

CHAPTER 3

ALL UTILITIES

Authority

N.J.S.A. 48:2-13, 48:2-16, 48:2-17, 48:2-20, 48:2-24, 48:2-25, 48:2-27, 48:3-3, 48:3-7.8, 48:3-12, 48:13A-1 and 48:19-17.

Source and Effective Date

R.1991 d.221, effective May 6, 1991.
See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).

Executive Order No. 66(1978) Expiration Date

Chapter 3, All Utilities, expires on May 6, 1996.

Chapter Historical Note

All provisions of this chapter became effective prior to September 1, 1969.

1971 Revisions: Subchapter 10 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.1984 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). Subchapters 3 and 7 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: 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). New rule 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 was subsequently readopted as new rules by R.1991 d.221, effective May 6, 1991. See: Source and Effective Date. 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).

See section annotations for specific rulemaking activity.

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SUBCHAPTER 1. DEFINITIONS

14:3-1.1 Words defined

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

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

“Customer” means any person, partnership, firm, corporation, governmental subdivision or agency receiving service from any such utility.

“Utility” has the same meaning as defined in N.J.S.A. 48:2-13 and includes pipeline utilities as defined in N.J.S.A. 48:10-3, and municipally-operated utilities, insofar as the Board’s jurisdiction is extended to them under the appropriate statutes.

Amended by R.1991 d.221, effective May 6, 1991.
See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).

Internal reference cite corrected, “Board” definition updated.

Case Notes

Definition of utility; Board jurisdiction over municipally owned and operated utilities found only by specific statutory grant. Freehold Boro. v. Freehold Twp., 193 N.J.Super. 724, 475 A.2d 691 (App.Div. 1984).

SUBCHAPTER 2. PLANT

14:3-2.1 Plant construction

(a) The construction and installation of plant and facilities of the utility must be in accordance with standard practice. Each utility shall make reasonable efforts to protect the public and its property from injury or damage and shall exercise due care to reduce hazards to which employees, customers, and the general public may be subjected by reason of its equipment and facilities.

(b) The various utilities should cooperate to the greatest extent practicable to reduce or eliminate interference among the different systems.

Case Notes

Electric utility practiced prudent field management in choosing site for proposed distribution substation. In Matter of Appeal of Atlantic City Electric Company, 93 N.J.A.R.2d (BRC) 75.

Proposed transmission line necessary for service, convenience and welfare of public; transmission line exempt from municipal regulation. In Matter of Application of Jersey Central Power & Light Company, 92 N.J.A.R.2d (BRC) 43.

14:3-2.2 Inspection of work performed by contractors

To the extent necessary to assure compliance with safe practices, any construction work performed for a utility by contractors shall be inspected by a qualified representative of the utility before being placed in active service.

14:3-2.3 Foreign construction on utility poles

Each utility owning poles shall endeavor to prevent non-standard foreign construction on poles owned by it. In other words, fire alarm and telephone, electric or trolley wires, or any other facilities, private or otherwise, should be located and attached in accordance with standard practice. When existing construction is replaced or changed, all non-standard construction then in place shall be made to conform with this regulation. In the event of disagreement with any municipality or other utility as to the necessity of changes or removals under this rule, the matter shall be submitted to the Board for determination.

14:3-2.4 Identification of buildings and structures

Each group of buildings or structures shall be provided with a sign displaying the name of the operating utility. This regulation shall not apply to buildings or structures located on railroad rights-of-way.

14:3-2.5 Identification of poles or structures supporting wires; fire hydrants

(a) Each utility owning solely or jointly poles or structures supporting wires along or over public highways or fire hydrants shall properly mark each such pole, structure or fire hydrant with the initials of its name, abbreviation of its name, corporate symbol or other distinguishing mark or code by which ownership may be readily and definitely ascertained, and with number or symbol or both by which the location of each such pole, structure or fire hydrant may be determined on office records. Such markings may be made with paint, brand or with a soft metal plate and the characters of the mark shall be of such size and so spaced and hereafter maintained as to be easily read.

(b) In the case of two or more utilities jointly owning any structures, the distinguishing mark or number of each utility shall be placed on such structure but not necessarily more than one number shall be placed thereon. The numbering may be in accordance with a code which will indicate joint ownership.

(c) In the case of such structures carrying or supporting overhead trolley wires, where there is a double line of such structures, one on each side of the track, such mark need be affixed to but one line of such structures.

(d) In the case of such structures erected upon private rights-of-way or on public highways of such character that the construction may be deemed to be a through or trunk line, such mark need be affixed only to every fifth structure; provided, however, that each and every structure situated

within the limits of any built-up community shall be marked, except as otherwise provided in subsection (c) of this Section. This subsection shall not be deemed to require the marking of railroad structures located on railroad rights-of-way.

(e) The requirements in this Section shall apply to all existing and future structures erected and to all changes in ownership and name.

(f) Each such utility shall have available a statement showing:

1. The initials, abbreviations of name, corporate symbol or distinguishing mark;
2. The means of marking employed;
3. The method followed in numbering structures within the limits of cities, towns or other built-up communities, and upon through or trunk lines.

(g) Each utility should make reasonable efforts to prevent the placing upon its poles of any marks, signs, placards, bulletins, notices, or any other foreign object other than as provided in N.J.S.A. 27:5-1 (Advertising on highways and private property prohibited; penalty) and as prescribed in these regulations.

14:3-2.6 Maintenance of plant, equipment and facilities

Every utility shall have and maintain its entire plant in such condition as will enable it to furnish safe, proper and adequate service.

14:3-2.7 Inspection of property

(a) Each utility shall inspect its equipment and facilities at sufficiently frequent intervals to disclose conditions, if existing, which would interfere with safe, adequate and proper service, and shall promptly take corrective action where conditions disclosed by such inspection so warrant.

(b) Whenever any equipment is removed from the system for any reason, it shall be inspected as to safety and serviceability before being reinstalled in the same or other locations.

(c) Each pole, post, tower or other structure shall be inspected by the utility owning or using it with sufficient frequency and comprehensiveness to disclose the necessity for replacement or repair in order to maintain service in accordance with established practice.

