

**CHAPTER 3
ALL UTILITIES**

Authority

N.J.S.A. 48:2-13, 48:2-16, 48:2-17, 48:2-20, 48:2-24, 48:2-27, 48:2-76, 48:3-3, 48:3-7.8, 48:3-12, 48:13A-1 and 48:19-17.

Source and Effective Date

R.2002 d.280, effective July 31, 2002.
See: 34 N.J.R. 992(a), 34 N.J.R. 3216(b).

Chapter Expiration Date

Chapter 3, All Utilities, expires on July 31, 2007.

Chapter Historical Note

All provisions of Chapter 3, All Utilities, became effective prior to September 1, 1969.

1971 Revisions: Subchapter 10, Solid Waste Collection and Solid Waste Disposal, became effective July 8, 1971 as R.1971 d.109. See: 2 N.J.R. 76(f), 3 N.J.R. 160(a).

1973 Revisions: Amendments became effective June 19, 1973 as R.1973 d.157. See: 5 N.J.R. 123(b), 5 N.J.R. 240(a). Further amendments became effective July 11, 1973 as R.1973 d.187. See: 4 N.J.R. 196(e), 5 N.J.R. 292(b).

1975 Revisions: Amendments became effective October 17, 1975 as R.1975 d.305. See: 7 N.J.R. 277(b), 7 N.J.R. 510(b).

1978 Revisions: Amendments became effective May 16, 1978 as R.1978 d.155. See: 9 N.J.R. 290(e), 10 N.J.R. 261(e).

1979 Revisions: Amendments became effective March 16, 1979 as R.1979 d.117. See: 11 N.J.R. 260(a). Further amendments became effective August 1, 1979 as R.1979 d.289. See: 11 N.J.R. 258(b), 11 N.J.R. 467(a). Further amendments became effective October 10, 1979 as R.1979 d.352. See: 11 N.J.R. 522(c).

1980 Revisions: Amendments became effective January 1, 1980 as R.1980 d.474. See: 11 N.J.R. 402(b), 12 N.J.R. 49(b). Further amendments became effective January 24, 1980 as R.1980 d.44. See: 12 N.J.R. 156(d). Further amendments became effective July 1, 1980 as R.1980 d.299. See: 12 N.J.R. 209(f), 12 N.J.R. 495(d). Further amendments became effective December 29, 1980 as R.1980 d.555. See: 12 N.J.R. 552(a), 13 N.J.R. 105(b).

1983 Revisions: Amendments became effective November 21, 1983 as R.1983 d.526. See: 15 N.J.R. 787(a), 15 N.J.R. 1949(a).

1984 Revisions: Amendments became effective February 6, 1984 as R.1983 d.651. See: 15 N.J.R. 1235(a), 16 N.J.R. 250(a). Further amendments became effective April 2, 1984 as R.1984 d.87. See: 15 N.J.R. 1355(a), 16 N.J.R. 744(a). Subchapter 3, Service, and Subchapter 7, Bills and Payments for Service, were readopted effective July 2, 1984 as R.1984 d.259. See: 16 N.J.R. 693(a), 16 N.J.R. 1807(a).

1985 Revisions: Amendments became effective April 15, 1985 as R.1985 d.166. See: 16 N.J.R. 2747(a), 17 N.J.R. 974(a). Further amendments became effective May 6, 1985 as R.1985 d.202. See: 17 N.J.R. 174(a), 17 N.J.R. 1136(a).

1986 Revisions: Amendments became effective July 7, 1986 as R.1986 d.242. See: 18 N.J.R. 463(a), 18 N.J.R. 1401(a).

1987 Revisions: Amendments became effective April 6, 1987 as R.1987 d.163. See: 18 N.J.R. 2425(a), 19 N.J.R. 552(a). N.J.A.C. 14:3-7.12A became effective December 21, 1987 as R.1987 d.516. See: 18 N.J.R. 2315(a), 19 N.J.R. 2405(b).

Pursuant to Executive Order No. 66(1978), Chapter 3, All Utilities, expired on May 6, 1990. Chapter 3, All Utilities, was subsequently adopted as new rules by R.1991 d.221, effective May 6, 1991. See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).

1993 Revisions: Subchapter 11, Solid Waste Collection Regulatory Reform, was adopted as R.1993 d.83, effective February 16, 1993. See: 24 N.J.R. 1459(a), 25 N.J.R. 692(a).

Pursuant to Executive Order No. 66(1978), Subchapter 10, Solid Waste Collection and Solid Waste Disposal, and Subchapter 11, Solid Waste Collection Regulatory Reform, were readopted by R.1996 d.253, effective May 6, 1996. As part of R.1996 d.253, Subchapters 10 and 11 were recodified to N.J.A.C. 7:26H-1 and 7:26H-5, respectively, effective June 3, 1996. See: 28 N.J.R. 78(a), 28 N.J.R. 247(a), 28 N.J.R. 1147(a), 28 N.J.R. 2908(a). The remainder of Chapter 3, All Utilities, consisting of Subchapter 1, Definitions; Subchapter 2, Plant; Subchapter 3, Service; Subchapter 4, Meters; Subchapter 5, Offices; Subchapter 6, Records; Subchapter 7, Bills and Payments for Service; Subchapter 8, Suggested Formulae for Extension of Utility Service; and Subchapter 9, General Provisions, expired on May 6, 1996.

Chapter 3, All Utilities, consisting of Subchapters 1 through 9 and 12, was adopted as new rules by R.1997 d.39, effective February 3, 1997. See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).

Subchapter 13, Interest on Deferred Balances of Levelized Energy Adjustment Clauses, Levelized Gas Adjustment Clauses, Purchased Water Adjustment Clauses and Purchased Sewerage Treatment Adjustment Clauses, was adopted as R.1997 d.351, effective September 2, 1997. See: 28 N.J.R. 4079(a), 29 N.J.R. 3845(a).

