding company RCBS in an effort to prevent distribution to nonaffiliated suppliers. To the extent there were any such solicitations, Liberty would review each to determine if it were designed to limit the information distribution.

3. Findings

During the audit period, NJNG did not solicit non-public data or information from unaffiliated suppliers within its certified territory for release to an affiliate, nor did it release any such information. The current Compliance Plan recites this provision of the Standards in the same section as it recites the provision for section 14:4-5.4(d).

4. Conclusions

1. During the audit period NJNG did not solicit unaffiliated supplier non-public information for release to affiliated entities.

2. The Compliance Plan adequately addresses Section 14:4-5.4(e) of the Standards.

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

F. Highlighting Affiliates in Lists of Providers

1. Statement of Applicable Requirements

Section 14:4-5.4(f) of the Standards provides that:

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

2. Summary of Audit Activities

Sections 14:4-5.3(n), 14:4-5.4(c), 14:4-5.4(f), and 14:4-5.4(g) are related. Liberty's audit activities were the same as those set forth for Section 14:4-5.3(n).

3. Findings

Liberty's findings are the same as those set forth for Section 14:4-5.3(n).

4. Conclusions

Liberty's conclusions are the same as those set forth for Section 14:4-5.3(n).

5. Recommendations

Liberty's recommendations are the same as those set forth for Section 14:4-5.3(n).

G. Supplementing Information About Affiliated Providers

1. Statement of Applicable Requirements

Section 14:4-5.4(g) of the Standards provides that:

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

- 1. Any such list shall include all suppliers licensed by the Board.*
- 2. Where maintaining such list would be unduly burdensome due to the number of service providers, the electric and/or gas public utility shall not provide a list and may direct the customer to a generally available listing of service providers, for example, the Board, the telephone directory or Internet.*

2. Summary of Audit Activities

Sections 14:4-5.3(n), 14:4-5.4(c), 14:4-5.4(f), and 14:4-5.4(g) are related. Liberty's audit activities were the same as those set forth for Section 14:4-5.3(n).

3. Findings

Liberty's findings are the same as those set forth for Section 14:4-5.3(n).

4. Conclusions

Liberty's conclusions are the same as those set forth for Section 14:4-5.3(n).

5. Recommendations

Liberty's recommendations are the same as those set forth for Section 14:4-5.3(n).

H. Record Keeping Concerning Transactions with Affiliates

1. Statement of Applicable Requirements

Section 14:4-5.4(h) of the Standards provides that:

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

2. Summary of Audit Activities

These provisions require a utility to keep complete and accurate records of all transactions it has with its holding company and related RCBSs. During transaction testing, and during other work sessions as well, Liberty reviewed the available documentation for numerous transactions between the utility and its affiliates. In addition, Liberty requested all contracts between the regulated and unregulated affiliates and reviewed the contracts it received.

The criteria Liberty applied in examining performance under this standard are set forth in the chapter of this report that addresses transaction testing.

3. Findings

Liberty found that NJNG was able to provide requested documentation. The Compliance Plan recites this provision of the Standards.

4. Conclusions

1. The willingness and ability of NJNG, its holding company, and affiliates to provide all requested agreements and transaction documents during Liberty's transaction testing activities demonstrated compliance with the provisions of Section 14:4-5.4(h) of the Standards.

2. The Compliance Plan adequately addresses the requirements of Section 14:4-5.4(h) of the Standards.

The Compliance Plan states that such records will be made available for Board Staff or Ratepayer Advocate review with 72 hours notice or at a mutually agreed upon time.

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

I. Record Retention Requirements for Transactions with Affiliates

1. Statement of Applicable Requirements

Section 14:4-5.4(i) of the Standards provides that:

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

2. Summary of Audit Activities

These provisions require that the records of transactions between the utility and its holding company or holding company RCBSs be maintained in accordance with the period specified in N.J.A.C. 14:5-5.2.

3. Findings

Liberty's transaction testing produced no case where transaction documentation was unavailable because of a failure to retain it. The current Compliance Plan recites this provision of the Standards, and Exhibit G, "Joint Purchasing Guidelines," Exhibit I, "Service Agreements," and Exhibit J, "Shared Services Guidelines" contain further discussion.

4. Conclusions

1. NJNG provides adequately for the retention of records of transactions involving it and its holding company or holding company RCBSs.

2. The Compliance Plan adequately addresses the requirements of Section 14:4-5.4(i) of the Standards.

5. Recommendations

Liberty has no recommendations regarding this provision of the Standards.

J. Inspection of Records

1. Statement of Applicable Requirements

Section 14:4-5.4(j) of the Standards provides that:

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

2. Summary of Audit Activities

These provisions require that transaction records be made available for BPU and Ratepayer Advocate review upon 72 hours notice. During conduct of its audit, Liberty sought access to records and documents pertaining to transactions involving the utility, holding company, and holding company RCBSs.

3. Findings

Liberty found that the companies were able to produce the records and documents as required during the audit. Liberty did not gain from any involved party any evidence of a failure to produce requested records. The current Compliance Plan recites this provision of the Standards in its section on records retention.

4. Conclusions

1. NJNG was in compliance with 14:4-5.4(j).

2. The Compliance Plan adequately addresses the requirements of Section 14:4-5.4(j) of the Standards.

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

K. Bid and Contract Records

1. Statement of Applicable Requirements

Section 14:4-5.4(k) of the Standards provides that:

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

2. Summary of Audit Activities

These provisions require that the utility maintain records of all contracts with the holding company and holding company RCBSs in accordance with N.J.A.C. 14:5-5.2.

During transaction testing, and during other work sessions as well, Liberty reviewed the available documentation for numerous transactions between the utility and its affiliates. In addition, Liberty requested all contracts between the utility and non-utility affiliates of NJR, and reviewed the contracts it received.

Liberty also sought to determine the utility's practices for retaining the documents required by this provision.

3. Findings

During transaction testing, NJNG was able to supply all the agreements that Liberty requested. The current Compliance Plan recites this provision of the Standards.

4. Conclusions

- 1. NJNG's practices were sufficient to assure retention of all contract information requested as part of transaction testing.**
- 2. The Compliance Plan adequately addresses the requirements of Section 14:4-5.4(k) of the Standards.**

The Plan states that all records pertaining to contracts and related bids for the provision of work, products, and/or services to and from the Utility to and from any retail affiliate will be maintained pursuant to the Standards.

5. Recommendations

Liberty has no recommendations with respect to this provision of the Standards.

VII. Separation Standards (Section 14:4-5.5)

Section 14:4-5.5 of the Standards applies to interactions between a utility and an RCBS of its holding company or the holding company itself if it offers or provides competitive services to retail customers in New Jersey. These standards do not apply, however, in cases where an internal RCBS exists within the utility itself and where there are transactions between the utility and such an RCBS. Separate standards, which Chapter VIII of this report addresses, apply to interactions between utilities and their internal RCBSs.

A. Separate Corporate Entities

1. Statement of Applicable Requirements

Section 14:4-5.5(a) of the Standards provides that:

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

2. Summary of Audit Activities

These provisions require that the utility, its PUHC, and the non-regulated RCBSs of the holding company be separate corporate entities. The criterion that Liberty employed in examining compliance with this standard was:

- The utility should exist as a legal entity that is separate and distinct from its holding company and any RCBS of its holding company.

Liberty considered relevant filings with the Securities and Exchange Commission, organization charts, a variety of data requests and interview results to assess whether the required corporate separation existed between the utility, on the one hand, and any holding company or holding company RCBSs, on the other hand.

3. Findings

Liberty found that NJNG existed and operated as a distinct corporate entity during the audit period, as it has historically, and as it will most likely do in the future. The current Compliance Plan recites this provision of the Standards.

4. Conclusions

1. **The NJR/NJNG structure and operation complied with this provision of the standards during the audit period.**
2. **The Compliance Plan adequately addresses the requirements of Section 14:4-5.5(a) of the Standards.**

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

B. Separate Books and Records

1. Statement of Applicable Requirements

Section 14:4-5.5(b) of the Standards provides that:

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

2. Summary of Audit Activities

This provision requires that the holding company keep separate books and records for the regulated utility and for its non-regulated affiliates. The criterion that Liberty applied in examining compliance with this standard was:

- Whether the utility books and records are fully separate and distinct from those of the holding company and any holding company RCBS.

Liberty conducted on-site interviews to review the company books and records.