14:3-2.8 Construction work near utility facilities

A utility shall endeavor, to the extent feasible and practicable, to obtain prompt notice and information concerning commencement and progress of construction work in close proximity to its facilities through its qualified employees, or through contractors, government agencies, or others who may be permitted to perform construction work within the

confines of its territory. Nothing herein shall affect the duties and obligations of persons working in the vicinity of high voltage lines as set forth in N.J.S.A. 34:6-47.1 or working in the vicinity of gas facilities as set forth in N.J.S.A. 2A:170-69.4 et seq.

SUBCHAPTER 3. SERVICE

14:3-3.1 Duty

(a) It shall be the duty of every utility to furnish safe, adequate and proper service, including furnishing and performance of service in a manner that tends to conserve energy resources and preserve the quality of the environment.

(b) Accordingly, it is the proper function and continuing duty of utilities as defined in N.J.A.C. 14:3-1.1 to suggest and develop conservation proposals for presentation to the Board. The regulations which follow do not limit this continuing duty nor other duties now imposed upon the facilities, but merely serve to define such duties and to establish standards for their performance.

Amended by R.1975 d.305, effective October 17, 1975.
See: 7 N.J.R. 277(b), 7 N.J.R. 510(b).

Case Notes

Curtailment of service found to be a violation of service standard; curtailment improper as not accordance with agreement and inadequate and unsafe as resulting in a health hazard; violation of curbside pickup ban constituted improper service. Bd. of Public Utilities v. Hamm's Sanitation, Inc., 2 N.J.A.R. 59 (1979).

Capital improvement program found necessary to provide safe, adequate and proper service. In re: Califon Water Co., 1 N.J.A.R. 414 (1980).

14:3-3.2 Applications

(a) Applications by a customer for the establishment of service may be made at the utility's office either in person, by mail or by telephone. If the utility requires a written application, the same may be subsequently submitted to the customer for signature.

(b) When a customer makes application for service to any utility and the service requested is supplied by another utility, the company shall advise the customer when possible of the appropriate utility to whom the application should be made.

(c) All applications to water utilities for fire protection service must request that the applicant supply the name and address of the insurance company that provides the applicant with fire protection insurance for the property listed on the application as well as the number of the policy itself.

(d) A utility may require proof of identity with an application for service. An applicant for service may provide any one of the following items to establish identity:

1. A valid driver's license;
2. Employment identification;
3. An unexpired foreign passport;
4. A U.S. passport;
5. An alien registration card with photograph;
6. A county identification card;
7. A county welfare identification card;
8. A student identification card; or
9. A military identification card.

(e) A utility may require proof of prior address with an application for service. An applicant for service may provide any one of the following items to establish prior address:

1. A notarized lease, deed, or letter from the present landlord;
2. A current auto insurance policy;
3. A bank statement;
4. A credit card statement;
5. Mailing envelopes addressed to the applicant at the previous address, post-marked no later than two months prior to the date of application; or
6. A letter of credit worthiness from a utility.

Amended by R.1991 d.144, effective May 6, 1991.
See: 22 N.J.R. 615(d), 23 N.J.R. 1445(a).

Established what items may be used as proof of identity and as proof of prior address.

Amended by R.1992 d.456, effective November 16, 1992.
See: 24 N.J.R. 2341(a), 24 N.J.R. 4271(a).

New (c) added requiring applications to request name and address of fire protection insurance company and policy number; recodified (c) and (d) as (d) and (e).

14:3-3.3 Customer information

(a) Each utility shall, upon request, furnish its customers with such information as is reasonable in order that the customers may obtain safe, adequate and proper service.

(b) Each utility shall inform its customers, where peculiar or unusual circumstances prevail, as to the conditions under which sufficient and satisfactory service may be secured from its system.

(c) Each utility shall file with the Board, and keep open to public inspection, tariffs applicable to the service area or line, pursuant to the provisions of N.J.S.A. 14:11-1.18 and 1.19, as applicable.

(d) Each utility shall supply its customers with information on the furnishing and performance of service in a manner that tends to conserve energy resources and preserve the quality of the environment, which shall include but not be limited to the duty to inform customers:

1. That there is a critical national and local need for the conservation of all types of energy resources by industrial, commercial and residential customers;

2. That such conservation if widely practiced, particularly at periods of peak demand, will reduce or defer the need for the expansion of utility generating and transmission capacity, with attendant public benefits in land use, environmental quality and public health and safety;

3. That installing adequate levels of ceiling insulation in residential structures is one readily available means which requires minimal investment to conserve energy resources;

4. That the utility will continue to develop and implement other conservation programs which will be promoted and advertised as provided for herein;

5. The information shall be distributed to the public by the following means:

i. Extensive advertising by public media, including newspapers, periodicals, television and radio;

ii. The use of outdoor signs and messages, including posting on utility vehicles and facilities, and common carriers;

iii. By direct mailing, at no direct charge to customers, informational booklets detailing methods for conserving energy resources and any other information pursuant to this Subchapter which the Board may from time to time require.

6. No utility may distribute to the public, advertise or otherwise disseminate information for the purpose or with the effect of encouraging or promoting the consumption of energy resources in a manner inconsistent with these regulations.

Amended by R.1975 d.305, effective October 17, 1975.
See: 7 N.J.R. 277(b), 7 N.J.R. 510(b).

Case Notes

State regulation preempted local regulation; commercial tenants responsible to pay their own individual bills. In *Re Complaint by Rotella*, 92 N.J.A.R.2d (BRC) 48.

Change in bill format rejected; determination of complex rate increase petition. In *re: Public Service Electric & Gas Co.*, 6 N.J.A.R. 633 (1981).

14:3-3.4 Permits

The utility, where necessary, will make application for any street opening permits for installing its service connections and shall not be required to furnish service until after such

permits are granted. The municipal charge, if any, for permission to open the street shall be paid by the customer.

14:3-3.5 Refusal to connect

(a) A utility may refuse to connect with any customer's installation when it is not in accordance with the standard terms and conditions of the utility furnishing the service, which have been filed with the Board, and with the provisions of applicable governmental requirements.

(b) When, because of its size or character, the customer installation desired to be connected to the facilities of the utility is so unusual as to adversely affect the adequacy of the service furnished to other customers, present or prospective, the utility may require special provisions for the service in question or may refuse the same.