Chapter 3, All Utilities, was readopted as R.2002 d.280, effective July 31, 2002. See Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. DEFINITIONS

14:3-1.1 Definitions

The following words and terms, when used in N.J.A.C. 14:3 through 14:10, shall have the following meanings unless clearly indicated otherwise:

“Board” means the Board of Public Utilities of New Jersey.

“Customer” means the person identified in the account records of a utility as the person responsible for payment of the utility bill. A customer may or may not be an end user, as defined herein.

“Days” means calendar days unless specified otherwise.

“End user” means a person who receives, uses, or consumes electricity, gas, telephone, water or wastewater service. An end user may or may not be a customer, as defined herein.

Case Notes

No proof presented in line extension case that owner required to construct new line or that utility is without authority to do so. *State v. Sun Oil Co.*, 160 N.J.Super. 513, 390 A.2d 661 (Law Div.1978).

Award of interest denied on rebate moneys wrongfully withheld (citing former regulation). *A & A Construction Corp. v. West Keansburg Water Co.*, 6 N.J.A.R. 210 (1980).

14:3-8.1A Waiver request, operative date

(a) If a regulated entity requests a waiver of one or more requirements in this subchapter (as effective December 20, 2004) in accordance with N.J.A.C. 14:1-1.2(b), the waiver shall include documentation that the requirements of N.J.A.C. 14:1-1.2(b)1 and 2 are met. Specifically, the waiver request shall demonstrate how full compliance with the requirement(s) of this subchapter would adversely affect ratepayers and the ability of the regulated entity to render safe, adequate and proper service in an environmentally responsible manner; and shall demonstrate that the regulated entity's proposed alternative will meet the purposes and intent of this subchapter at least as effectively as the requirements that will be waived. Any such waiver request shall be submitted by January 19, 2005, and the Board shall act on the waiver request within 180 days after receipt of a complete waiver petition.

(b) This subchapter (as effective December 20, 2004) shall become operative on March 20, 2005, except for this section and N.J.A.C. 14:3-8.1B, which shall become operative on December 20, 2004.

New Rule, R.2004 d.462, effective December 20, 2004.
See: 36 N.J.R. 276(a), 37 N.J.R. 5928(a).

14:3-8.1B Submission of modified tariff

Each regulated entity shall submit to the Board a modified tariff that complies with this subchapter as operative March 20, 2005 (see 36 N.J.R. 5928(a)) by January 19, 2005.

New Rule, R.2004 d.462, effective December 20, 2004.
See: 36 N.J.R. 276(a), 36 N.J.R. 5928(a).

14:3-8.2 Definitions

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

“Applicable tariff” means the tariff, filed with and approved by the Board, that covers the geographic area in which a particular development or extension is located.

“Area not designated for growth” means an area that is not a designated growth area as defined herein.

“Cost” means, with respect to the cost of construction of an extension, actual expenses incurred for materials and labor (including both internal and external labor) employed

in the design, purchase, construction, and/or installation of the extension, including overhead directly attributable to the work, as well as overrides or loading factors such as those for back-up personnel for mapping, records, clerical, supervision or general office functions.

“Center designation” or “designated center” means a center that has been officially recognized as such by the State Planning Commission in accordance with its rules at N.J.A.C. 5:85 or in the Pinelands Area, a center recognized as such pursuant to a valid Memorandum of Agreement between the New Jersey Pinelands Commission and the New Jersey State Planning Commission.

“Designated growth area” means an area depicted on the New Jersey State Planning Commission State Plan Policy Map as:

1. Planning Area 1 (Metropolitan Planning Area, or PA-1);
2. Planning Area 2 (Suburban Planning Area, or PA-2);
3. A designated center;
4. An area identified for growth as a result of either an initial or advanced petition for plan endorsement that has been approved by the State Planning Commission pursuant to N.J.A.C. 5:85-7;
5. A smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (l) of section 6 of N.J.S.A. 13:17-6; or
6. A Pinelands Regional Growth Area, Pinelands Village or Pinelands Town, as designated in the Comprehensive Management Plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the Pinelands Protection Act, N.J.S.A. 13:18A-8.

Assistance in determining whether a particular parcel of land in a designated growth area can be obtained through the Department of Community Affairs Office of Smart Growth website at <http://www.nj.gov/dca/osg/>.

“Distribution revenue” means a regulated entity's total revenue, minus the following, as applicable:

1. For a gas public utility, as defined at N.J.A.C. 14:4-2.2, Basic Gas Supply Service charges assessed in accordance with the gas public utility's tariff; and
2. For an electric public utility, as defined at N.J.A.C. 14:4-1.2, Basic Generation Service charges assessed in accordance with the electric public utility's tariff.

“Extension” means the construction or installation of plant and/or facilities by a regulated entity to convey service from existing or new plant and/or facilities to one or more new customers, and also means the plant and/or facilities themselves. This term includes all plant and/or facilities for

transmission and/or distribution, whether located overhead or underground, on a public street or right of way, or on a private property or private right of way, including the wire, poles of supports, cable, pipe, conduit or other means of conveying service from existing plant and/or facilities to each unit or structure to be served, except as excluded at 1 through 6 below. An extension begins at the existing infrastructure and ends as follows:

1. For water service, the extension ends at the curb of the property or properties on which the customers to be served are located, but also includes the meter. Any piping, fire hydrants and branches, or other water infrastructure (with the exception of the water meter), which is within the boundary or the property or properties to be served, is not included in the extension and is the responsibility of the customer;
2. For gas service, the extension ends at the meter and includes the meter;
3. For an overhead extension of electric service, the extension ends at the point where the service connects to the building, but also includes the meter;
4. For an underground extension of electric service, the extension ends at, and includes, the meter; unless the applicant and the regulated entity make other arrangements; and
5. For telecommunications service, the extension ends at the point of demarcation as defined in the regulated entity's tariff.

“Generation” means the manufacture, production, extraction or creation of a substance (such as water or petroleum products), a form of energy (such as electricity), or a signal (such as a telecommunications or cable television signal).