3. Findings

Liberty found that NJR maintains separate books and records for the required entities. The current Compliance Plan recites this provision of the Standards.

4. Conclusions

1. NJR/NJNG complied with the provisions of Section 14:4-5.5(b) during the audit period.

Each affiliate's books and records were kept separately pursuant to the Standards. Further discussion of accounting books and records can be found in Liberty's chapter on *Accounting and Property Records* in the Management Audit report.

2. The Compliance Plan adequately addresses the requirements of Section 14:4-5.5(b) of the Standards.

The Plan states that all books and records of NJNG and all affiliates must be separately kept and made available for examination by the Board on request.

5. Recommendations

Liberty has no recommendations with respect to this provision of the Standards.

C. Conformity of Books and Records with USOA

1. Statement of Applicable Requirements

Section 14:4-5.5(c) of the Standards provides that:

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

2. Summary of Audit Activities

This provision requires that the utility maintain books and records in accordance with USOA. Liberty did not undertake a full-scale examination of conformity with each USOA requirement. Liberty found during its assessment of management and operations that the company generally complied with the USOA requirements. Liberty addresses this issue in the *Accounting and Controls* section of its companion reporting on the results of its assessment of management and operations.

3. Findings

The NJNG chart of accounts is consistent with USOA. The current Compliance Plan recites this provision of the Standards.

4. Conclusions

1. NJNG complied with the requirements of Section 14:4-5.5(c) during the audit period.

2. The Compliance Plan adequately addresses the requirements of Section 14:4-5.5(c) of the Standards.

5. Recommendations

Liberty has no recommendations with respect to this requirement.

D. Availability of Books and Records for Board Examination

1. Statement of Applicable Requirements

Section 14:4-5.5(d) of the Standards provides that:

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

2. Summary of Audit Activities

This provision requires that the utility's holding company provide access to its books and records and to those of its non-regulated RCBSs. During the conduct of its audit, Liberty sought access to a host of records and documents pertaining to the utility, utility holding company, and holding company RCBSs. The criterion that Liberty applied in examining compliance with this standard was:

- Whether all requests for information necessary to verify compliance with the standards subject to this audit produced substantially complete responses.

3. Findings

NJNG provided substantially complete responses to all of Liberty's requests for information, whether through data requests, access to documents, or interviews. Liberty believes that the support shown for the audit was commendable, particularly given the relatively small size of

NJNG. Liberty believes that NJNG has demonstrated a strong willingness and ability to make its books and records open for examination for compliance with the Standards. The current Compliance Plan recites this provision of the Standards, and notes that the general accounting department has responsibility for implementation.

4. Conclusions

- 1. All of NJR's entities and people complied with the requirements of Standards Section 14:4-5.5(d) in responding to Liberty's requests for information; they demonstrated in interviews and responses to data requests a cooperative and supportive attitude towards regulatory needs and objectives.**
- 2. The Compliance Plan adequately addresses the requirements of Section 14:4-5.5(d) of the Standards.**

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

E. Sharing of Space, Services, and Equipment

1. Statement of Applicable Requirements

Section 14:4-5.5(e) of the Standards provides that:

An electric and/or gas public utility shall not share office space, office equipment, services, and systems with a related competitive business segment of its public utility holding company, except to the extent appropriate to perform shared corporate support functions permitted under this subsection or as follows:

- 1. An electric and/or gas public utility may access the computer or information systems of a competitive related business segment of its PUHC or allow a related competitive business segment of its PUHC to access its computer or information systems, for purposes of the sharing of computer hardware and software systems and may share office space, office equipment, services and systems, provided adequate system protections are in place to prevent the accessing of information or data between the utility and its affiliate(s) which would be in violation of these standards.*
 - i. Prevention of unauthorized access to computer and information systems must be specifically addressed as part of an electric and/or gas public utility's compliance plan submitted pursuant to N.J.A.C. 14:4-5.7(b).*

2. Summary of Audit Activities

These provisions allow a utility and an RCBS of its PUHC to share office space, office equipment, services and systems only if:

- It is required as part of providing permitted shared corporate support functions, or

- Adequate system protections are in place to prevent accessing of data that would violate the Standards.

The effect of the two bulleted exceptions is generally to allow shared space, services, systems, and equipment, provided that security against data exchange is adequate. Given the breadth of this exception, Liberty applied the following criterion in examining performance under this standard:

- Whether, in cases where sharing is done, adequate measures are taken to prevent inappropriate information exchange.

Liberty requested information regarding the sharing of *Information Technology* services between the utility, its holding company, and holding company RCBSs. Liberty conducted an in-depth interview with personnel from the Information Technology Department and followed up with several data requests. In addition, Liberty reviewed the listing of databases and policies and procedures pertaining to IT security and data base access.

3. Findings

The Compliance Plan states that NJNG will not share office space with a retail affiliate except as permitted in the area of shared corporate support functions. Exhibit Q of the Compliance Plan summarizes rules on access to information data within Company computer systems. It also states that specific protections will be in effect to prevent unauthorized access to information of data within the computer systems which would be in violation of affiliate rules.

Liberty asked the Company for a list of all databases owned by the holding company and its subsidiaries and to identify which of those required protection vis-à-vis the Standards. Liberty also sought information stating which specific departments and work groups had routine access to these databases, and those who were granted access on an exception basis. Liberty requested detailed descriptions of the guidance given and oversight exercised over database owners regarding access to their data bases to ensure compliance with the Standards.

The Company's response indicated only the JD Edwards System and associated databases and described Liberty's request as "broad".

During the audit period, NJRHS occupied space in NJNG-owned Manahawkin and Lakewood facilities, which was covered by a shared service agreement between the parties. Charges to NJRHS were based on a proportionate share of building costs based on square footage. CR&R sub-leases space in the Wall headquarters building from NJNG, which leases the building from an unaffiliated third party. CR&R in turn sub-leases space to NJRHS, among others. CR&R pays a prorated shared of lease and building O&M costs for its share of the building.

4. Conclusions

1. The Company did not maintain a list of data bases that require protection under the Standard. (*Recommendation #1*)

The maintenance of a list that requires protection is a core element in assuring that there is sufficient control over access to satisfy this provision of the Standards. That list should be

accompanied by a program for identifying those who may have access to which systems that are covered by this provision, and for controlling access appropriately.

5. Recommendations

1. **Develop and maintain a current list of data bases as well as a master list of which departments and which employees have access to them; institute effective controls for limiting access to authorized persons.** (*Conclusion #1*)

F. Authorized Joint Products and Services

1. Statement of Applicable Requirements

Section 14:4-5.5(f) of the Standards provides that:

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

2. Summary of Audit Activities

The purpose of the provisions is to ensure that any joint products and or services offered by the utility are offered to non-affiliated providers on the same terms and conditions. The criterion that Liberty applied in examining performance under this standard was:

- In the event that any utility offered products or services jointly with a holding company RCBS, whether they were offered to non-affiliated providers on the same basis.

Liberty reviewed the utility's tariffs to determine whether the company had any competitive products and services. In addition, Liberty asked whether the utility offered any competitive services, and gathered information on the product offerings of the RCBS who provide services at retail in New Jersey.

3. Findings

NJNG did not conduct any structured joint products or services marketing activities with an RCBS during the audit period. The company states that there have been no joint marketing, promotional or advertising programs during the audit period. The Compliance Plan does not address this issue of the Standards.

4. Conclusions

1. **NJNG made no structured joint product or service offerings with an RCBS during the audit period.**
2. **The Compliance Plan does not adequately address the requirements of Section 14:4-5.5(f).** (*Recommendation #1*)

Liberty review the Company's Compliance Plan and found no reference to joint services.

5. Recommendations

1. Update the Compliance Plan to include guidance on the Utility providing structured joint product or service offerings with an RCBS. (Conclusion #2)

G. Joint Purchases

1. Statement of Applicable Requirements

Section 14:4-5.5(g) of the Standards provides that:

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

2. Summary of Audit Activities

This provision of the standards confirms the general permissibility of joint purchases, which Liberty addresses in the ensuing section of this audit report. However, the provision also imposes a strict prohibition against joint purchases that relate to the merchant function. Liberty applied the following criterion in examining performance under this standard:

- The utility may not make merchant-function related purchases jointly with a holding company or holding company RCBS.

