

## CHAPTER 248

**AN ACT** concerning municipal electric power systems and rural electric cooperatives and amending P.L.1999, c.23

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

1. Section 39 of P.L.1999, c.23 (C.48:3-88) is amended to read as follows:

C.48:3-88 Status of municipal systems, rural electric cooperatives, definition.

39. a. (1) A municipal system, or a rural electric cooperative, that was established prior to the effective date of P.L.1999, c.23 (C.48:3-49 et seq.), shall not be subject to the provisions of P.L.1999, c.23 except as provided in paragraph (2) of subsection a. of this section or subsection b. of this section.

(2) The governing body of a municipality that operates such a municipal system, or the board of directors of a rural electric cooperative, may require that system or cooperative, as the case may be, to implement retail choice.

b. (1) A municipal system subject to this section that serves retail electric power customers solely within the corporate limits of its municipality and that, on or after the effective date of P.L.2003, c.248, is authorized by the governing body of the municipality to provide electric generation service beyond those corporate limits shall become licensed as an electric power supplier pursuant to section 29 of P.L.1999, c.23 (C.48:3-78) and shall be subject to the provisions of sections 31 through 38 of P.L.1999, c.23 (C.48:3-80 through C.48:3-87) for the purpose of and to the extent of the provision of such electric generation service.

(2) A municipal system subject to this section that serves retail electric power customers beyond the corporate limits of its municipality and that, on or after the effective date of P.L.2003, c.248, is authorized by the governing body of the municipality to provide electric generation service beyond its franchise area shall become licensed as an electric power supplier pursuant to section 29 of P.L.1999, c.23 (C.48:3-78) and shall be subject to the provisions of sections 31 through 38 of P.L.1999, c.23 (C.48:3-80 through C.48:3-87) for the purpose of and to the extent of the provision of such electric generation service.

(3) A rural electric cooperative subject to this section that, on or after the effective date of P.L.2003, c.248, is authorized by its board of directors to provide electric generation service beyond its franchise area shall become licensed as an electric power supplier pursuant to section 29 of P.L.1999, c.23 (C.48:3-78) and shall be subject to the provisions of sections 31 through 38 of P.L.1999, c.23 (C.48:3-80 through C.48:3-87) for the purpose of and to the extent of the provision of such electric generation service.

(4) A municipal system or rural electric cooperative that becomes licensed as an electric power supplier and otherwise subject to the provisions of P.L.1999, c.23 (C.48:3-49 et seq.) pursuant to the provisions of this section shall, in conjunction with the provision of electric generation service, provide for retail choice for the retail electric power customers within its prior service or franchise area, as appropriate.

c. For the purposes of this section, "municipal system" means a municipality that provides light, heat or power pursuant to the provisions of R.S.40:62-12 et seq.

2. Section 42 of P.L.1999, c.23 (C.48:3-91) is amended to read as follows:

C.48:3-91 Government aggregator.

42. a. Pursuant to the provisions of sections 42 through 45 of this act, a government aggregator may obtain: electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, for its own facilities or with other government aggregators; and a government aggregator that is a county or municipality may contract for the provision of electric generation service or gas supply service, either separately or bundled, for the business and residential customers within the territorial jurisdiction of the government aggregator. Such a government aggregator may combine the need for its own facilities for electric generation service or gas supply service with that of business and residential customers.

b. A government aggregator shall purchase electric generation service and gas supply service only from licensed electric power suppliers and licensed gas suppliers.

c. The government aggregator shall enter into the contract for electric generation service, electric related service, gas supply service or gas related service for its own facilities or with other government aggregators under the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.), or the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.), as applicable.

d. Nothing in this act shall preclude the State government or any State independent authority or State college from exercising authority to obtain electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, for its own facilities on an aggregated basis.

e. Nothing in this section shall preclude a government aggregator from aggregating its own accounts for regulated utility services, including basic generation or gas service.

f. Nothing in this act shall preclude any interstate authority or agency from exercising authority to obtain electric generation service or gas supply service, either separately or bundled, for its own facilities in this State, including tenants in this State and other utility customers in this State at such facilities, on an aggregated basis. By exercising such authority, no interstate authority or agency shall be deemed to be a public utility pursuant to R.S. 48:1-1 et seq.; provided, however, that nothing in this act shall be construed to exempt such authority or agency from the payment of the market transition charge or its equivalent, imposed pursuant to section 13 of this act, the transition bond charge or its equivalent, imposed pursuant to section 18 of this act and any societal benefits charge or its equivalent, which may be imposed pursuant to section 12 of this act, to the same extent that other customers of an electric public utility pay such charges in conjunction with any transmission and distribution service provided by an electric public utility to the authority or agency.

g. Notwithstanding any other provision of this act to the contrary, a private aggregator that is a private institution of higher education may enter into a contract with a licensed electric power supplier other than a municipal system or rural electric cooperative for the provision of electric generation service or electric related service, either separately or bundled, including any private aggregator that is a four-year private institution of higher education which is located within the jurisdiction of a municipal system, or within the franchise area of a rural electric cooperative, as the case may be. The right hereunder of a four-year private institution of higher education to enter into a contract with a licensed electric power supplier other than the municipal system or rural electric cooperative shall be subject to the condition that the municipal system or rural electric cooperative shall have the right of first refusal to offer a competitive, market-based price for electric power. For the purposes of this subsection, "municipal system" means a municipality that provides light, heat or power pursuant to the provisions of R.S.40:62-12 et seq.

h. The "New Jersey School Boards Association," established pursuant to N.J.S.18A:6-45, is authorized to serve as a government aggregator to obtain electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, in accordance with the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., for members of the association who wish to voluntarily participate.

i. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, interim standards governing government energy aggregation programs. Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

j. No government aggregator shall implement the provisions of section 42, 43, 44, or 45 of this act, as appropriate, prior to the starting date of retail competition pursuant to section 5 of this act, or the date on which the board adopts interim standards pursuant to subsection i. of this section, whichever is earlier.

3. This act shall take effect immediately.

Approved January 14, 2004.