“New Jersey State Planning Commission” means the commission established by the State Planning Act, N.J.S.A. 52:18A-196 et seq.

“Office of Smart Growth” means the Office in the Department of Community Affairs that staffs the State Planning Commission and provides planning and technical assistance as requested. The Office of Smart Growth serves the same functions as the Office of State Planning, described at N.J.S.A. 52:18A-201.

“Planning area” has the meaning assigned to the term in the rules of the State Planning Commission at N.J.A.C. 5:85-1.4. As of December 20, 2004, this term is defined in those rules to mean an area of greater than one square mile that shares a common set of conditions, such as population density, infrastructure systems, level of development, or environmental sensitivity. The State Development and Redevelopment Plan sets forth planning policies that serve as

the framework to guide growth in the context of those conditions.

“Plant and/or facilities” means any machinery, apparatus, or equipment, including but not limited to mains, pipes, aqueducts, canals, wires, cables, fibers, substations, poles or other supports, generators, engines, transformers, burners, pumps, and switches, used for generation, transmission, or distribution of water, energy, telecommunications, cable television or other service that a regulated entity provides. This term includes service lines and meters, but does not include equipment used solely for administrative purposes, such as office equipment used for administering a billing system.

14:3-8.3 General requirement to provide extensions

(a) To obtain regulated services to serve new development or new customers, a person shall apply to the appropriate regulated entity, as defined at N.J.A.C. 14:3-1.1, for construction of an extension, as defined at N.J.A.C. 14:3-8.2.

(b) If an applicant for an extension has met all applicable requirements in this chapter, a regulated entity shall install the requested extension in accordance with this subchapter. No regulated entity is required to construct an extension or to furnish service to any customer unless all applicable requirements of this subchapter have been met, unless ordered to do so by the Board.

(c) A regulated entity is not required to construct, own, operate or maintain an extension on any property unless the regulated entity is legally authorized to do so, for example through an easement or right of way. The applicant shall ensure that the regulated entity is provided with such legal authority, at no cost to the regulated entity and with no requirement for condemnation of the property.

(d) In constructing and operating an extension, a regulated entity shall use equipment and practices that meet all applicable requirements in this chapter, and which are consistent with applicable industry best practices and standards and the regulated entity's minimum system design standards. An applicant may request equipment or service which exceeds these standards. If the regulated entity provides this excess equipment or service, the regulated entity may charge the applicant for the full cost of the excess facilities requested, in accordance with N.J.A.C. 14:3-8.9(d)3.

(e) A regulated entity shall construct an extension with sufficient capacity to provide safe, adequate, and proper service to customers, in accordance with the regulated entity's and/or the industry's system design standards, even if the applicant requests less capacity.

Case Notes

Award of interest denied on rebate moneys wrongfully withheld (citing former regulation). *A & A Construction Corp. v. West Keansburg Water Co.*, 6 N.J.A.R. 210 (1980).

14:3-8.4 (Reserved)

Repealed by R.2004 d.462, effective December 20, 2004.

See: 36 N.J.R. 276(a), 36 N.J.R. 5928(a).

Section was "Requirement to put certain extensions underground".

14:3-8.5 General provisions regarding costs of extensions

(a) A regulated entity shall not pay for or financially contribute to the cost of an extension, as defined at N.J.A.C. 14:3-8.2, except in accordance with this subchapter or N.J.A.C. 14:3-10. This section applies in addition to the requirements of N.J.A.C. 14:3-8.6 or 8.7, whichever is applicable.

(b) An extension shall become the property of the regulated entity upon its completion. If an extension is paid for by an applicant in accordance with this chapter, a regulated entity shall include the extension in its contribution in aid of construction (CIAC) accounts, for accounting purposes only. The regulated entity shall record such a contribution in a manner consistent with the Uniform System of Accounts, 18 CFR Part 101, which is incorporated by reference in the rules. Amounts that a regulated entity receives in accordance with this subchapter and which are not refunded to an applicant shall be credited to the appropriate plant account or accounts.

(c) The estimated cost of an extension for which a regulated entity receives a deposit, or receives a non-refundable contribution, shall include the tax consequences incurred by the regulated entity as a result of receiving deposits under the Tax Reform Act of 1986.

(d) Regulated entities, customers, applicants, developers, builders, municipal bodies and other persons shall cooperate fully in order to facilitate construction of an extension at the lowest reasonable cost consistent with system reliability and safety. This includes sharing trenches where practicable, and coordinating scheduling and other aspects of construction to minimize delays and to avoid difficult conditions such as frozen or unstable soils. A municipality shall not impose an ordinance or other requirement that conflicts with this subchapter, or which would prevent or interfere with another person's compliance with this subchapter.

(e) Each regulated entity shall submit for Board approval a proposed tariff containing charges for services, including installation of underground service. The regulated entity

shall periodically submit updated tariffs on its own initiative or as requested by the Board.

(f) If an applicant requests an extension to serve both a designated growth area and an area not designated for growth, the regulated entity shall pay for the portion of the extension that is necessary for and will be used to serve a designated growth area in accordance with N.J.A.C. 14:3-8.7. The regulated entity shall pay for or contribute financially to the portion of the extension that will serve the area not designated for growth only in accordance with (h) below.

(g) A regulated entity shall construct each extension with sufficient capacity to provide safe, adequate, and proper service to customers, in accordance with N.J.A.C. 14:3-8.3(e). For example, if an applicant requests a four kilovolt extension of electric service but the regulated entity's minimum system design standard is thirteen kilovolts, the regulated entity shall construct a thirteen kilovolt extension. In such a case, the cost of the extension for purposes of this subchapter and the suggested formula shall be the full cost of the thirteen kilovolt extension, and not merely the cost of a four kilovolt extension.