Liberty requested copies of all joint purchasing agreements that included both the regulated utility and a holding company or holding company RCBS. Liberty's examination of *Gas Supply*, which companion reporting addresses, also sought detailed information about how NJNG makes purchases and what transactions took place among it and affiliates during an eight-year audit period, regardless of whether the affiliates were RCBSs or not.

3. Findings

Section 14:4-5.2 of the Standards provides the following definitions relevant to Section 14:4-5.5(g):

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

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

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

"Merchant functions" means the marketing and/or the provision of electric generation service and/or gas supply service to wholesale or retail customers, as

opposed to the marketing and/or provision of transmission and distribution services, by an electric and/or gas public utility.

There were no joint purchasing agreements with the holding company or an RCBS during the EDECA audit period. Any joint purchases would be done in compliance with Exhibit G, "New Jersey Natural Gas Company Affiliate Rules Compliance Plan Joint Purchasing Guidelines," of the Compliance Plan.

The current Compliance Plan recites this provision of the Standards.

4. Conclusions

1. NJNG complied with Section 14:4-5.5(g) of the Standards regarding joint purchases associated with merchant functions; no covered purchases took place during the audit period.

2. The Compliance Plan adequately addresses the requirements of Section 14:4-5.5(g).

The Plan notes that NJNG will not make joint purchases associated with the merchant function. The plan also states that NJNG can make joint purchases of other products and services, provided that costs can be clearly identified and allocated to the utility, and that all such purchases will be in compliance with the Standards and any other Board allocation and reporting rules.

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

H. Pricing and Reporting of Joint Purchases

1. Statement of Applicable Requirements

Section 14:4-5.5(h) of the Standards provides that:

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

2. Summary of Audit Activities

The purpose of these provisions is to ensure, for all joint purchases, proper record keeping, pricing, and assignment of direct and indirect costs between the utility and the RCBS. The provision's two principal requirements include the ability to segregate the utility portion of joint

purchases and the allocation of both the direct and indirect costs of purchases to the utility on the basis of its portion of the purchases. Therefore, Liberty applied the following criteria in examining performance under this standard:

- Whether recordkeeping and reporting of jointly made purchases provides for accurate identification and segregation of the utility portion of purchases made through common efforts
- Whether the costs that the utility pays for purchases made through common efforts are in strict proportion to the amounts purchased for its use.

3. Findings

Liberty requested a list of all joint purchasing agreements that included both the regulated utility and an unregulated affiliate. There were no joint purchasing agreements in place during the EDECA audit period.

The current Compliance Plan recites this provision of the Standards.

4. Conclusions

1. NJNG and NJRHS did not make any joint purchases during the audit period.

2. The Compliance Plan adequately addresses the requirements of Section 14:4-5.5(h).

The Plan states that NJNG can make joint purchases of other products and services, provided that costs can be clearly identified and allocated to the utility, and that all such purchases will be in compliance with the Standards and any other Board allocation and reporting rules. Any joint purchases would be done in compliance with Exhibit G, “New Jersey Natural Gas Company Affiliate Rules Compliance Plan Joint Purchasing Guidelines,” of the Compliance Plan.

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

I. Shared Services

1. Background

Section 14.4-5.5(i) of the Standards provides that:

An electric and/or gas public utility, its public utility holding company and related competitive business segments, or separate business segments of the public utility holding company created solely to perform corporate support services may share joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with N.J.A.C. 14:4-5.4 and this section, respectively, set forth herein, as well as other applicable Board pricing and reporting requirements.

2. Summary of Audit Activities

The provision of and charging for common services falls among the topics addressed in the reporting of Liberty's examination of *Cost Allocations and Affiliate Relationships*.

J. Protection of Confidential and Market Information

1. Statement of Applicable Requirements

Section 14:4-5.5(j) of the Standards provides that:

Such joint utilization shall not allow or provide a means for the transfer of confidential customer or market information from the electric and/or gas public utility to a related competitive business segment of its public utility holding company in violation of these standards, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of a related competitive business segment of the public utility holding company.

2. Summary of Audit Activities

This provision prohibits the utility from sharing confidential customer and market information with the holding company and related competitive business segments. The purpose of this prohibition is to prevent opportunities for cross-subsidies, customer confusion, and unfair competitive advantage. Cross-subsidies and unfair market advantages could occur in ways such as the following:

- Identification of new market opportunities
- Information concerning strategic direction of the company
- Acquiring market sensitive and related information
- Providing an opportunity for customer confusion between the identity of the utility and its PUHC or its RCBS.

The criteria that Liberty applied were as follows:

- Sufficient controls should be in place to protect competitively sensitive information regarding joint services
- The compliance plan should address handling of market sensitive information when joint services are being utilized
- Joint planning should be conducted in a manner that will protect competitively sensitive information.

This provision addresses the transfer of both customer and market information. A number of other provisions in the Standards address the protection of customer information. Liberty addresses the sufficiency of those protective efforts in connection with its discussion of those standards. Therefore, the focus of audit activities here was marketing.

The criteria that Liberty employed in examining performance under this provision were:

- Whether adequate steps are taken to prevent the transfer of protected information during planning and marketing activities

- Whether the utility compliance plan adequately addresses responsibilities imposed by this provision of the Standards.

Through the use of data requests and interviews, Liberty reviewed and analyzed the planning process at the utility and holding company as it relates to this provision of the Standards. Liberty sought to determine whether competitive sensitive information was shared during the planning cycle, and what controls were in place to ensure that competitive sensitive information generated at the utility was not used by affiliates.

As its initial step, Liberty reviewed the Compliance Plan and its procedures for complying with the Standard. Then through the use of data requests and interviews, Liberty attempted to identify opportunities in joint processes between the utility and its PUHC or RCBS where inappropriate sharing of information could occur. Liberty then reviewed and analyzed processes to ensure that adequate controls were in place to protect competitively sensitive information. To assess the controls, Liberty reviewed the information flows, the granularity of the information, which personnel had access, and how the information was used. Because of the amount of data and its competitive sensitivity, Liberty placed particular emphasis on the planning process at the utility and the PUHC.

3. Findings

Liberty conducted the activities described under other provisions; see, for example, Sections V.C., V.M., and VII.E., to address the issues relevant to this provision as well. The findings in those sections address the criteria for this provision.

Liberty reviewed strategic and business plans of NJNG. Liberty found that the business plans were separate from those of affiliated companies and Liberty could not identify any use of NJNG information by affiliates in their plans. Liberty also reviewed the planning processes as part of its evaluation of Management and Operations, which is addressed in companion reporting. That examination found no indication of inappropriate commingling of information or analysis during the planning processes.

The current Compliance Plan contains a certification by the NJNG Vice President – Regulatory Affairs affirming that there are sufficient mechanisms in place to assure compliance with the Standards and to assure that NJNG is not using corporate support services to circumvent the Standards.

4. Conclusions

- 1. Liberty found no evidence that the planning process provides an undue disadvantage or advantage to NJNG vis-à-vis other affiliates.**
- 2. The Compliance Plan adequately addresses the requirements of Section 14:4-5.5(j).**

5. Recommendations

Liberty has no recommendations with respect to this section of the standards.

K. Use of Utility Name and Logo

1. Statement of Applicable Requirements

Section 14.4-5.5(k) of the Standards provides that:

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

- 1. The PUHC or related competitive business segment of the public utility holding company "is not the same company as [LDC's NAME HERE], the electric and/or gas public utility";*
- 2. The PUHC or related competitive business segment of the public utility holding company is not regulated by the Board; and*
- 3. "You do not have to buy [RELATED COMPETITIVE BUSINESS SEGMENT'S NAME HERE] products in order to continue to receive quality regulated services from the electric and/or gas public utility."*

2. Summary of Audit Activities

These provisions address how a holding company RCBS may promote itself, particularly if it shares a similar name or logo with the regulated utility. A holding company RCBS may not use its connection with the utility to promote itself, nor may it use the utility's name or logo in any form of communication, unless it clearly and conspicuously provides the required disclaimer. The disclaimer is required only with regard to the use of the utility's name or logo in New Jersey.

Liberty requested information concerning the use of logos, trademarks and service marks, in order to determine whether there was any shared use of the utility name or logo, and, if so, whether the required disclaimer was prominently displayed. Liberty requested copies of utility and affiliate logos, trademarks and service marks and details of where the marks were used. Liberty also reviewed the websites and utility compliance plan for adherence to these standards.

