

## CHAPTER 184

AN ACT providing electricity customers with price comparison information and amending P.L.1999, c.23.

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

1. Section 8 of P.L.1999, c.23 (C.48:3-56) is amended to read as follows:

C.48:3-56 Board shall not regulate, fix, prescribe certain aspects of competitive services.

8. a. Except as otherwise provided in P.L.1999, c.23 (C.48:3-49 et al.), and notwithstanding any provisions of R.S.48:2-18, R.S.48:2-21, section 31 of P.L.1962, c.198 (C.48:2-21.2), R.S.48:3-1 or any other law to the contrary, the board shall not regulate, fix, or prescribe the rates, tolls, charges, rate structures, rate base, or cost of service of competitive services.

b. For the purposes of P.L.1999, c.23 (C.48:3-49 et al.), electric generation service is deemed to be a competitive service.

c. The board is authorized to determine, after notice and hearing, whether any other service offered by an electric public utility is a competitive service. In making such a determination, the board shall develop standards of competitive service which, at a minimum, shall include: evidence of ease of market entry; presence of other competitors; and the availability of like or substitute services in the relevant market segment and geographic area. Notwithstanding the presence of these factors, the board may determine that any service shall remain regulated for purposes of the public safety and welfare.

d. The board is authorized to determine, after notice and hearing, and after appropriate review by the Legislature pursuant to subsection k. of this section, whether to reclassify as regulated any electric service or segment thereof that it has previously found to be competitive, including electric generation service, if it determines that sufficient competition is no longer present, upon application of the criteria set forth in subsection c. of this section. Upon such a reclassification, subsection a. of this section shall no longer apply and the board shall determine such rates for that electric service which it finds to be just and reasonable. The board, however, shall continue to monitor the electric service or segment thereof and, whenever the board shall find that the electric service has again become sufficiently competitive pursuant to subsection c. of this section, the board shall again apply the provisions of subsection a. of this section.

e. Nothing in P.L.1999, c.23 (C.48:3-49 et al.) shall limit the authority of the board, pursuant to Title 48 of the Revised Statutes, to ensure that electric public utilities do not make or impose unjust preferences, discriminations, or classifications for any services provided to customers.

f. (1) The board shall adopt, by rule, regulation, or order, such fair competition standards, affiliate relation standards, accounting standards, and reports as are necessary to ensure that electric public utilities or their related competitive business segments do not enjoy an unfair competitive advantage over other non-affiliated purveyors of competitive services and in order to monitor the allocation of costs between competitive and non-competitive services offered by an electric public utility, and within 60 days after the starting date for implementation of retail choice pursuant to subsection a. of section 5 of P.L.1999, c.23 (C.48:3-53), shall commence the process of conducting audits, at the expense of the electric public utilities, to ensure compliance with this section and section 7 of P.L.1999, c.23 (C.48:3-55) and with the board's rules, regulations and orders adopted pursuant to this

section and section 7 of P.L.1999, c.23 (C.48:3-55). The board shall hire an independent contractor to perform such audits.

(2) Subsequent audits shall take place no less than every two years after the date of the decision rendered pursuant to subsection k. of section 7 of P.L.1999, c.23 (C.48:3-55).

(3) The public utility or an intervenor shall have the right to contest the methodology and rebut the findings of an audit performed pursuant to this subsection, in a filing with the board. The board shall take no action to functionally separate, structurally separate, or require the divestiture of any portion of a public utility's operations pursuant to this subsection until the public utility, and any intervenors, have been afforded timely opportunity to make such filing and until the board has issued a decision thereon.

(4) If the board finds, as a result of any such audit, that substantial violations of P.L.1999, c.23 (C.48:3-49 et al.) or of the board's rules, regulations or orders adopted pursuant to this section and section 7 of P.L.1999, c.23 (C.48:3-55) have occurred which result in unfair competitive advantages for an electric public utility, it shall: order the electric public utility to establish and provide such services through a business unit which is functionally separated from the electric public utility business unit as a related competitive business segment of the utility, such that, other than shared administration and overheads, employees of the competitive services business unit 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 noncompetitive utility and safety services; order the electric public utility to establish and provide such services through a structurally separate business unit or units including, but not limited to, a related competitive business segment of the public utility holding company; or order the electric public utility to divest itself of any business units that provide such services.

(5) If the board determines, as a result of the audit performed pursuant to this subsection that an electric public utility has unfairly allocated costs between its competitive and non-competitive services, the board is authorized to require such utility to return to the ratepayers an amount, equivalent to the amount of the costs determined to be unfairly allocated, with interest, during the time that the unfair allocation of costs occurred. In addition, the board is authorized to order such utility to pay a fine of up to \$10,000 as a result of the violation or violations determined to have occurred pursuant to this subsection.

(6) Notwithstanding any requirements 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, such fair competition and accounting standards as are necessary on an interim basis to implement retail electric choice. 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."

g. The board shall determine, by rule or order, what reports are necessary to monitor the competitiveness of any service offered to a customer of an electric public utility.

h. The board shall have the authority to take appropriate increasingly stringent action, including the issuance of an order that an electric public utility or its related competitive business segment cease the offering of a competitive service, functionally separate or structurally separate its competitive service offering from non-competitive business functions, or divest itself of such services, in the event that the board determines, after hearing, that recurring and significant violations of its rules or orders adopted pursuant to subsection f. of this section have occurred.

i. Nothing in P.L.1999, c.23 (C.48:3-49 et al.) shall exempt an electric public utility from obtaining all applicable local, State, and federal licenses or permits associated with the offering of competitive services and complying with all applicable laws and regulations regarding the provision of such services.

j. If the board finds, as a result of any audit conducted pursuant to this section, that violations of the board's rules, regulations or orders adopted pursuant to this section and section 7 of P.L.1999, c.23 (C.48:3-55) have occurred, which are not substantial violations, the board is authorized to impose a fine of up to \$10,000 against the electric public utility.

k. Prior to reclassifying as regulated any service it previously found to be competitive, the board shall make recommendations to the Legislature concerning the proposed reclassification. The recommendations shall be deemed to be approved unless the Legislature adopts a concurrent resolution stating that the Legislature is not in agreement with all or any part of the recommendations within 90 days following the date of transmittal of the recommendations to the Legislature. The concurrent resolution shall advise the board of the Legislature's specific objections to the recommendations and shall direct the board to submit revised recommendations which respond to those objections within 45 days of the date of transmittal of the concurrent resolution to the board.

1. The board may promulgate regulations to require each electric public utility, electric power supplier, marketer, government aggregator, and broker engaged in the provision of electricity to end use customers to provide the board with adequate and accurate price comparison information that will enable customers to make informed choices regarding the purchase of electric energy offered by that provider to customers. The board may compile that information into a single, understandable database and post the database on its Internet website in a manner that enables customers to compare prices and services on a uniform basis. The board may contract with a public or private entity for the purpose of developing, administering, and maintaining the database. The contract shall specify the duties and responsibilities of the entity with respect to the development, administration, and maintenance of the database. The board shall monitor the work of the entity to ensure that the database is developed, administered, and maintained pursuant to the requirements of this section.

2. This act shall take effect immediately.

Approved January 13, 2014.