14:3-3.6 Basis of discontinuance of service

(a) The utility shall, upon reasonable notice, when it can be reasonably given, have the right to suspend or curtail or discontinue service for the following reasons:

1. For the purpose of making permanent or temporary repairs, changes or improvements in any part of its system;

2. For compliance in good faith with any governmental order or directive notwithstanding such order or directive subsequently may be held to be invalid;

3. For any of the following acts or omissions on the part of the customer:

i. Nonpayment of a valid bill due for service furnished at a present or previous location. However, nonpayment for business service shall not be a reason for discontinuance of residence service, except in cases of diversion of service pursuant to N.J.A.C. 14:3-7.16, and service shall not be discontinued for nonpayment of repair charges, merchandise charges and non-tariff contracted service charges between the customer and the utility, nor shall notice threatening such discontinuance be given.

ii. Tampering with any facility of the utility;

iii. Fraudulent representation in relation to the use of service;

iv. Customer moving from the premises, unless the customer requests that service be continued;

v. Providing a utility's service to others without approval of the utility;

vi. Failure to make or increase an advance payment or deposit as provided for in these regulations or the utility's tariff;

vii. Refusal to contract for service where such contract is required;

viii. Connecting and operating in such manner as to produce disturbing effects on the service of the utility or other customers;

ix. Failure of the customer to comply with any reasonable standard terms and conditions contained in the utility's tariff;

x. Where the condition of the customer's installation presents a hazard to life or property;

xi. Failure of customer to repair any faulty facility of the customer;

4. For refusal of reasonable access to customer's premises for necessary purposes in connection with rendering of service, including meter installation, reading or testing, or the maintenance or removal of the utility's property.

(b) A customer wishing to discontinue service must give notice to that effect. Where such notice is not received by the utility, the customer shall be liable for service until the final reading of the meter is taken. Notice to discontinue service will not relieve a customer from any minimum or guaranteed payment under any contract or rate.

(c) Public utilities shall not discontinue residential service except between the hours of 8:00 A.M. and 4:00 P.M. Monday through Thursday, unless there is a safety related emergency. There shall be no involuntary termination of service on Fridays, Saturdays, and Sundays or on the day before a holiday or on a holiday, absent such emergency.

(d) Discontinuance of residential service for nonpayment is prohibited if a medical emergency exists within the premises which would be aggravated by discontinuance of service and the customer gives reasonable proof of inability to pay. Discontinuance shall be prohibited for a period of up to two months when a customer submits a physician's statement in writing to the utility as to the existence of the emergency, its nature and probable duration, and that termination of service will aggravate the medical emergency. Recertification by the physician as to continuance of the medical emergency shall be submitted to the utility after 30 days. However, at the end of such period of emergency, the customer shall still remain liable for payment of service(s) rendered, subject to the provisions of N.J.A.C. 14:3-7.13. During the period of medical emergency the customer shall pay telephone tolls which are in excess of the average bills of the six months preceding the first 30-day period.

1. The Board may extend the 60-day period for good cause.

2. Public utilities may in their discretion delay discontinuance of residential service for nonpayment prior to submission of the physician's statement required by this subsection when a medical emergency is known to exist.

Amended by R.1978 d.155, effective May 16, 1978.
See: 9 N.J.R. 290(e), 10 N.J.R. 261(e).

Amended by R.1983 d.526, effective November 21, 1983.
See: 15 N.J.R. 787(a), 15 N.J.R. 1949(a).

In (a)3i, added "except in cases of diversion of service pursuant to 14:3-7.16."

Amended by R.1991 d.145, effective May 6, 1991.
See: 22 N.J.R. 616(a), 23 N.J.R. 1446(a).

Prohibits discontinuance of service due to non-payment of repair charges, merchandise charges, and non-tariff contracted charges; limits utilities' discontinuance of residential service to Monday-Thursday, 8 A.M. to 4 P.M. except for safety related emergency.

Cross References

Residential electric and gas service, winter termination program. see N.J.A.C. 14:3-7.12A.

Case Notes

Homeowners' association was not entitled to stay of discontinuance by water utility of fire hydrant service. In Matter of Vernon Valley Water Company v. Stone Hill Property Owners Association. 93 N.J.A.R.2d (BRC) 1.

State regulation preempted local regulation; commercial tenants responsible to pay their own individual bills. In Re Complaint by Rotella, 92 N.J.A.R.2d (BRC) 48.

Service discontinuance by gas and electric utility; appropriate notice given and discontinuance not on basis of non-payment of contested charges. Buczek v. Public Service Electric & Gas, 92 N.J.A.R.2d (BRC) 13.

14:3-3.7 Basis for restoration

Service shall be restored upon proper application when the conditions under which such service was discontinued are corrected, and upon the payment of all proper charges due from the customer provided in the tariff of the utility, or if the Board so directs when a complaint involving such matter is pending before it.

14:3-3.8 Access to customer's premises

(a) The utility shall have the right of reasonable access to customer's premises, and to all property furnished by the utility, at all reasonable times for the purpose of inspection of customer's premises incident to the rendering of service, collection of coin boxes, reading meters, or inspecting, testing, or repairing its facilities used in connection with supplying the service, or for the removal of its property. The customer shall obtain, or cause to be obtained, all permits needed by the utility for access to the utility's facilities. Access to the utility's facilities shall not be given except to authorized employees of the utility or duly authorized governmental officials.

(b) In the case of defective service, the customer shall not interfere or tamper with the apparatus belonging to the utility but shall immediately notify the utility to have the defects remedied.

14:3-3.9 Interruptions

(a) Each utility shall exercise reasonable diligence to avoid interruptions, curtailments or deficiencies (hereinafter referred to as interruptions) of service and, when such interruptions occur, service shall be restored as promptly as possible consistent with safe practice. Each utility shall keep a record for a period of one year of each reported interruption of service.

(b) Records of the major interruptions of service shall be kept in a manner suitable for analysis for the purpose of minimizing possible future interruptions and shall include the time, cause, and duration of the interruptions as well as the remedial action taken. Interruptions to service by reason of any act of God, accident, strike, legal process, or governmental interference, where service to customers is interrupted for at least two hours, in accordance with the chart below, shall be reported to the Board by each utility by the speediest means of communication available followed by a detailed written report.