3. Findings

The current Compliance Plan recites this provision. The company states that there have been no joint marketing, promotional or advertising programs during the audit period. Liberty reviewed sample mailings from NJRHS. Each of the mailings contained the necessary language. The disclaimer reads:

NJR Home Services is not the same company as New Jersey Natural Gas, the utility, and is not regulated by the New Jersey Board of Public Utilities. You do not have to buy products or services from NJR Home Services in order to continue receiving regulate services from New Jersey Natural Gas.

The disclaimer is also included on all outgoing emails from NJRHS employees.

NJRHS trucks use the standard Home Services logo, without any link to or disclaimer regarding NJNG.

Letterhead is similar. It contains at the bottom the disclaimer:

NJR Home Services is not the same company as New Jersey Natural Gas Company, the utility, and is not regulated by the New Jersey Board of Public Utilities. You do not have to buy products or services from NJR Home Services in order to continue receiving regulated services from New Jersey Natural Gas.

Business cards have the same disclaimer on the reverse. They use the common logo, the title, "NJR Home Services," offer the employee's njresources.com e-mail address, and list the www.njliving.com web site.

The NJRHS marketing materials made routine use of the common logo element, adding the subsidiary's own name and regularly providing the required disclaimer.

The NJR website makes significant use of logo commonality. NJRHS' website does include the disclaimer. Those holding companies that have affiliates listed on web sites as providing these services do the following:

- First Energy uses a much more modest pictorial connection, its retail energy affiliate does not share name elements with the utility, and the web-site of that affiliate features the disclaimer.
- South Jersey Industries makes use of similar logo commonality. Its appliance service business web-site and retail energy web site make use of the disclaimer.
- Conectiv does not share a common logo (pictorially or otherwise) with its parent or the holding company RCBS that provides competitive energy services in parts of the states where the parent's utility operating companies provide utility services; the web page of that entity providing retail services, Pepco Energy Services, has no connection with the utility name, and contains a disclaimer of connection with the utility.
- ETG and its parent share a common pictorial element, but their web sites do not list retail affiliates.
- PSEG uses a common pictorial element and the PSEG name in all its logos, but lists no retail affiliates. The utility, PSE&G, provides appliance service, but the rules about logo use differ for utility and holding company RCBSs.
- Orange & Rockland and its parent, ConEd share the pictorial element of their logos and the Orange & Rockland logo notes its affiliation with ConEd, but there are no retail affiliates listed on either site. The parent's site links to that of its retail energy and telecommunications affiliates, which share logo and name elements with the parent and with the New York utility, and which do not operate in New Jersey. Their sites do not contain a disclaimer.

4. Conclusions

1. **NJRHS' website makes use of the common logos and marks, provides the required disclaimer, but does not do so prominently.** (*See Recommendation #1 under Section V.A. of this report*)

Please see section V.A. of this report addressing Liberty's concerns with the use of the disclaimer on the NJRHS website.

2. **NJRHS always uses the disclaimer in marketing and sales materials, although those provided are sometimes not conspicuous.**

Liberty's examination of marketing and sales materials disclosed inconsistent practice in including the disclaimers. (*Recommendation #1*)

What constitutes a *conspicuous* disclaimer is clearly judgmental. However, Liberty's examination of marketing materials and customer communications showed that it was occasionally difficult to spot the disclaimer readily, even though the reviewer was specifically looking for it. The provision is intended for the benefit of readers not looking for disclaimers.

3. **NJRHS uses the required disclaimer on business cards and letterhead.**

Each of the NJRHS business cards reviewed by Liberty carried the required disclaimer on the back side of the business card. Each piece of NJRHS letterhead that Liberty reviewed displayed the proper disclaimer.

4. **The Compliance Plan otherwise adequately addresses Section 14.4-5.5(k) of the Standards.**

According to the Plan, retail affiliates are not permitted to trade upon, promote or advertise its relationship to NJNG, or use the Utility's name or logo in any publicly circulated materials in New Jersey without using the required disclaimer. The Plan states that it will not offer its retail affiliate any advertising space nor will it participate in joint advertising or joint marketing with a retail affiliate except to the extent allowed through the Affiliate Rules. The Plan further states that NJNG and any retail affiliates will not participate in joint business activities, trade shows, conferences, or marketing events in New Jersey. The plan also states that NJNG will not subsidize the cost of research, development, or advanced technology research to the benefit of a retail affiliate.

Compliance Plan Exhibit O, "Corporate Communications and Public Relations Guidelines and Corporate Identification and Advertising Guidelines," states that all employees must ensure that corporate communications and public relations services do not constitute joint marketing or advertising by NJNG and any retail affiliate. It also states that NJNG employees must avoid any actual or perceived joint marketing or advertising by NJNG and any retail affiliate that targets specific customer needs or highlights specific products or services. Exhibit O describes these joint advertising and marketing materials in a similar manner as do the Standards.

5. Recommendations

1. Review all NJRHS marketing materials and communications to verify that the required disclaimer is sufficiently prominent and make appropriate changes.

L. Non-New Jersey Use of Utility Name and Logo

Section 14.4-5.5(l) of the Standards provides that:

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

This section of the standards does not provide a conduct standard that is auditable. It merely narrows the restrictions imposed by Standard Section 14:4-5.5(k).

M. Promising or Implying Preferred Treatment

1. Statement of Applicable Requirements

Section 14:4-5.5(m) of the Standards provides that:

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

2. Summary of Audit Activities

The requirements of this section are similar to those of Sections 14:4-5.3(a) and (c). Liberty's audit activities were the same as those set forth for Sections 14:4-5.3(a) and (c).

3. Findings

Liberty's findings are the same as those set forth for Sections 14:4-5.3(a) and (c).

4. Conclusions

Liberty's conclusions are the same as those set forth for Sections 14:4-5.3(a) and (c).

5. Recommendations

Liberty's recommendations are the same as those set forth for Sections 14:4-5.3(a) and (c).

N. Use of Utility Advertising Space

1. Statement of Applicable Requirements

Section 14:4-5.5(n) of the Standards provides that:

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

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

2. Summary of Audit Activities

These provisions prohibit joint marketing activities between the utility and an RCBS of its holding company. The utility may not promote the holding company RCBS in its billing envelope or in other written communication unless competitors are offered the same opportunity. Liberty applied the following criterion in examining performance under this standard:

- If space is provided to an RCBS in any written communications to utility customers, it must be similarly provided to others.

Liberty requested information about all joint marketing activities pertaining to compliance with these provisions of the Standards. Liberty also requested a copy of all utility bill inserts. Liberty also reviewed the utility compliance plan with regard to this section of the Standards.

3. Findings

The Compliance Plan states that the Company will not offer its retail affiliate any advertising space nor participate in joint advertising or joint marketing with a retail affiliate, except to the extent allowed through the Standards. There is no specific mention of billing inserts.

Liberty reviewed the billing inserts that were sent to customers during the audit period. NJNG did not offer space in its billing envelope to NJRHS. Further, NJNG reports that they provided no space in its billing envelopes to NJRHS or any of its competitors.

4. Conclusions

- 1. NJNG did not provide advertising space for its PUHC or PUHC RCBSs in utility billing inserts during the audit period.**
- 2. NJNG did not provide an affiliate with advertising space in any written customer communications to its PUHC or PUHC RCBSs during the audit period.**
- 3. The Compliance Plan does not adequately address the requirements of Section 14:4-5.5(n). (Recommendation #1)**

While the Compliance Plan states that no joint marketing or advertising will occur, there is no specific mention of billing inserts.

5. Recommendations

- 1. Update the Compliance Plan to specifically address the Standards' provision against advertising in utility bill inserts. (Conclusion #3)**

O. Joint Advertising or Marketing

1. Statement of Applicable Requirements

Section 14:4-5.5(o) of the Standards provides that:

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

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

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

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

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

2. Summary of Audit Activities

These provisions prohibit joint marketing activities or the joint funding or support of research and development activities between the utility and an RCBS of its PUHC. Joint advertising or marketing activities between the utility and the PUHC RCBS are prohibited, including (but not limited to):

- Joint sales calls
- Joint call centers
- Joint proposals or responses to RFPs
- Joint advertising, marketing, communications, or correspondence
- Joint participation in trade shows, conferences, or other information or marketing events held in New Jersey
- Joint business activities

The utility may at the customer's unsolicited request participate in non-sales meetings with its PUHC RCBS in order to discuss technical or operational subjects regarding the provision of distribution services, provided the same participation is offered on a nondiscriminatory basis to competitors. Subsidization by the utility of R&D costs, fees, or payments with the PUHC RCBS is prohibited.