(h) There may be a case where an applicant requests an extension and the regulated entity wishes to construct additional capacity over that required under N.J.A.C. 14:3-8.3(e). If a regulated entity chooses to construct an extension or portion of an extension with additional capacity, over that which is needed to comply with N.J.A.C. 14:3-8.3(e), the regulated entity may pay for or contribute financially to the incremental cost of the additional capacity, or may require the applicant to pay for it. However, if any of the additional capacity is added to serve anticipated customers in an area not designated for growth, the Board will consider this fact when considering whether the investment in additional capacity was reasonable and prudent, in determining whether to allow the regulated entity to include the cost of the additional capacity in its rate base.

(i) This subchapter does not prohibit a regulated entity from constructing an extension or performing related services in exchange for compensation. A regulated entity may contract with an applicant for service to design, purchase, construct or maintain an extension on behalf of the applicant. However, the regulated entity shall be paid for the cost of constructing or installing the extension, in accordance with this subchapter.

(j) A regulated entity shall charge customers in a designated growth area only for costs related to the portion of an

extension that is necessary for and will be used to serve the designated growth area.

(k) The costs of any installation or construction of infrastructure, which is not governed by this subchapter, shall be governed by other applicable law.

14:3-8.6 Costs for extension serving an area not designated for growth

(a) This section governs a regulated entity's authority to pay for or contribute financially to an extension or portion thereof, which has been requested solely to serve development in an area not designated for growth, as defined at N.J.A.C. 14:3-8.2. The section phases out a regulated entity's authority to pay for such an extension or portion thereof. The requirements in this section apply in addition to those of N.J.A.C. 14:3-8.5.

(b) If a regulated entity chooses to construct additional capacity, not requested by the applicant and greater than the capacity required under N.J.A.C. 14:3-8.3(e), the cost of that additional capacity shall not be governed by this section but shall be governed by N.J.A.C. 14:3-8.5(h).

(c) During the three-year phasing out period, a regulated entity may choose not to contribute to an extension or portion thereof, described at (a) above, or may choose to contribute in accordance with the adjusted formula set forth at (e) or (f) below, as applicable.

(d) Beginning March 20, 2005 and ending January 1, 2006, if a regulated entity chooses to contribute to an extension described at (a) above, the regulated entity shall contribute financially to the extension in accordance with N.J.A.C. 14:3-8.7, except that if the suggested formula at N.J.A.C. 14:3-8.10 or 8.11 is applied, each refund to the applicant shall be calculated by multiplying annual distribution revenue from each customer by the following, rather than by 10:

1. For extensions of water service, by 1.5; and
2. For extensions of all other regulated services, by three.

(e) Beginning January 1, 2006 and ending January 1, 2007, if a regulated entity chooses to contribute to an extension described at (a) above, the regulated entity shall contribute financially to the extension in accordance with N.J.A.C. 14:3-8.7, except that if the suggested formula at N.J.A.C. 14:3-8.10 or 8.11 is applied, each refund to the applicant shall be calculated by multiplying annual distribution revenue from each customer by the following, rather than by 10:

1. For extensions of water service, by .75; and

2. For extensions of all other regulated services, by 1.5.

(f) After January 1, 2007, a regulated entity shall not pay for or financially support an extension or portion thereof described at (a) above except pursuant to an exemption under N.J.A.C. 14:3-8.8, and in addition the Board shall not consider the cost of the extension when determining the regulated entity's rates under N.J.S.A. 48:2-21.

14:3-8.7 Costs for extension serving a designated growth area

(a) This section governs the regulated entity's authority to pay for or contribute financially to an extension or portion thereof that has been requested in order to serve development in a designated growth area, as described at (b) below. The requirements in this section apply in addition to the requirements of N.J.A.C. 14:3-8.5.

(b) If an extension is part of a project that the Board has approved for inclusion in a Targeted Revitalization Incentive Program (TRIP) under N.J.A.C. 14:3-10, the cost of the extension shall not be governed by this section but shall be governed by N.J.A.C. 14:3-10, as applicable. The cost of an extension that will serve development in an area not designated for growth is governed by N.J.A.C. 14:3-8.6. If a regulated entity chooses to construct additional capacity, not requested by the applicant and greater than the capacity required under N.J.A.C. 14:3-8.3(e), the cost of that additional capacity shall not be governed by this section but shall be governed by N.J.A.C. 14:3-8.5(h).

(c) The cost of an extension described at (a) above shall be determined by mutual agreement between the regulated entity and the applicant. If a regulated entity and an applicant cannot agree upon a financial arrangement regarding the cost of an extension, either party may petition the Board to apply the suggested formula set forth at N.J.A.C. 14:3-8.10 or 8.11, as applicable.

(d) For an extension described at (a) above, a regulated entity may require a deposit prior to construction from an applicant in any case where the regulated entity is not expected to receive a substantial portion of the revenue from the extension within the first five years after the extension is constructed. The deposit shall be refunded to the applicant in accordance with the suggested formula set forth at N.J.A.C. 14:3-8.10 or 8.11, as applicable.

14:3-8.8 Exemptions from cost limits on areas not designated for growth

(a) The following shall be exempt from the requirements for costs of extensions to serve development in an area not designated for growth at N.J.A.C. 14:3-8.6:

1. (Reserved);

2. An extension serving certain agricultural buildings, as described in (d) below;

3. A prior agreement or Board order requiring a regulated entity to provide certain extensions without charge, as described at (e) below;

4. A project already in progress as of March 20, 2005, as described in (g) below;

5. A project that will provide a significant public good, as described in (h) below; and

6. A project for which compliance would cause extraordinary hardship, as described in (i) below.

(b) An exemption described at (a)1 through 4 above shall not require prior written approval from the Board. An exemption described at (a)5 or 6 above shall require prior written approval from Board staff.

(c) Reserved.

(d) An extension with the sole purpose of serving an agricultural building or structure whose sole use is the production, storage, packing or processing of agricultural or horticultural products, provided that a majority of these products were produced on a New Jersey commercial farm, as defined in N.J.S.A. 4:1C-3, shall be exempt from the limits at N.J.A.C. 14:3-8.6. The costs for an extension covered by this subsection shall be governed by the requirements for extensions to serve a designated growth area at N.J.A.C. 14:3-8.7.