Customers Served	Customers Interrupted
500 or less	20
501 to 1,000	50
1,001 to 10,000	100
10,001 to 100,000	200
100,001 to 500,000	1,000
500,001 to 1,000,000	2,000
1,000,001 or more	5,000

(c) However, interruptions to service made in accordance with provisions in interruptible service contracts between the utility and its customers need not be reported. Planned interruptions for operating reasons shall always be preceded by reasonable notice to all affected customers, and the work shall be planned so as to minimize customer inconvenience.

Cross References

See N.J.A.C. 14:11-5.4, Reporting of accidents, N.J.A.C. 14:11-1.10, Reporting threatened interruptions of service, N.J.A.C. 14:10-1.13, Service interruptions, and N.J.A.C. 14:7-1.31, Natural gas pipelines. Autobus, trolley, and railroad utilities shall report in accordance with N.J.A.C. 16:52-1.4, Interruption of service, and N.J.A.C. 16:23-2.1, Interruption of service, as applicable.

Case Notes

Board without jurisdiction to hear action for damage resulting from power interruption; proper jurisdiction with courts; Board's jurisdiction limited to disputes over propriety of tariffs, costs and charges. Brooks, v. Public Service Electric and Gas Co., 1 N.J.A.R. 243 (1980).

SUBCHAPTER 4. METERS

14:3-4.1 Ownership

Each utility, except telephone utilities, shall own and provide without charge for each customer supplied on a measured basis, a meter or meters and such service appliances as are customarily furnished by the utility, in order to connect the customer's equipment with the utility's facilities.

Case Notes

Record established that confusing billing procedures and malfunctioning remote register warranted elimination of adjusted bill. Magley v. New Jersey—American Water Company. 93 N.J.A.R.2d (BRC) 13.

14:3-4.2 Location

(a) The installation of meters and connections shall be in accordance with applicable "Codes", as set forth in Chapters 5 (Electric), 6 (Gas), and 9 (Sewer and Water) of this Title, standard practice and the standard terms and conditions contained in the tariff of the utility on file with the Board.

(b) Meters installed indoors shall be located in a clean, dry, safe place not subject to great variations in temperature and on a support which is free from appreciable vibration. Meters installed outdoors should be protected from the weather or be designed for outdoor use.

(c) Meters shall be so located as to be easily accessible for reading, testing and making necessary adjustments and repairs. Meters should be placed in a location where the visits of the meter reader or tester will cause minimum inconvenience to the customer or to the utility.

14:3-4.3 Access

Access to meter shall be in accordance with Section 3.8 (Access to customer's premises) of this Chapter.

14:3-4.4 Equipment for testing

Test equipment and facilities shall be satisfactory to and approved by the Board, and shall be available at all reasonable times for the inspection by and the use of any authorized representative of the Board.

14:3-4.5 Tests by utility on request

(a) Each utility shall, without charge, make a test of the accuracy of a meter upon request of a customer, provided such customer does not make a request for test more frequently than once in 12 months.

(b) A report giving results of such tests shall be made to the customer, and a complete record of such tests shall be kept on file at the office of the utility in accordance with N.J.A.C. 14:3-4.9 Meter records.

(c) When a billing dispute is known to exist, the electric, gas or water utility shall, prior to removing the meter, advise the customer that the customer may have the meter tested by the utility or may have the Board either conduct a test of the meter or witness a testing of the meter by the utility, and that in any event the customer may have the test witnessed by a third party.

(d) A meter test arising from a billing dispute may be appropriate in instances which include, but are not limited to, unexplained increased consumption, crossed meters, consumption while account is vacant or any other instance where the meter's accuracy might be an issue in a bill dispute.

Amended by R.1991 d.146, effective May 6, 1991. See: 22 N.J.R. 617(a), 23 N.J.R. 1448(a).

New provisions at (c) and (d) require utility to inform customer of the option of a Board witnessed or conducted test of the customer's meter.

14:3-4.6 Tests by Board on request

Upon application by any customer to the Board, a test shall be made of the customer's meter by an inspector of the Board. Such test shall be made as soon as practicable after receipt of the application and upon notice to the customer and the utility as to the time and place of such test. For such test a fee, in accordance with N.J.S.A. 48:2-56, shall be paid by the customer at the time application is made for the test. This fee is to be retained if the meter is found to be slow or correct within the allowable limits. If the meter is found to be fast beyond the allowable limits, the utility shall reimburse the customer for the test fee paid by him.

14:3-4.7 Adjustment of charges

(a) Whenever a meter is found to be registering fast by more than two percent, or in the case of water meters, more than one and one half percent, an adjustment of charges shall be made in accordance with the following:

1. If the date when the meter had first become inaccurate can be definitely ascertained, then the adjustment shall be such percentage as the meter is found to be in error at the time of test adjusted to 100 percent on the amount of the bills covering the entire period that the meter had registered inaccurately.

2. In all other cases the adjustment shall be such percentage as the meter is found to be in error at the time of test on one-half of the total amount of the billing affected by the fast meter adjusted to 100 percent since the previous test, but not to exceed a period of six years for electric and gas meters subject to testing by an approved scientific sampling technique.

(b) No adjustment shall be made for a period greater than the time during which the customer has received service through that meter.

(c) No adjustment shall be made for a meter that is found to be registering less than 100 percent except in the case of meter tampering, non-registering meters or in circumstances in which the customer should reasonably have known that his bill did not reflect his usage.

Amended by R.1991 d.221, effective May 6, 1991.

See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).

Reference to gas as well as electric meters added.

Amended by R.1991 d.147, effective May 6, 1991.

See: 22 N.J.R. 618(a), 23 N.J.R. 1449(a).

Reduced the measurement of accuracy for water meters from two percent to one and one half percent, thereby conforming the standard of accuracy in these rules to the uniform standards of the American Water Works Association; also prohibited a utility from re-billing a customer for consumption previously not billed for due to a slow meter.

Case Notes

Customers not entitled to be billed on basis of 1,136 ccf of gas usage, rather than 11,136 ccf, for eight year period. *Thomas v. New Jersey Natural Gas Company*, 93 N.J.A.R.2d (BRC) 145.