Liberty applied the following criteria in examining performance under this standard:

- Except in the case of unsolicited customer requests, the utility should not engage in any of the proscribed joint marketing and sales activities
- The utility should not participate with its holding company or a holding company RCBS in joint funding of research and development activities in a manner that fails to assign a proper share of the costs to the holding company or holding company RCBS.

Liberty requested information on all joint marketing, promotional, and advertising programs that benefited both regulated and competitive services. Liberty asked about sharing of space at trade shows, and requested information on practices and policies for utility participation in non-sales meetings with affiliates or non-affiliates. Liberty has also reviewed the utility compliance plan for its procedures regarding this section of the Standards.

Liberty requested information on the amount of research and development and advanced technology expenditures by the utility and the PUHC or a PUHC RCBS.

3. Findings

NJNG did not jointly participate in any trade shows, conventions, fairs or other similar events with any affiliate, nor did NJNG pay for the admission or participation of an affiliate at any such events. NJNG also states that there have been no joint marketing efforts, joint business activities, or joint advertisements of any kind with NJNG and another affiliate. NJNG has not jointly sponsored any events with an affiliate. NJNG reported that there was no joint marketing or advertising during the audit period.

While NJNG does participate in trade shows, NJRHS does not consider them a cost-effective strategy. NJRHS also does not participate in any golf outings, tournaments, foundation activities, charitable events, or other similar activities with parent or utility, nor does it get involved in the charitable support activities of NJNG.

Liberty observed that NJRHS displays its appliances in the immediate vicinity of the portion of NJR's offices where customers visit. The appliances are visible from the entrance that NJNG customers would likely use, but, in order to see the identity of the offeror of the appliances, customers would have to walk in a different direction from that leading to the windows where they would transact with NJNG customer representatives. There is, however, free access to the appliances, which NJRHS displays in the same lobby.

NJHRS has periodically made offers through which a portion of the costs associated with an NJRHS appliance purchase can be included on the NJNG bill and interest free-financing may be available for "qualified customers." Costs associated with the interest-free offer are the responsibility of the affiliate; NJNG does not bear them. NJNG does not offer a similar bill-

inclusion provision to NJRHS's competitors. The Company believes that the service it provides to NJRHS by including the affiliate's product billing constitutes a corporate support service, which is allowed under Section 14:4-5.5(e) of the Standards. See the discussion of that exception under Section V.B of this report volume. That section permits a utility to provide such services to an RCBS (such as NJRHS) without offering them to others. The NJRHS product billing is set forth on a separate line of the bill, and does not serve to change what the customer (whether on a payment plan or not) would pay for utility service during the six months covered. NJNG also provides (as discussed earlier in this report) for a billing and remittance processing services for NJRHS. As is true for those other products and services, NJNG purchases the receivables of the affiliate, using a factor that accounts for uncollectibles.

Customers contact NJR and its affiliates through a toll-free number. The response at that number identifies New Jersey Resources, "the parent company of New Jersey Natural Gas Company" as the responder. The caller is instructed to press "2" to reach NJRHS. This same toll-free number appears generally on NJRHS marketing and sales communications to potential and new customers.

NJNG reports that employees from various NJR affiliates participate in "VISION" activities, which consist of charitable community service events at which these employees volunteer their time and services. Samples of VISION activities include:

- Saturday Soup Kitchen
- Salvation Army Toy Sorting and Gift Wrapping
- Monmouth/Ocean County Foodbank
- Planting Flower at Ronald McDonald House.

Employees of NJR companies also participate in the Company's "Speakers Bureau Program" where local community organizations can request a speaker on topics such as "Careers in the Natural Gas Industry" and "Conserving Energy in Your Home". The Company reports that the NJNG logo would be the only corporate logo utilized for these events

NJRHS marketing and sales programs rely primarily on direct mail. NJRHS sends out two direct mailings per year, to mailing lists purchased from a third party, highlighting their standard offerings. These mailing lists are purchased from Rein Associates. NJRHS also sends out a newsletter twice per year to their 130,000 service contract customers. NJRHS also uses target mailings (e.g., senior citizens), through lists developed internally or purchased through the third party.

Occasional newspaper advertising is utilized for NJRHS, but no TV or radio advertisements have been used. They have performed some marketing out of area (into other LDC service territories), but have not been pursuing those areas, because their "brand" doesn't have significant enough impact there. They don't a priori limit their marketing to the NJNG service area, but that is pretty much the practical effect of their strategy and actions.

The current Compliance Plan recites the Standards provisions against participating in joint business activities, trade shows, conferences, or marketing events in New Jersey.

Liberty asked for a listing of R&D expenditures during the audit period; NJNG replied that NJNG did not subsidize cost, fees, or payments with its PUHC or any RCBS.

Customer satisfaction survey results include both Home Service and NJNG data, which allows for sharing of data between the utility and the affiliate. For contract customers, the communication with Home Services is through the work order system, rather than through transferring the call to a Home Services person. A Home Services customer can ask to speak to a Home Services employee. There is not a way for a leak call to get sent through to Home Services. If a call to the leak reporting number is for other purposes, NJNG reps do not take it, but ask the customer to call back to the correct number. If a gas distribution customer without a service contract calls for service, the NJNG reps advise the NJNG customer that the utility does not do service work, and directs the customer to the yellow pages; there is no flow of such calls to Home Services. A service agreement with the utility provides for the provision of phone answering. Home Services has not requested any special treatment of its customers, and expects that it is getting the same response as utility customers. NJNG and Home Services use the same dispatch system, the Field Order Dispatch System (FODS), but operate on separate, unlinked modules. Therefore, Home Services does not have access to utility work order/customer information. The two used to use the same system until 2003, when the separation took place.

4. Conclusions

- 1. NJRHS/NJNG did not jointly attend trade fairs, conventions, and marketing events in New Jersey.**
- 2. NJNG did not allow RCBS information to be inserted into bills.**
- 3. NJR allows NJRHS to display its products in the same lobby through which NJNG customers gain access to customer service windows. (*Recommendation #1*)**
- 4. Offering interest-free financing and inclusion on the utility bill of purchases from NJRHS constitutes joint advertising. (*Recommendation #2*)**
- 5. NJRHS's use for marketing and sales purposes of a toll-free number that routes through a system explicitly notifying callers that they have reached the parent of NJNG constitutes joint marketing. (*Recommendation #4*)**

When a customer calls a number commonly provided by NJRHS as the source for discussing product and service offerings, the first response heard is that the customer has reached the parent of NJNG. Thus, before the caller gets through to NJRHS, a connection is made to the utility. It is sometimes the case that the number appears in an NJRHS brochure that contains a disclaimer far back in the document from where the contact number is provided. There is only a partial disclaimer provided as part of the answering of the call. It comes after pressing the number for NJRHS and as part of the greeting specific to NJRHS. This disclaimer excludes the notification about not having to buy from NJRHS to continue receiving utility services. For the reasons discussed in Section V.B earlier in this report, the common services exception is not applicable; at least, NJNG should seek BPU clarification that the exemption relied on applies to this situation and that the routing of customers through a common link for marketing purposes does

not violate the joint marketing prohibition. Note also that the order approving the transfer of NJRHS operations from NJNG requires separate phone numbers.

6. The Compliance Plan adequately addresses this provision.

7. NJNG did not fund or support any R&D or advance technology efforts that benefited an RCBS.

8. Customer satisfaction surveys comprise a marketing activity; combining and sharing results of utility and NJRHS results thus constitutes joint conduct of marketing activity.
(Recommendation #4)

There are monthly reports that summarize performance across the full range of NJR operations (including NJNG customer satisfaction) at a very high level. These do not convey information that may provide advantage to the affiliate. However, the surveys of customers that produce these measures should not be made available to NJRHS.

5. Recommendations

1. End NJRHS's display in the lobby that customers use to gain access to NJNG customer representatives. *(Conclusion #3)*

2. Provide for competitor participation in programs by which NJNG offers financing, payment deferral, or any other concession on or related to a customer's utility account or bill. *(Conclusion #4)*

The offering of such participation should be on the same terms and conditions as NJNG makes available to its affiliate. Therefore, for example, if the affiliate bears the financing costs of a deferral, so should participating competitors. Similarly, any charges (*e.g.*, for billing services) made to the affiliate should apply to participating competitors.