(e) If a regulated entity has entered into a prior written agreement with the Board that requires the regulated entity to provide certain extensions without charge, or has been ordered by the Board to provide certain extensions without charge, those extensions shall be exempt from the limits at N.J.A.C. 14:3-8.6. For an agreement or Board order to qualify for this exemption, the agreement shall have been executed March 20, 2005.

(f) If the Board has, prior to March 20, 2005, executed a binding agreement providing for a regulated entity to contribute financially to an extension, the regulated entity may contribute financially to the extension, to the extent required for compliance with the prior agreement. However, this exemption does not cover a telecommunications infrastructure upgrade project serving areas not designated for growth under the Plan of Alternative Regulation, approved by Board Order issued under Docket No. TO92030358.

(g) If construction of an extension has begun prior to March 20, 2005, or if a regulated entity has committed in writing to pay for or financially support the extension, prior to March 20, 2005, the extension shall be exempt.

(h) To obtain an exemption based on a significant public good, a person shall demonstrate to the Board that all of the following criteria are met:

1. The project or activity served by the extension would provide a significant benefit to the public or to the environment;

2. That the project described in (h)1 above is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth. In making this determination, the Board will consult with the Office of Smart Growth and other State agencies; and

3. There is no practicable alternative means of providing the benefit while still complying with this subchapter.

(i) To obtain an exemption based on extraordinary hardship, a person shall demonstrate to the Board that all of the following criteria are met:

1. Compliance with this subchapter would cause an extraordinary hardship;

2. The extraordinary hardship results from unique circumstances that do not apply to or affect other projects in the region;

3. The unique circumstances arise from the project itself and not from the circumstances or situation of the regulated entity or its customers; and

4. Neither the extraordinary hardship nor the unique circumstances are the result of any action or inaction by the regulated entity, its shareholders, or its customers.

(j) The cost of an extension that is exempt under this section shall be distributed as follows:

1. If an extension is eligible for an exemption based on a prior agreement or Board order under (e) above, the regulated entity shall pay for or financially contribute to the extension only to the extent required by the prior agreement or Board order. To the extent that the prior agreement does not specify the distribution of costs for the extension, the requirements for extensions that serve an area not designated for growth at N.J.A.C. 14:3-8.6 shall govern;

2. If an extension is eligible for an exemption based on a project in progress under (f) above, the regulated entity shall pay for or financially contribute to the extension only to the extent that it previously committed to do so in a written agreement. To the extent that the regulated entity has not committed to pay for the extension, the requirements for extensions shall serve an area not designated for growth at N.J.A.C. 14:3-8.6 shall govern;

3. For an exemption based on significant public good or extraordinary hardship, the Board shall determine the distribution of costs for the extension at the time of approval of the exemption; and

4. For any exemption not covered at (j)1, 2, or 3 above, the regulated entity shall pay for or financially contribute to an extension in accordance with the requirements at N.J.A.C. 14:3-8.7 governing extensions in a designated growth area.

14:3-8.9 Designated growth area suggested formulae—general provisions

(a) Board staff will apply the suggested formula only if all of the following criteria are met:

1. The extension is subject to N.J.A.C. 14:3-8.7;
2. The extension is not included in a Board-approved TRIP program; and
3. Either the regulated entity or the applicant for service submits a request to Board staff to apply the suggested formula, based on the parties' inability to reach agreement upon the amount of the regulated entity's financial contribution to the extension.

(b) If a regulated entity or applicant requests application of the suggested formula to an extension to serve any type of development other than a single residential customer, Board staff shall apply the formula at N.J.A.C. 14:3-8.10. If a regulated entity or applicant requests that Board staff apply the suggested formula to an extension to serve only a single residential customer, Board staff shall apply the formula in N.J.A.C. 14:3-8.11.

(c) For both types of formulae (single residential customer and other), the applicant shall provide the regulated entity with a deposit. The amount of the deposit shall be determined according to the provisions for multi-unit developments at N.J.A.C. 14:3-8.10 or for single residential customers at N.J.A.C. 14:3-8.11, as applicable. The regulated entity shall then construct the extension, and shall refund the portions of the deposit that are refundable under (g) below according to the formula set forth at N.J.A.C. 14:3-8.10 or 8.11, as applicable.

(d) For purposes of determining the amount of the deposit and applying the suggested formula, the following shall apply:

1. The regulated entity shall estimate the cost of the extension in accordance with the applicable tariff, and shall include the tax consequences incurred by the regulated entity under the Tax Reform Act of 1986 as a result of receiving the deposit;
2. The regulated entity shall assume that the electric service connection to each building will be at the nearest corner of the building to the point at which the service enters the property;

3. If an applicant requests service that costs more than that which is standard under the regulated entity's and/or the industry's system design standards, or if an extension presents an unusual situation in which providing standard service is substantially more expensive than usual, the regulated entity may charge the applicant or the customer for the extra expense. In accordance with (h) below, this charge is not refundable. For example, for an underground extension, costs of pavement cutting and restoration, rock removal, blasting, or unusual or difficult digging conditions requiring equipment and methods not generally used may be charged to the applicant. In such a case, the regulated entity shall not charge the applicant more than the actual cost for the extra work required; and

4. If the extension requires a regulated entity to pay an attachment charge for the use of utility poles located on private property and not owned by the regulated entity, the regulated entity may include the cost of the attachment charge when calculating the cost of the extension.

(e) The regulated entity shall notify the applicant of the actual cost of the extension within 30 days after the actual costs are known, and as soon as reasonably practical after construction is completed. As the application process and the construction proceeds, the amount of the deposit shall be adjusted as needed to reflect the actual cost. If the amount of the deposit exceeds actual costs at the completion of construction, the regulated entity shall return any excess. If the deposit is less than actual costs, the applicant shall provide the necessary additional funds to the regulated entity.