Homeowner not entitled to credit to sewerage bill for water utilized in swimming pool and sprinkler system; no application for water diversion meter. *Perelman v. Atlantic City Sewerage Company*, 93 N.J.A.R.2d (BRC) 138.

No showing of water meter defect; no refund for overbilling. *Aabdollah v. New Jersey American Water Company*, 93 N.J.A.R.2d (BRC) 73.

Record established that meter readings and billings reflected water consumption; no overcharges. *Presidential Apartments v. Hackensack Water Company*, 93 N.J.A.R.2d (BRC) 68.

Record established that confusing billing procedures and malfunctioning remote register warranted elimination of adjusted bill. *Magley v. New Jersey—American Water Company*, 93 N.J.A.R.2d (BRC) 13.

14:3-4.8 Meter test reports

A report shall be made to the Board giving a summary of all meter tests. Each utility having 500 or more meters shall report quarterly. Utilities having less than 500 meters shall report annually. Blank forms on which reports are to be made will be furnished by the Board.

14:3-4.9 Meter records

(a) Complete records on all utility meters shall be kept in the utility's office and shall be available for examination at any time by inspectors of the Board. Such records shall include the following information:

1. Owning utility's number, or manufacturer's name and number;
2. Type, size, and so forth;
3. Date and location of each installation, and dates of removal and test;
4. The accuracy of the meter;
5. A record of the tests of each meter and action taken regarding same.

(b) All the records required in this Section shall be kept for a period of six years or to the date of the last test, whichever period is the longer.

14:3-4.10 Meter replacement

(a) A utility shall not make any charge for replacing a meter where such replacement is requested by a customer, unless the meter first referred to has been in use less than two years, in which case a charge, which shall not exceed the cost of making the replacement, may be made. No charge shall be made for replacing a meter for test purposes, or for replacing a meter necessitated by a change in service characteristics which conform to the provisions of these regulations, or for replacing a defective meter, unless the defect is due to the negligence of the customer in which case a charge which shall not exceed the cost of making the replacement may be made.

(b) A meter of a customer who has a complaint filed with the Board reflecting on the accuracy or performance of the meter shall not be removed from service by the utility during the pendency of said complaint or during the following 30 days unless otherwise authorized or directed by the Board.

SUBCHAPTER 5. OFFICES

14:3-5.1 Location

(a) Each utility shall maintain in or within reasonable proximity of its service area an office, the current location of which shall be furnished to the Board, where applications for service, complaints, service inquiries, bill payments, and so forth, will be received.

(b) Each utility shall furnish the Board with the current location of the offices where maps and records covering the various service areas are available to supply, upon reasonable request, information to customers, governmental bodies, other utilities and contractors.

(c) In the event that a utility desires to close or relocate an office, the utility shall comply with the following procedures:

1. At least 60 days prior to the closing or relocation of an office described in (a) or (b) above, a utility shall apply for approval with the Board, demonstrating that such closure or relocation is not unreasonable and will not unduly prejudice the public interest, and setting forth the means, upon Board approval of the application, by which customers and other interested parties will be adequately notified of the closing or relocation and alternatives available in the case of a closed office.

2. The utility shall simultaneously notify its customers and the clerk of each affected municipality of the pending application for permission to relocate or close the subject office by means of posting notice at the office location and, within three days of application, by placing notice of the office closing or relocation in the newspaper(s) serving the affected area.

- i. The notice shall inform customers of their right to present to the Board, in writing, any objections they may have to the office closure or relocation; and

- ii. The notice shall specify a date certain for submission of comments which date shall not be less than 20 nor more than 30 days after publication and posting.

3. An office shall not be closed or relocated until the utility has been informed, in writing, that the Board has approved such request.

(d) Utilities shall maintain and provide toll free or local exchange telephone numbers for use by the general public

and customers affected by an office closing or relocation for billing, service and sales inquiries. This toll free number or local exchange number shall be posted on any notice at the office location as well as in the notice placed in the newspaper(s), pursuant to (c) above, serving the affected area.

Amended by R.1993 d.298, effective June 21, 1993.
See: 24 N.J.R. 2132(a), 25 N.J.R. 2699(a).

Case Notes

Change in bill format rejected; determination of complex rate increase petition. In re: Public Service Electric & Gas Co., 6 N.J.A.R. 633 (1981).

14:3-5.2 Personnel to be contacted

(a) Each utility shall furnish to the Board and keep current a list of names, addresses and telephone numbers of responsible officials to be contacted in connection with routine matters during normal working hours.

(b) Each utility shall also furnish to the Board and keep current a list of names, addresses, and telephone numbers of responsible officials who may be contacted in event of emergency during other than normal working hours.

14:3-5.3 Emergency telephone numbers

(a) Each public utility shall establish and prominently display on all customer bills after present supplies are exhausted, a current telephone number which may be used by customers and others to report emergencies to the public utility.

(b) In addition, each public utility shall maintain a listed emergency number in appropriate telephone directories, and file same with police departments, fire departments, municipal clerks and other appropriate governmental agencies.

(c) These numbers shall be tended in order that calls can be answered on a 24 hour basis, with assurance that, within a reasonable period of time, a company official will be contacted.

R.1973 d.187, effective July 11, 1973.
See: 4 N.J.R. 196(e), 5 N.J.R. 292(b).

SUBCHAPTER 6. RECORDS

14:3-6.1 Location and examination

Each utility shall notify the Board, upon request, of the office or offices at which various records are kept. These records shall be open for examination by the Board's inspectors.

14:3-6.2 Plant and operating

(a) Each utility shall maintain, readily available, adequate maps and/or records reflecting the latest available information and data concerning the size, type, location and date of installation of its major units of property.

(b) Each utility owning or operating pumping, treatment facilities or power stations or other production facilities for the purpose of furnishing service to customers shall keep for a period of one year a record of the time of starting and shutting down of all principal units of such equipment, as well as a record of pertinent related operating statistics. Each such utility shall maintain and keep in operating condition one or more graphic recording devices at central points where continuous records shall be made of the pressure or voltage at that point.

(d) Each utility shall keep for a period of one year, a record of complaints in regard to service received at its office or offices, which shall include the name and address of the customer, the date, the nature of complaint and the disposition. The record shall be available for inspection by the Board's inspectors.