3. Route NJRHS calls through a number that does not identify NJNG; or secure a BPU order permitting the practice. *(Conclusion #5)*

4. Preclude the sharing of utility customer satisfaction results with NJRHS. *(Conclusion #7).*

P. Joint Employees

1. Statement of Applicable Requirements

Section 14:4-5.5(p) of the Standards provides that:

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

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

2. Summary of Audit Activities

The criteria that Liberty employed in examining performance under this provision were:

- Whether any employee of a holding company RCBS was provided to the utility as an employee, consultant, or independent contractor for the performance of non-competitive utility and safety services
- Whether there was any sharing of employees or assets between the utility and a holding company RCBS engaged in the merchant function.

Liberty requested and analyzed information from the utility identifying which, if any, employees of affiliates (other than a service company and the holding company) provide non-competitive utility and safety services.

3. Findings

Liberty asked the company about employee and asset sharing between NJNG and affiliates during the audit period. NJNG told Liberty that there was no employee sharing.

Other than the use of rental space at the Wall headquarters building, no assets have been simultaneously used by the utility and an affiliate.

The current Compliance Plan recites this provision. No NJNG employee during the audit period served any affiliate simultaneously as an employee, contractor, consultant, or otherwise, apart from those offering shared services subject to billing or allocation to such an affiliate. No affiliate employees during the audit period were simultaneously engaged in the provision of utility and safety services, apart from shared administration and overheads.

4. Conclusions

1. There was no sharing of employees or assets covered by this provision of the Standards.

2. The Compliance Plan adequately addresses Section 14:4-5.5(p) of the Standards.

The Plan states that NJNG will fully comply with the provisions regarding employment with respect to the merchant function. The Plan also says that no employees of a retail affiliate will provide non-competitive or safety-related functions for the utility unless related to shared administration and overhead, or in the event of an emergency.

5. Recommendations

Liberty has no recommendations regarding this requirement of the standards.

Q. Common Directors and Officers

1. Statement of Applicable Requirements

Section 14:4-5.5(q) of the Standards provides that:

An electric and/or gas public utility and the PUHC or related competitive business segments of its public utility holding company shall not have the same persons serving on the Board of Directors as corporate officers, except for the following circumstances:

- 1. In instances when these standards are applicable to public utility holding companies, any board member or corporate officer may serve on the holding company and with either the electric and/or gas public utility or a related competitive business segment of the public utility holding company, but not both the electric and/or gas public utility holding company and a related competitive business segment of the public utility holding company.*
- 2. Where the electric and/or gas public utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the related competitive business segments, the prohibition against any board member or corporate officer of the electric and/or gas public utility also serving as a board member or corporate officer of a related competitive business segment shall only apply to related competitive business segments operating within New Jersey.*
 - i. In the case of shared directors and officers, a corporate officer from the electric and/or gas public utility and holding company shall verify, subject to Board approval, in the electric and/or gas public utility's compliance plan required pursuant to N.J.A.C. 14:4-5.7(a) through (e), the adequacy of the specific mechanisms and procedures in place to ensure that the electric and/or gas public utility is not utilizing shared officers and directors in violation of the Act or these standards.*

2. Summary of Audit Activities

Liberty requested a list of Directors and Officers for each company in addition to asking for any information on any position changes that were made during the audit period. Liberty also reviewed the Company's Compliance Plan.

3. Findings

The following table shows the holding company's officers during the audit period. The names followed by an asterisk are those who served also as NJNG officers during the audit period.

Table VII-7. Current NJR Officers

Position
<i>President and CEO</i>
Downes*
<i>Senior VP and CFO</i>
Lockwood
<i>Senior VP, General Counsel and Corp Secretary</i>
Harden*
<i>VP and General Counsel</i>
Dugan*
<i>Corp Secretary</i>
Figueroa*
<i>Senior Vice President, Corporate Affairs</i>
Ellis

In 2006 there were no instances of a company officer serving both NJNG and its only acknowledged RCBS; *i.e.*, NJRHS. However, the NJNG CEO, General Counsel, and Corporate Secretary also serve as officers of CR&R, which NJR does not acknowledge as an RCBS. In 2003 and 2004, the same individual served as NJR/NJNG Senior Vice President, General Counsel and Secretary, and as Director for retail affiliates NJRHS, NJR Power Services (since discontinued), and NJR Plumbing Services. This individual has since left the company and the current holders of those positions at the NJNG level are not similarly serving any current retail affiliates. No NJR Directors serve on any boards of affiliates other than NJNG.

The current Compliance Plan recites this provision regarding shared officers and directors.

4. Conclusions

- 1. Outside director separation meets the requirements of this provision**
- 2. Past instances of non-compliance regarding Officers and Directors serving NJNG and retail affiliates have been corrected.**
- 3. The Chief Financial Officer of NJR is technically not the Chief Financial Officer of NJNG; if he can be construed as such; there is a violation of the common officer prohibition. (Recommendation #1)**

The NJR CFO also serves as an officer of NJR's RCBSs NJRHS and CR&R. For him to serve as a utility officer would be a violation of this section of the Standards. The senior financial officer for NJNG is nominally the Company's Treasurer. In practice, however, the NJR CFO has responsibility for NJNG financial functions.

- 4. If CR&R is acknowledged as an RCBS, then officer changes will be required to comply with this provision. (Recommendation #2)**
- 5. The Compliance Plan adequately addresses Section 14:4-5.5(q) of the Standards.**

The plan accurately summarizes that no officer or director will serve both the utility and a retail affiliate.

5. Recommendations

1. Ensure that NJNG financial policies and decisions are not overseen by the NJR CFO, or alter the officer structure of NJRHS and CR&R to exclude him. (Conclusion #3)

In similar holding company - utility relationships where the utility represents the bulk of corporate activities, it is common that the holding company CFO serves in the same capacity for the utility. NJNG states that its Treasurer is its senior financial officer. During the audit Liberty observed that the NJR CFO was provided to answer questions relating to utility finance issues. Liberty's concern is that this individual is serving as the Utility's de facto CFO while officially serving as an officer of a holding-company RCBS.

2. Change the officers of CR&R in order to reach compliance with this section of the Standards. (Conclusion #4)

Liberty believes that CR&R is an RCBS of NJNG. The following NJNG officers serve similar roles for CR&R, which is not consistent with this provision of the Standards:

- Chairman, CEO, President, Director
- Vice President, General Counsel
- Corporate Secretary.

R. Employee Transfers

1. Statement of Applicable Requirements

Section 14:4-5.5(r) of the Standards provides that:

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

- 1. The electric and/or gas public utility shall make a public posting of all employee transfers within three working days.*
- 2. An electric and/or gas public utility shall track and report annually to the Board all employee transfers between the electric and/or gas public utility and such related competitive business segments of its public utility holding company.*
- 3. Once an employee of an electric and/or gas public utility is transferred to such related competitive business segment of its public utility holding company, said employee may not return to the electric and/or gas public utility for a period of one year, unless the related competitive business segment of the public utility holding company to which the employee is transferred goes out of business or is acquired by a non-affiliated company during the one-year period.*

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

2. Summary of Audit Activities

This provision limits the competitive impact on unaffiliated suppliers of utility employee movement from or to the PUHC or an RCBS. Should transfers occur, the provision makes them transparent to regulators and competitors. These limitations prevent a PUHC or RCBS from gaining competitive advantage through inappropriate transferring of employees to or from the public utility. Advantages could be gained in the following manners:

- Frequent transfer of employees with special expertise or knowledge
- Joint use of employees with special expertise or knowledge
- Transferring employees utilizing knowledge or transporting information gained at the utility for the benefit of the PUHC or related competitive business sector or vice versa.

Liberty sought to determine if employee transfers from NJNG to a holding company or holding company RCBS occurred during the audit period. Liberty then ascertained whether NJNG publicly posted the information within the three working day period. Liberty then determined if any transferring employee was provided proper instructions on the employee's use of retained information. Liberty also determined if NJNG made any required annual filing of employee transfer information with the Board.

In addition, Liberty determined whether any employee that did transfer from NJNG to the holding company or holding company RCBS and vice-versa met the one-year requirement on transferring back to the previously held job at the affected entity. As a part of this evaluation Liberty determined whether any such employees were properly instructed on confidential, competitively-restricted information prior to and after the transfer.