(f) Any amount not refunded within 10 years after the date upon which the regulated entity is first ready to render service from the extension shall remain with the regulated entity. In no event shall a regulated entity refund more than the total deposit amount to the applicant.

(g) The following portions of a deposit shall be refundable under the suggested formula:

1. For any extension, the cost of the portion of the extension that runs from existing infrastructure to the boundary of the property on which the new customers to be served are located (that is, to the subdivision gate; or for an individual lot, to the curb of the lot);
2. For an extension of gas infrastructure, the cost of the portion of the extension that is within the boundary of the property or properties on which the new customers to be served are located; and
3. For an underground extension of electricity or telecommunications service, the amount it would cost to serve the customers overhead.

4. A utility infrastructure plan, which may cover a period of time up to five years, describing all infrastructure the regulated entity estimates will be needed, including cost estimates;

5. A one-year work plan for the first year of the TRIP, which provides specificity and detail regarding the work the regulated entity intends to complete in the first year of the TRIP, including maps detailing where the work is to be done, and a breakdown of estimated costs;

6. A demonstration of how the work proposed in the utility infrastructure plan in (b)4 above is necessary to provide service to the development anticipated in (b)3 above; and

7. Any other information necessary to evaluate whether the petition submitted by a particular regulated entity and municipality complies with this subchapter.

(c) When submitting a petition for initial approval of a TRIP, a regulated entity shall comply with the notice requirements for petitions at N.J.A.C. 14:1-5.12.

(d) The Board shall provide notice of its receipt of the petition for initial approval of a TRIP on the Board's webpage at www.bpu.state.nj.us, and will make the petition available for public inspection.

(e) The Board shall approve a TRIP on a year-by-year basis. The Board's initial approval of the TRIP shall authorize the regulated entity to implement the construction detailed in the one-year work plan submitted under (b) above. Each year, the Board shall review the construction proposed for the following year and shall determine whether to approve it.

(f) Because the purpose of a TRIP is to provide data and case studies to guide the Board in future smart growth policy making, the Board may deny a petition for approval of a TRIP if the Board determines that it has sufficient data, that the TRIP is not likely to provide the information the Board needs, or that previously approved TRIP pilots are not successfully meeting their intended purpose.

(g) Once the Board has approved a TRIP pilot, the regulated entity shall begin infrastructure investments in accordance with the activities in the first one-year work plan, as approved by the Board under this section. If a developer or new customer requests service for a new development in the TRIP area during the time frame covered by the TRIP pilot, the regulated entity shall build the necessary infrastructure and shall not charge the applicant or require a deposit, provided that:

1. The development to be served is consistent with the municipal plans, zoning and ordinance submitted to the Board as part of the TRIP petition; and

2. The new infrastructure is consistent in timing and content with the one-year work plan for that year, which

the Board approved under this section. If the infrastructure is included in the overall utility infrastructure plan described in (b) above, but was not submitted as part of the one-year work plan, the regulated entity shall build the necessary infrastructure without charge to the applicant and shall not require a deposit. The regulated entity shall include this cost as an additional cost in the annual TRIP adjustment petition, described in N.J.A.C. 14:3-10.5. The regulated entity shall maintain detailed records of expenditures on infrastructure constructed in the TRIP area.

14:3-10.5 Annual TRIP adjustment petition

(a) After eligible investments have begun, the regulated entity and the municipality shall submit an annual TRIP adjustment petition to the Board in a format provided by the Board and shall include the following types of information:

1. Detailed descriptions of all eligible investments and the development, existing and prospective, served by infrastructure constructed under the TRIP;

2. The amount of new utility service capacity provided by the investments;

3. A one-year work plan for all infrastructure construction planned for the forthcoming year under the TRIP, and the estimated cost of this infrastructure, consistent with N.J.A.C. 14:3-10.4(b)5;

4. Any changes in zoning laws, development or redevelopment plans, or other requirements relevant to development in the TRIP area, that have occurred since the TRIP was initially approved;

5. An accounting of the type and size of new development that is being served (housing, commercial, industrial, number of units, jobs, office space) in the TRIP area;

6. An update of the utility infrastructure plan submitted under N.J.A.C. 14:3-10.4(b), showing any changes necessitated by changes in development patterns, municipal plans or zoning, or any other causes. The updated utility infrastructure plan shall be consistent with all local plans and ordinances, and with the State Plan; and

7. The proposed TRIP charge, determined in accordance with N.J.A.C. 14:3-10.7, and detailed information demonstrating that the proposed TRIP charge meets the requirements at N.J.A.C. 14:3-10.7. Such information shall support the TRIP charge calculation with documentation, detailed financial analyses, and other relevant information showing all assumptions and calculations. All of this supporting financial information shall be presented in such a way as to allow the Board to evaluate whether the calculations meet all requirements of this subchapter.

(b) When submitting an annual TRIP adjustment petition, a regulated entity shall comply with the notice requirements for petitions at N.J.A.C. 14:1-5.12.

(c) The Board shall review each annual TRIP adjustment petition, and shall determine:

1. Whether the completed investments meet the requirements in this subchapter;
2. Whether the regulated entity's proposed TRIP charge meets the requirements at N.J.A.C. 14:3-10.7;
3. Whether the updated utility infrastructure plan remains consistent with all local plans and ordinances, with the State Plan, and with N.J.A.C. 14:3-10.1 through 10.5; and
4. Whether to approve an additional year of the TRIP.

(d) In determining whether to approve an additional year of the TRIP, the Board shall consider, at a minimum, the following:

1. Whether the regulated entity completed previously authorized TRIP investments in accordance with this subchapter, and if not, why not;
2. Whether, in light of local and regional economic and development trends, the planned and prospective development called for in the municipal plans continues to be prudent and likely, and therefore whether the regulated entity's planned infrastructure investments continue to be prudent; and
3. Whether the planned and prospective development continues to be consistent with the State Development and Redevelopment Plan and all applicable local plans and laws.