14:3-6.3 Periodic reports

Every utility shall file with the Board on or before March 31 of each year, or on or before the due date noted on the report form, a summary of its finances and operations for the preceding calendar year on forms prescribed and furnished by the Board. In special instances utilities may be required to submit reports quarterly and monthly as directed by the Board. Other periodic reports shall be filed on or before the due date noted on the report form.

Amended by R.1991 d.221, effective May 6, 1991.
See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).

Reference to due dates noted on report forms, added.

14:3-6.4 Accidents

Each utility shall keep a record of and report to the Board all accidents, as set forth in Subchapter 5 (Reporting Accidents) and Subchapter 8 (Natural Gas) of Chapter 11 of this Title, as applicable.

14:3-6.5 Public records

(a) All records, except those records set forth in (b) below or which by rule are accorded confidential treatment by the Board or are the subject of a protective order of the Board, which specifically are required by law to be made, maintained or kept by and for the Board of Regulatory Commissioners shall be public records within the meaning of N.J.S.A. 47:1A-1 et seq. Records which by rule are accorded confidential treatment by the Board or which are the subject of a protective order of the Board shall be disclosed only to the extent and in the manner provided therein, and shall not be deemed public records within the meaning of N.J.S.A. 47:1A-1 et seq.

(b) All records which specifically are required by law to be made, maintained or kept by and for the Board which relate to accidents and investigation of accidents concerning public utilities and to surveys of property and equipment of public utilities shall be deemed public records, copies of which may be purchased or reproduced under the provisions of N.J.S.A. 47:1A-1 et seq., unless it is determined by the Board that the inspection, copying or publication of such records shall be inimical to the public interest.

(c) All other records of the Board shall not be subject to the provisions of N.J.S.A. 47:1A-1 et seq., and shall be available for inspection and examination only to the extent and for such purposes as may be expressly authorized by the Board.

(d) The fee for copies of records, instruments and documents of the Board shall be the fee established by law.

Amended by R.1991 d.221, effective May 6, 1991.

See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).

Corrected internal citation formats.

Case Notes

Plaintiffs in civil action entitled to examine accident reports made by Board and submitted by gas company, under either the Right to Know Law or the common law right of citizens to inspect public records. *Irval Realty, Inc. v. Bd. of Public Utility Commissioners*, 61 N.J. 366, 294 A.2d 425 (1972).

Unsuccessful telecommunication relay service bidder was not entitled to disclosure of successful bidder's proposal information. In *Matter of Provision of Telecommunications Relay Service*, 92 N.J.A.R.2d (BRC) 58.

Cable TV association was entitled to aggregate-based service records of telephone utility but not individual service records; internal memoranda of staff of Board of Regulatory Commissioners also not subject to disclosure. In *Matter of Request of New Jersey Cable Television Association*, 92 N.J.A.R.2d (BRC) 51.

SUBCHAPTER 7. BILLS AND PAYMENTS FOR SERVICE**14:3-7.1 Deposits for metered and telephone service**

(a) If after notice of the methods of establishing credit and being afforded an opportunity, a customer has not established credit, the utility may require a reasonable deposit as a condition of supplying service.

(b) The credit established, by whatever method, shall apply at any location within the area of the utility furnishing the service; that is, service is not to be regarded as restricted to a particular location.

(c) The amount of a deposit shall be reasonably related to the probable charge for service during a billing period; this period to include the average time required for collection after bills are rendered.

As amended, R.1978 d.155, effective May 16, 1978.
See: 9 N.J.R. 290(e), 10 N.J.R. 261(e).

14:3-7.2 Deposits to insure credit of new customers

If a customer whose credit has not been established applies for service, the initial deposit shall be the estimated average bill of the customer for a given billing period increased by one month's estimated average bill. In determining the amount of the deposit, except in the case of telephone utilities, there shall be excluded from the average bill such portion thereof, if any, for which payment is received in advance. If the actual bills of the customer subsequently rendered prove that the deposit is either insufficient or excessive, the deposit may be changed in accordance with the facts.

14:3-7.3 Customers in default

(a) Customers in default in the payment of bills may be required to furnish a deposit or increase their existing deposit in an amount sufficient to secure the payment of future bills. The amount of such deposit shall be determined in accordance with the principle set forth in section 1 (Deposits for metered and telephone service) of this subchapter. Service shall not be discontinued for failure to make such deposit except after proper notice.

(b) If a customer who has made a deposit fails to pay a bill, the utility may apply such deposit insofar as is necessary to liquidate the bill and may require that the deposit be restored to its original amount.

14:3-7.4 Receipts and records

The utility shall furnish a receipt to each customer who has made a deposit. Where return of the deposit is made in cash, surrender of the receipt or, in lieu thereof, proof of identity may be required.

14:3-7.5 Return of deposits

(a) Upon closing any account the balance of any deposit remaining after the closing bill for service has been settled shall be returned promptly to the depositor with interest due.

(b) Each utility shall review a residential customer's account at least once every year and a nonresidential customer's account at least once every two years and if such review indicates that the customer has established credit satisfactory to the utility, then the outstanding deposit shall be refunded to the customer. Each utility shall afford its customers the option of having the deposit refund applied to the customer's account in the form of a credit or of having the deposit refunded by separate check in a period not to exceed one billing cycle.

(c) Simple interest at a rate equal to the average yields on new six month Treasury Bills for the 12 month period ending each September 30 shall be paid by the utility on all

deposits held by it, provided the deposit has remained with the utility for at least three months. Said rate, shall become effective on January 1 of the following year. The Board shall perform the annual calculation to determine the applicable interest rate and shall notify the affected public utilities of said rate.

1. The interest based upon the average yields on new six month Treasury Bills shall be applied to all deposits received by the public utility on and after January 1, 1989.

2. Interest on deposits previously collected and held by the public utility on January 1, 1989 shall be apportioned so that the interest rate based upon the average yields on new six month Treasury Bills shall be computed beginning January 1, 1989.

3. Interest payments shall be made at least once during each 12 month period in which a deposit is held and shall take the form of credits on bills toward utility service rendered or to be rendered. The effect of this subsection shall be limited to those deposits, if any, held by electric, gas, telephone, and water utilities to secure residential accounts.