3. Findings

NJRHS is a holding company RCBS under the Standards. The following table summarizes the number of employees transferred from NJNG to NJRHS. None of the employees transferred were subsequently transferred back to NJNG.

NJNG to NJRHS Employee Transfers

Year	Number of Employees	Job Title
2006	2	Administrative Asst. II., Workload Supervisor
2005	0	n/a
2004	2	Install. Workload Supv., Workload Supervisor
2003	0	n/a
2002	2	HVAC/Electrical Sup., Clerical Asst. III

The following table summarizes the number of employees transferred from NJRHS to NJNG. None of the employees transferred were subsequently transferred back to NJRHS.

NJRHS to NJNG Employee Transfers

Year	# of Employees	Job Title
2006	4	Utility Service Tech. II (2), First Responder, Gas Plant Repairperson
2005	1	Load Dispatcher
2004	6	Utility Service Tech. II (2), First Responder (4),
2003	1	Utility Service Tech. II
2002	1	Utility Service Tech. II

Liberty asked NJNG to provide its annual reports to the BPU of employee transfers. The responses did not establish that such reports have been filed.

NJR reports that there is no established procedure for selecting employees for transfer between the utility and NJRHS. When NJRHS was created in 2000, the Company asked employees who had been working in the appliance repair business if they wanted to move to NJRHS. All current positions are advertised both throughout the NJR Corporation and outside of the Company.

The Compliance Plan recites this provision of the Standards.

The NJNG web site included postings of audit-period employee transfers on the “regulatory postings” page: <http://www.njng.com/regulatory/postings.asp/>

As part of an employee transfer certification, anyone moving to NJRHS must certify that he or she will not:

- Use information gained at NJNG to benefit NRJHS
- Provide to NJRHS any confidential customer information gained at NJNG that would be to the detriment of any NJRHS competitor.

4. Conclusions

- 1. NJNG has not demonstrated that it has made required reports annually about employee transfers during the audit period. (Recommendation #1)**
- 2. There was posting of employee transfers as required by Section 14:4-5.5(r) of the Standards.**
- 3. No employee transferred back to a former position within a year of the initial transfer during the audit period.**
- 4. NJR has no established process relating to the transfer of employees from NJNG to an affiliate; the transfer provisions of the Standards merit more emphasis. (Recommendations #2 and 3)**
- 5. The Compliance Plan generally addresses Section 14:4-5.5(r) of the Standards.**

Exhibit P to the current Compliance Plan recites the provision that the transfer of an employee from NJR or NJNG to a retail affiliate must be posted within three business days, and notes that the Human Resources department has responsibility for this posting. While the Compliance Plan

discusses the necessity of treating customer information as confidential, there is no separate focus on this area of the standards relating to employees transferred from NJNG to an affiliate.

5. Recommendations

1. **Make the required annual reporting to the BPU of covered employee transfers.** *(Conclusion #1)*
2. **Include in job postings, where applicable, a notice of the need for preservation of the confidentiality of protected information.** *(Conclusion #4)*
3. **Include in the Compliance Plan a specific reference to the need for preservation of the confidentiality of protected information for transferred employees.** *(Conclusion #4)*

S. Use of Utility Information after Employment Transfers

1. Statement of Applicable Requirements

Section 14:4-5.5(s) of the Standards provides that:

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

1. *Any electric and/or gas public utility employee hired by a related competitive business segment of the public utility holding company shall not remove or otherwise provide information to said affiliate which said related competitive business segment of the public utility holding company would otherwise be precluded from having pursuant to these standards.*
2. *An electric and/or gas public utility shall not make temporary or intermittent assignments, or rotations to related competitive business segments of its public utility holding company.*

2. Summary of Audit Activities

The first provision prohibits inappropriate use of utility information by transferred employees. The second prohibits rotations that would have the effect of making such information available without permanent transfer.

As a threshold matter, Liberty first sought to determine if employee transfers from the utility occurred during the audit period. Liberty reviewed utility employment practices, and analyzed severance or exit procedures used when an employee transfers to an affiliated company. Liberty also inquired whether any public utility employees were provided temporary or intermittent jobs with the holding company or holding company RCBS. Liberty reviewed the utility compliance plan and conducted interviews concerning temporary assignments, transfers, and rotations with human resources personnel.

3. Findings

NJNG reports that there were no short-term, temporary assignments of personnel between affiliates during the audit period.

As discussed in the previous section, the Compliance Plan discusses the necessity of treating customer information as confidential; there is no separate focus on this area of the standards relating to employees transferred from NJNG to an affiliate.

4. Conclusions

1. There were no audit-period transfers that this provision restricts.
2. NJNG has reasonable controls in place to prevent prohibited transfers of information.
3. The Compliance Plan adequately addresses Section 14:4-5.5(q) of the Standards.

5. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

T. Service Transfers

1. Statement of Applicable Requirements

Section 14:4-5.5(t) of the Standards provides that:

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

1. *Transfers from the electric and/or gas public utility to a related competitive business segment of its public utility holding company of services produced, purchased or developed for sale on the open market by the electric and/or gas public utility will be priced at no less than the fair market value.*
2. *Transfers from a related competitive business segment of the public utility holding company to the electric and/or gas public utility of services produced, purchased or developed for sale on the open market by the related competitive business segment of the public utility holding company shall be priced at no more than fair market value.*
3. *Prices for services regulated by a state or Federal agency shall be deemed to be the fair market value.*
4. *Services produced, purchased or developed for sale on the open market by the electric and/or gas public utility shall be provided to related competitive business segments of its public utility holding company and unaffiliated company(ies) on a nondiscriminatory basis, except as otherwise required or permitted by these standards or applicable law.*
5. *Transfers of services not produced, purchased or developed for sale on the open market by the electric and/or gas public utility from the electric and/or*

gas public utility to related competitive business segments of its public utility holding company shall be priced at fully allocated cost.

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

These provisions require that:

- “Open market” services the utility provides to an RCBS of the PUHC are priced at no less than fair market value and are provided on a nondiscriminatory basis (note that regulated services are at fair market value)
- “Open market” services an RCBS of the PUHC provides to the utility are priced at no more than fair market value (note that regulated services are at fair market value)
- “Non-open” market services the utility provides to an RCBS of the PUHC are priced at fully allocated cost
- “Non-open” market services an RCBS of the PUHC provides to the utility are priced at the lower of fully allocated cost or fair market value.

2. Summary of Audit Activities

The provision of and charging for common services falls among the topics addressed in Liberty’s companion reporting of its examination of *Cost Allocations and Affiliate Relationships*.

U. Utility Asset Transfers

1. Statement of Applicable Requirements

Section 14:4-5.5(u) of the Standards provide that:

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

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

These provisions address the pricing of assets transferred between affiliates, and generally require asymmetric pricing:

- Transfers from the utility to a PUHC RCBS are to be priced and recorded at fair market value or book value as determined by the Board.

- Transfers from a PUHC RCBS to the utility are to be priced at the *lesser* of book or fair market value.

2. Summary of Audit Activities

Liberty sought information from NJNG regarding asset transfers, leases, rentals, easements and other encumbrances through data requests. Specifically, Liberty asked NJNG to:

- Identify and describe each asset transfer from the regulated utility to each of the unregulated affiliates (and from each unregulated affiliate to the regulated utility) during the audit period
- List all asset leases and rentals between the regulated utilities and the unregulated affiliates of the parent/holding company
- List all licenses, easements, or other encumbrances of utility assets between the regulated utilities and the unregulated affiliates of the parent/holding company.

3. Findings

NJNG does not have policies and procedures in place regarding the transfer of assets. The company cited the fact that transfers of assets rarely occur, the last being in fiscal 2000 when NJRHS was created and bought assets from NJNG. There have been no other audit period asset transfers. The Compliance Plan states that any transfers, leases, rentals, leases, easement or other encumbrances of utility assets from NJNG to a retail affiliate be recorded at the greater of net book cost or fair market value. Also, such actions related to assets of a retail affiliate going to the utility will be recorded at the lesser of net book cost or fair market value.

The company reports that there were no equipment leases during the audit period.

The company confirmed that there were no audit-period transfers of intellectual property between NJNG and any affiliate. The current Compliance Plan does not address the issue of transfers of intellectual property.