(e) The Board may condition participation in the TRIP for a subsequent year on modifications to the updated utility infrastructure plan and the proposed work plan for the upcoming year, to ensure consistency with this subchapter.

14:3-10.6 Termination of a TRIP

(a) The regulated entity shall stop assessing the TRIP charge at the earlier of the following:

1. When the infrastructure covered by the TRIP charge is fully depreciated; or
2. At the conclusion of the next rate case for the regulated entity.

(b) If at any time the Board determines that the municipal master plan or zoning and ordinances are no longer consistent with the State Plan or principles of smart growth, or if the State Planning Commission revokes the previously granted plan endorsement pursuant to N.J.A.C. 5:85-7.13, all activities under the TRIP shall stop within three months after the Board determination or the Commission's revocation, whichever is earlier.

(c) If the Board finds at any time that a regulated entity is not in compliance with the TRIP as approved, or if there is a material change in development patterns, economic trends, or other trends relevant to the prudence of the planned development to be served by infrastructure constructed under the TRIP, the Board may cancel the TRIP approval upon three months notice to the regulated entity.

(d) If a TRIP terminates under (b) or (c) above, the following shall apply, as applicable:

1. The regulated entity may continue to assess the TRIP charge for any investments made under the TRIP prior to the termination;
2. The regulated entity shall not use a TRIP charge to pay for any investments made after the TRIP is terminated; and
3. If an applicant requested an extension prior to the termination of the TRIP, which would have been covered under the TRIP, the regulated entity shall not require the applicant to provide a deposit for the extension, but may require the applicant to furnish a deposit for any additional work not requested prior to the termination of the TRIP.

(e) If the Board has not adopted a permanent TRIP to replace the pilot TRIP within five years after initial approval of a regulated entity's TRIP pilot, the regulated entity shall stop initiating infrastructure investments under the TRIP.

14:3-10.7 Calculating the TRIP charge

(a) When a regulated entity has submitted a TRIP adjustment petition in accordance with N.J.A.C. 14:3-10.5, the Board shall determine the amount of the TRIP charge in accordance with this section.

(b) The Board shall set the amount of a TRIP charge at a level that will provide the regulated entity with the following:

1. A return on eligible TRIP investments, offset by accumulated depreciation and accumulated deferred income taxes, and adjusted for taxes. The return shall be set at the regulated entity's current cost of debt, adjusted for taxes. The current cost of debt shall be determined by the Board and calculated using the rate for seven year constant maturity treasuries, as shown in the Federal Reserve Statistical Release published on or closest to August 31, plus 60 basis points; and

2. Recovery of depreciation expense on the eligible investments, calculated using the regulated entity's overall composite depreciation rate in effect for that class of assets.

(c) The TRIP charge shall be subject to the following limits:

1. The TRIP charge shall be calculated and assessed on a per unit of service basis. The TRIP charge per unit of service shall be the same for all applicable customers while the TRIP charge is in effect. For all regulated entities except for water utilities, applicable customers shall be those customers from which a regulated entity is authorized to assess the Societal Benefits Charge (SBC) in accordance with N.J.S.A. 48:3-60. For water utilities, applicable customers shall be all customers;

2. The TRIP charge shall not allow a regulated entity to earn in excess of its allowed return on common equity, as determined by the Board in the most recent base rate case for that regulated entity. Amounts not recoverable under this paragraph shall not be deferred;

3. The TRIP charge shall not be set at a level that results in a charge to residential customers that is greater than one percent of the average bill of a typical residential customer for that regulated entity; and

4. Any other limits or conditions necessary to ensure that the TRIP charge complies with (b) above.

(d) All TRIP charge calculations shall be supported as required under N.J.A.C. 14:3-10.5(a)7.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. UTILITY MANAGEMENT AUDITS

14:3-12.1 Applicability

The rules of this subchapter shall be applicable to those utilities subject to the requirements set forth in N.J.S.A. 48:2-16.4.

14:3-12.2 Initiation of audit

Where the Board determines that an audit of a utility is necessary or desirable, it shall order the audit to be performed and shall establish the objective, scope, and other factors it deems pertinent to said audit.

14:3-12.3 Performance of audit

(a) Where the Board requires an audit to be performed by an independent management consulting firm under the supervision of designated members of the Board's staff, the following provisions shall apply:

1. The Board's staff shall establish and maintain a list of qualified consulting firms from which participants shall be selected to be invited to submit proposals to perform the audit, except that any consulting firm may request, in

writing, to become a participant and shall be awarded the full privileges thereof;

2. The Board's staff shall prepare a request for proposals to be mailed to all participants setting forth all pertinent criteria to be used by the Board's staff in its evaluation of submitted proposals;

3. The Board's staff shall invite all participants to attend a conference, prior to the submission of proposals, for the purpose of reviewing the request for proposals with the Board's staff and representatives of the utility;

4. The Board's staff shall prepare, with the assistance of the utility, an evaluation of all submitted proposals for review by the Board, from which a consulting firm shall be selected to perform the audit; and

5. The Board's staff shall prepare a written agreement, setting forth all terms and conditions of the audit, to be signed by authorized representatives of the utility and the selected consulting firm.

(b) In lieu of selecting a consulting firm, the Board may require an audit to be performed by members of its staff.

14:3-12.4 Results of audit

Upon completion and review of an audit, the Board's staff shall permit the utility to review its findings of said audit and to provide written comments which shall be incorporated into the results filed with the Board.

14:3-12.5 Implementation of results

(a) The utility may adopt, or the Board may order, the implementation of new or altered practices and procedures, as determined by the results of the audit.

(b) The Board's staff shall formulate, with the assistance of the utility, detailed plans to implement new or altered practices and procedures.

(c) The Board's staff shall monitor, evaluate and modify, as necessary, the implementation of new or altered practices and procedures to ensure the promotion of efficient and adequate service to meet the public convenience and necessity.