As amended, R.1978 d.155, effective May 16, 1978.

See: 9 N.J.R. 290(e), 10 N.J.R. 261(e).

As amended, R.1979 d.117, effective March 16, 1979.

See: 11 N.J.R. 260(a).

As amended, R.1979 d.289, effective August 1, 1979.

See: 11 N.J.R. 258(b), 11 N.J.R. 467(a).

As amended, R.1984 d.87, effective April 2, 1984.

See: 15 N.J.R. 1355(a), 16 N.J.R. 744(a).

(c) Amended to allow interest payments to be credited towards bills.

Amended by R.1988 d.568, effective December 19, 1988.

See: 20 N.J.R. 737(a), 20 N.J.R. 3140(b).

Changed "six months" to "12"; added text "The board shall ...".

Amended by R.1991 d.148, effective May 6, 1991.

See: 22 N.J.R. 619(a), 23 N.J.R. 1450(a).

Requires utilities refund deposit by check or credit and be made within a billing cycle.

Public Notice: Applicable interest rate on customer deposits effective for calendar year 1992 is 6.0 percent.

See: 23 N.J.R. 3660(a).

Amended by R.1992 d.225, effective June 1, 1992.

See: 24 N.J.R. 686(b), 24 N.J.R. 2073(a).

Rounding interest up or down to nearest half percent repealed.

Public Notice: Applicable interest rate on customer deposits effective for calendar year 1993 is 3.93 percent.

See: 24 N.J.R. 4434(a).

Cross References

Billing disputes, see N.J.A.C. 14:3-7.13.

Case Notes

Utility lost right to setoff security deposit against utility debts. In re Village Craftsman, Inc., Bkrcty.D.N.J.1993, 160 B.R. 740.

14:3-7.6 Unmetered service

Where a utility, other than a telephone utility, furnishes unmetered service for which payment is received in advance, it may not demand other guarantee to secure payment for service.

14:3-7.7 Information for customers

Each utility shall adopt some method of informing its customers as to the reading of meters, either by printing on bills a description of the method of reading meters, or a notice to the effect that the method will be explained on request, giving the address and telephone number where such information may be obtained. In addition the utility shall furnish the address of an office where complaints, service inquiries and bill payments will be received.

14:3-7.8 Record of customer's account

Each utility shall keep a record of each customer's account in such a manner as will permit computation of the bill for any billing period occurring within six years, except that telephone utilities shall keep said records in accordance with the Federal Communications Commission's rules and regulations, "Part 45—Preservation of Records of Telephone Carriers", effective October 1, 1950.

14:3-7.9 Form of bill for metered service

(a) Unless a utility has been specifically relieved of so doing by order of this Board, the bill shall show the following:

1. The meter readings at the beginning and end of the billing period;
2. The dates on which the meter is read;
3. The number and kind of units measured;
4. Identification of the applicable rate schedule. If the applicable rates are not shown, the bill shall carry a statement to the effect that the applicable rate will be furnished upon request;
5. The gross and/or net amount of the bill;
6. If the utility uses gross and net billing, the date on which payment must be made to qualify for the net billing or discount;
7. A distinctive marking to indicate an estimated or average bill;
8. An explanation or statement of any conversion from meter reading to billing units or any other calculations or factors used in determining the bill;
9. For each gas, electric and Class A water and sewerage company subject to the Board's jurisdiction, sufficient information to reflect the estimated amount of money in that individual bill which is collected for the gross receipt and franchise taxes pursuant to N.J.S.A. 54:30A-54. The following language is suggested as a model statement to be included on the bill: "Approximately 13% of \$___ of your current period charges reflect the average gross receipts and franchise taxes which are paid to the State of New Jersey and distributed to New Jersey municipalities."

(b) Rules concerning estimated bills for residential customers are as follows:

1. Utility companies shall maintain a regular meter reading schedule and make a reasonable effort to read all meters.

2. Utility companies, upon request, must make available to all customers a postage paid business reply card on which the customer may mark the meter reading. Said card shall have appropriate explanation. The utility must permit the customer to telephone the meter reading to the utility. The customer reading is to be used in lieu of an estimated reading, provided the reading is received in time for billing.

3. When a utility company estimates an account for four consecutive billing periods (monthly accounts), or two consecutive billing periods (bimonthly and quarterly accounts), the company must initiate a program to mail (an important notice) a notice marked "Important Notice" to the customer on the fifth and seventh months explaining that a meter reading must be obtained and said notice must explain the penalty for failure to complete an actual meter reading. After all reasonable means to obtain a meter reading have been exhausted, the company may discontinue service provided at least eight months have passed since the last meter reading was obtained, the Board of Public Utilities has been so notified and the customer has been properly notified by prior mailing. If service is discontinued and subsequently restored, the utility may charge a reconnection charge equal to the reconnection charge for restoring service after discontinuance for non-payment.

4. Utility companies must submit to the Board of Public Utilities a statement detailing their estimating procedures.

5. An estimated bill must be clearly designated as such.

6. If low estimates result in a customer receiving an actual bill that is at least 25 percent greater than the prior estimated bill, the company shall allow the customer to amortize the excess amount. The amortization will be in equal installments over a period of time equal to the period when no actual reading was taken by the customer or the company.

7. Annually, the company shall notify all customers of their rights to amortize as outlined in paragraph 6 of this subsection.

As amended, R.1979 d.474, effective January 1, 1980.

See: 11 N.J.R. 402(b), 12 N.J.R. 49(b).

As amended, R.1980 d.44, effective January 24, 1980.

See: 12 N.J.R. 156(d).

As amended, R.1980 d.299, effective July 1, 1980.

See: 12 N.J.R. 209(f), 12 N.J.R. 495(d).

As amended by R.1987 d.163, effective April 6, 1987.

See: 18 N.J.R. 2425(a), 19 N.J.R. 552(a).

"and sewerage" substituted for "sewage".

Amended by R.1991 d.221, effective May 6, 1991.

See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).

Deleted archaic "Board of Public Utility Commissioners".

Case Notes

Implementation of 1991 amendments to Gross Receipts and Franchise Tax statutes. In Matter of Implementation of P.L. 1991, C. 184, 92 N.J.A.R.2d (BRC) 53.