The Compliance Plan states that NJNG will not share office space with a retail affiliate except as permitted in the area of shared corporate support functions.

The Compliance Plan recites this provision. NJNG does not have policies and procedures in place regarding the transfer of assets. The company cited the fact that transfers of assets rarely occur, the last being in fiscal 2000 when NJRHS was created and bought assets from NJNG. The company also reports that there were no asset leases and rentals during the audit period. CR&R does sub-lease space in the Wall headquarters building from NJNG, but the building is not a utility asset and is leased from an unaffiliated third party. NJRHS occupies space in NJNG-owned Manahawkin and Lakewood facilities under payment arrangements that are covered by a shared agreement between the parties, rather by a lease.

NJNG reported that there were no licenses, easements or other encumbrances of utility assets between NJNG and an RCBS during the audit period.

4. Conclusions

- 1. There have been no asset transfers, asset leases, or assets rentals between NJNG and an RCBS during the audit period.**
- 2. There were no reported licenses, easements or other encumbrances of utility assets between NJNG and an RCBS during the audit period.**
- 3. Space occupied by NJRHS in NJNG-owned facilities is covered by and paid for pursuant to a shared service agreement.**
- 4. The Compliance Plan adequately addresses Section 14:4-5.5(u) of the Standards, except for intellectual property. (*Recommendation #1*)**

5. Recommendations

- 1. Make explicit the Compliance Plan's inclusion of intellectual property in asset transfer provisions and provide a sufficient explanation of what is covered to put all employees on notice of the types of intangible property that is covered. (*Conclusion #4*)**

VIII. Utility RCBS Financial Reports (Section 14:4-5.6(o))

A. Background

A utility operating an RCBS must track:

- Total customers
- Total utility revenues
- Dedicated assets
- Carrying costs on dedicated assets
- Portion of shared assets allocated to competitive services
- Dedicated expenses incurred in the start-up, promotion and provision of service
- Fully allocated shared expenses
- Total margins, *i.e.*, the difference between total revenues and total expenses
- Net revenues, *i.e.*, the difference between total revenues and dedicated expenses
- Any such other item as the Board may determine.

Subsection (o) requires NJR to file an annual and a semi-annual report, using the information listed in (n) above, on the financial performance of each competitive product/service offered by the public utility or its RCBS.

B. Findings

This section of the standards does currently not apply to NJNG. NJRHS was not operated by the utility during the audit period, as it was transferred out of the utility in 2000. CR&R was not operated by the utility.

C. Conclusions

1. NJNG has no internal RCBS.

D. Recommendations

Liberty has no recommendations regarding the requirements of this provision.

IX. Prior EDECA Audit Follow-Up

A. Background

In July 2000, the Board selected a firm to perform audits of the state's three natural gas utilities, Elizabethtown Gas, South Jersey Gas and New Jersey Natural Gas. The firm completed these audits under a compressed time schedule of three months. In 2002, the Board selected a different firm to conduct the next EDECA audits of the three New Jersey LDCs. The overall objective of the audits was to determine whether the utilities had complied with the Electric Discount and Energy Competition Act and the Board's rules, regulations and orders regarding competitive services. The auditors were required to determine whether there was strict separation and allocation of each utility's revenues, costs, assets, risks, and functions between the utility's electric or gas distribution operations and its related competitive business segments.

In their reports, the auditors provided an assessment of whether each utility had:

- Cross subsidies between the utility and its non-utility segments within a holding company structure
- A reasonable separation of utility and non-utility organizations based on the standards
- Any impact on the use of utility assets in the provision of non-safety related competitive services
- Any impact or effect on the utility's employees with particular interest in professional assignments to related competitive business segments.

In addition, the reports included an assessment as to whether the utility was unfairly affecting competitive services, and whether the utility could demonstrate compliance with the Act. The auditors were also required to render an opinion as to whether any other services offered by the companies were competitive, and to quantify, when possible, any amount unfairly allocated to the related competitive business segments.

Liberty reviewed the report from the last EDECA audit. The purpose of this review was to enable Liberty to interpret the approved recommendations as they apply to the utility as it now exists, taking into account new business relationships that may have solidified since the prior audit, and changes in affiliates and their purposes (*e.g.*, removal of the appliance service business from the utility). Similarly, some of the pre-existing relationships among affiliated businesses have changed in the interim. As part of its review, Liberty sought to ascertain whether the scope of the recommendations has been affected by any new business relationships, and to ensure that steps are taken to implement the recommendations in all areas of the company as appropriate. Liberty's scope also included an independent analysis of whether the BPU should implement such recommendations.

B. Findings

The most recent NJNG audit report identified 13 specific recommendations. Liberty examined the company's progress in implementing them.

The first area covered by those recommendations was affiliate transactions documentation and internal control, which produced the following recommendations:

Prior Audit Recommendation A.1.: Expand service agreements between NJNG and each individual affiliate that describes the nature, terms and prices to be charged for inter-company services.

Prior Audit Recommendation A.2.: Prepare periodic itemized statements of inter-company services and charges (including allocations) for review by the business units and departments being charged for the services.

Prior Audit Recommendation A.3.: Adjust the board membership of NJR subsidiaries to comply with Affiliate Standards or obtain permission for variances from the BPU.

The company reports that recommendation A.1 was completed in 2004. Recommendations A.2 and A.3 are also complete. The company replaced the General Counsel as Corporate Secretary at NJRHS in July of 2006 in order to comply with Recommendation A.3. Additional revisions relating to this recommendation have since been made to reflect recent officer changes.

The second area covered by those recommendations addressed cost allocations, which produced the following recommendations:

Prior Audit Recommendation B.1.: Improve procedural documentation and workpaper support for Service Company and NJNG shared function cost allocations.

Prior Audit Recommendation B.2.: Discontinue the use of the equity allocator, retain at NJR the executive and other corporate costs associated with non-utility corporate development and allocate remaining “residual” or “unattributable” costs in proportion with costs directly assigned and attributed.

Prior Audit Recommendation B.3.: For each NJNG function shared with Home Services or another affiliate, identify, document, pool and allocate all common costs related to the function.

Prior Audit Recommendation B.4.: Adjust the discount applied to Home Services receivables (purchased by NJNG) to properly reflect the entire cost of credit, collection and bad debts.

Liberty performed its own detailed examination of cost allocations and supporting procedures and work papers. Liberty’s companion reporting on its examination of *Cost Allocations and Affiliate Relationships* provides the results of that examination, which subsumes the recommendation being addressed here.

The company reports that recommendations B.1 and B.3 are completed. NJR disagreed with the allocation of costs in the manner described in recommendation B.3 as it relates to the allocation of the AS-400 system, which they argue benefits primarily NJNG. The company initially disagreed with recommendation B.2 arguing that their approach is based on a long standing BPU-approved method and that the alternative proposed by the audit would serve to increase costs to the utility. Nevertheless the company implemented the recommendation. The company initially disagreed with the recommendation posed in B.4. NJR states that the rate used is based on what is charged to third-party suppliers. NJR allocated credit and collections by costs, continuing bad debt percentages and stated that they were reasonable based on the company’s service territory demographics. However, the company implemented the change in fiscal year 2005 and that information is shown in the quarterly Allocation Statements to Affiliates.

The third area covered by those recommendations addressed the appliance service business, which produced the following recommendations:

Prior Audit Recommendation C.1.: Establish controls to prevent NJNG customer service representatives (CSRs) from using NJNG's customer data in serving NJRHS appliance service customers.

Prior Audit Recommendation C.2.: Include the prohibition against using utility customer data for appliance services in the NJR "Do's and Don'ts for Customer Service Representatives" policy.

Prior Audit Recommendation C.3.: The BPU should consider the competitive consequence of granting NJR permission to transfer "No Heat" calls to Home Services and provide NJNG with instruction based on its consideration.

The Board's July 29, 2004 Order in Docket Number GM02080609 generally addressed these recommendations.

The company reports that controls are in place relating to the sharing of NJNG customer data discussed in recommendation C.1, and the company emphasized to the CSRs the importance of this issue. Recommendation C.2 was agreed to by the company and completed. NJR held discussions with BPU staff regarding recommendation C.3 but the parties reached no resolution.

C. Conclusions

1. NJNG has responded to the recommendations of the last EDECA audit.

D. Recommendations

Liberty has no recommendations concerning follow-up to the prior EDECA audit; however, see Section VI.A. of this report volume.