SUBCHAPTER 13. INTEREST ON DEFERRED BALANCES OF LEVELIZED ENERGY ADJUSTMENT CLAUSES, LEVELIZED GAS ADJUSTMENT CLAUSES, PURCHASED WATER ADJUSTMENT CLAUSES AND PURCHASED SEWERAGE TREATMENT ADJUSTMENT CLAUSES

14:3-13.1 Scope

The rules contained in this subchapter shall apply to deferred balances which result from the operation of Level-

ized Energy Adjustment Clauses, Levelized Gas Adjustment Clauses, Purchased Water Adjustment Clauses and Purchased Sewerage Treatment Adjustment Clauses.

14:3-13.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Applicable period” means the period or timeframe in which any adjustment clause is in effect, usually 12 months, or any other period as authorized by the Board.

“Base cost of energy” means the cost of energy produced, purchased and interchanged as established in the most recent base rate or adjustment clause case of an electric utility and collected via the base rates of that electric utility.

“Base cost of gas” means the cost of gas produced and/or purchased as established in the most recent base rate or adjustment clause case of a gas utility and collected via the base rates of that gas utility.

“Base cost of purchased sewerage treatment” means the cost of contractually purchased sewerage treatment as established in the most recent base rate or adjustment clause case of a wastewater utility. Actual cost shall be reflected as cost per 1,000 gallons or cost per 1,000,000 gallons unless otherwise specifically approved by the Board. (See N.J.A.C. 14:9-8.2.)

“Base cost of purchased water” means the cost of contractually purchased water as established in the most recent base rate or adjustment clause case of a water utility and collected via the base rates of that water utility. Actual cost shall be reflected as cost per 1,000 gallons or cost per 1,000,000 gallons unless otherwise specifically approved by the Board. (See N.J.A.C. 14:9-7.2.)

“Deferred accounting treatment” means the deferring on the books and records of a water or wastewater utility the difference between the expense imposed upon it by a water purveyor for purchased water or by a sewerage treatment purveyor for purchased sewerage treatment, and, as effective at the time of the imposition of the expense, the amount of expense approved by the Board for inclusion in rates for recovery of this expense. (See N.J.A.C. 14:9-7.2 and 8.2.)

“Deferred balance” means the difference between the cost of energy or gas collected via an electric or gas utility’s rates and the actual cost incurred by the electric or gas utility for the applicable period.

“Levelized Energy Adjustment Clause” or “LEAC” means the mechanism employed by electric utilities whereby a charge or credit is made when the estimated average cost of energy produced, purchased, and interchanged for the applicable period is above or below the base cost of energy; or its successor clause.

“Levelized Gas Adjustment Clause” or “LGAC” means the mechanism employed by gas utilities whereby a charge or a credit is made when the estimated average cost of gas purchased and or produced for the applicable period is above or below the base cost of gas; or its successor clause.

“Purchased Sewerage Treatment Adjustment Clause” or “PSTAC” means the methodology by which a sewer utility obtains recognition in its rates of an increase or decrease in the cost of sewerage treatment purchased by it from a sewerage treatment purveyor (see N.J.A.C. 14:9-8.2); or its successor clause.

“Purchased Sewerage Treatment Adjustment Clause” or “PSTAC” means the methodology by which a wastewater utility obtains recognition in its rates of an increase or decrease in the cost of sewerage treatment purchased by it from a sewerage treatment purveyor (see N.J.A.C. 14:9-8.2); or its successor clause.

Amended by R.2002 d.280, effective September 16, 2002.

See: 34 N.J.R. 992(a), 34 N.J.R. 3216(b).

In “Base cost of purchased sewerage treatment”, rewrote the first sentence; in “Deferred accounting treatment” and “Purchased Sewerage Adjustment Clause”, substituted “wastewater” for “sewer”.

Case Notes

A constant levelized energy adjustment clause (LEAC) charge, which is included in an electric utility’s overall rate tariff based on estimated prospective 12-month energy costs, is subject to periodic adjustment to reflect actual costs. Petition of Atlantic City Elec. Co., 310 N.J.Super. 357, 708 A.2d 775 (A.D. 1998).

14:3-13.3 Interest rate

The interest rate to be used should reflect the utility’s Board-approved overall rate of return, effective at the time of interest rate calculation. That rate, divided by 12 and rounded to four decimal places, shall be applied monthly on the average of the current and prior months’ positive or negative cumulative deferred ending balances; Class B, C and D water utilities and wastewater utilities that meet the revenue threshold of a Class B, C or D water utility have the option to calculate the interest, at the annual overall rate of return on the deferral balance, at the end of the clause period.

Amended by R.2002 d.280, effective September 16, 2002.

See: 34 N.J.R. 992(a), 34 N.J.R. 3216(b).

Rewrote the section.

14:3-13.4 Interest calculation

(a) The clause cost adjustment will be effective on a 12-month basis, unless otherwise specified by the Board within the context of an appropriate rate proceeding.

(b) The difference between actual clause costs and the utility’s recovery amount of the base clause cost and the clause cost adjustment charge shall be determined monthly. If actual clause costs exceed the amount of recovery of the base clause cost and the clause adjustment charge, an underrecovery or a negative balance will result. If the amount of recovery of the base clause cost and the clause adjustment charge exceed actual clause costs, an overrecovery or a positive balance will result.

(c) Interest shall be applied monthly to the average monthly cumulative deferred balance, positive or negative, from the beginning to the end of the clause period.

(d) Monthly interest on negative deferred balances (underrecoveries) shall be netted against monthly interest on positive deferred balances (overrecoveries) for the clause period.

(e) A cumulative net positive interest balance at the end of the clause period is owed to customers and shall be returned to customers in the next clause period. A cumula-

tive net negative interest balance shall be zeroed out at the end of the clause period.

(f) The sum of the calculated monthly interests shall be added to the overrecovery balance or subtracted from the underrecovery balance at the end of the clause period. The positive interest balance shall be rolled into the beginning over-underrecovery balance of the subsequent clause period.

14:3-13.5 Tariff language requirement

The utility's tariff shall include the language provided in N.J.A.C. 14:3-13.4.