Change in bill format rejected; determination of complex rate increase petition. In re: Public Service Electric & Gas Co., 6 N.J.A.R. 633 (1981).

14:3-7.10 Form of bill for unmetered service

(a) The bill shall show the following:

1. The period of the bill;
2. Identification of the applicable rate schedule. If the applicable rates are not shown, the bill shall carry a statement to the effect that the applicable rate will be furnished upon request;
3. The gross and/or net amount of the bill;
4. If the utility uses gross and net billing, the date by which payment must be made to qualify for the net billing or discount.

14:3-7.11 Method of billing

(a) Bills for metered and telephone service shall be rendered monthly, bimonthly or quarterly and shall be prorated upon establishment and termination of service. In unusual credit situations, bills may be rendered at shorter intervals.

(b) Metered and telephone seasonal service may be billed in accordance with reasonable terms and conditions of service set forth in the utility's filed tariff.

(c) A utility furnishing unmetered service may, under uniform nondiscriminatory terms and conditions, require payment in advance for a period not to exceed that for which bills are regularly rendered as specified in its applicable filed tariff. Unless otherwise provided for in the applicable filed tariff, initial and final bills shall be prorated as of the date of the initial establishment and final termination of service.

14:3-7.11A Requirements for budget billing and payment plans of gas and electric utilities for residential accounts

(a) Each gas and electric utility shall have available at request a budget billing and payment plan for residential accounts having the characteristics set forth below.

1. The plan shall be voluntary.
2. The projected monthly budget amount shall be determined by the following factors:
 - i. Usage on the account for the past season;
 - ii. Actual weather conditions encountered during the past season as compared to normal year;
 - iii. Base rate increases and levelized energy or levelized raw material adjustment charges actually granted

by the Board of Public Utilities and in effect at the time plan is established; and

iv. Projected changes in the levelized energy or levelized raw material adjustment charges.

3. The utility company shall have the authority to determine the time frame of the plan, 10, 11 or 12 months. Any change in time frame will require prior approval by the Board of Public Utilities.

4. If a customer is a new customer with little or no prior use, the monthly budget amount shall be determined by a reasonable estimate of likely usage.

5. A comparison shall be made between the actual cost of service rendered, as determined by actual meter readings, and the monthly budget amount as follows:

i. The comparison shall be made at least once in the budget plan year;

ii. The comparison shall take into account consumption and any rate increases or decreases that have been granted by the Board of Public Utilities, including increases or decreases in the levelized energy or levelized raw material adjustment charges;

iii. If and when a comparison reveals an increase or decrease of 25 percent or more in the monthly budget amount, the monthly budget amount shall be adjusted upwards or downwards, as the case may be, for the balance of the budget plan year to minimize the adjustment required at the end of the budget plan year between the monthly budget amount and the actual cost of service rendered during the budget plan year; there shall be no more than one such adjustment during the budget plan year;

iv. A final bill for a budget plan year shall be issued at the end of the budget plan year and shall contain that month's monthly budget amount plus an adjustment of any difference between said amount and the actual cost of the service rendered during the budget plan year; and

v. A utility shall notify plan customers in writing of a revised monthly budget amount at least 10 working days before the due date of the initial bill of the next budget plan year.

6. The plan shall be offered by a bill insert or bill message to eligible customers at least twice in each 12 month period.

7. The plan bill shall contain the information required by N.J.A.C. 14:3-7.9 (Form of bill for metered service), N.J.A.C. 14:3-7.10 (Form of bill for unmetered service) and N.J.A.C. 14:3-7.11 (Method of billing). In addition, the plan bill shall show the monthly budget amount, budget balance and, when feasible, the budget billing to date and the actual cost of service rendered billing to date.

8. A customer may go off a plan anytime he desires, in which event the customer shall pay the amount owed for service rendered or agree to a stipulated payment agreement according to N.J.A.C. 14:3-7.13(c).

(b) A plan currently constituted and in place on the effective date of these regulations shall remain in effect until expiration of the plan. Upon renewal of a plan the regulations promulgated herein shall apply.

(c) Each gas and electric utility shall file with the Board a copy of its budget billing and payment plan.

(d) These rules shall become operative and be implemented no later than 120 days after publication in the February 6, 1984 New Jersey Register.

R.1983 d.651, eff. February 6, 1984.

See: 15 N.J.R. 1235(a), 16 N.J.R. 250(a), 16 N.J.R. 1807(b).

Section expires on February 6, 1989.

14:3-7.12 Notice of discontinuance

(a) At least 10 days' time for payment shall be allowed after sending a bill. A public utility may discontinue service for nonpayment of bills provided it gives the customer, except for a fire protection service customer as set out in (f) below, at least seven days' written notice of its intention to discontinue. The notice of discontinuance shall not be served until the expiration of the said 10 day period. However, in case of fraud, illegal use, or when it is clearly indicated that the customer is preparing to leave, immediate payment of accounts may be required.

1. Electric, gas, water, sewer and telephone public utilities shall annually notify all residential customers that, upon request, notice of discontinuance of service will be sent to a designated third party as well as to the customer.

2. Electric, gas, water, sewer and telephone public utilities shall make good faith efforts to determine which of their residential customers are over 65 years of age, and shall make good faith efforts to notify such customers of discontinuance of service by telephone in addition to notice by regular mail. This effort may consist of an appropriate inquiry set forth on the notice informing customers that they may designate a third party to receive notice of discontinuance. This provision shall not apply to utilities which make good faith efforts to contact all residential customers by telephone prior to discontinuance and file with the Board a statement setting forth such procedure.

3. Electric and gas utilities shall, on a semi-annual basis, solicit information from their residential customers in order to determine the presence of any life-sustaining equipment on the customer's premises.

(b) When the customer is a public utility under the Board's jurisdiction, the serving utility shall concurrently serve a copy of the notice of discontinuance on the Board.

(c) On all notices of discontinuance to residential customers, there shall be included:

1. A statement that the utility is subject to the jurisdiction of the New Jersey Board of Public Utilities and the address and telephone number of the Board. The telephone numbers of the Board to be indicated on such statement are (201) 648-2350 and 1-800-624-0241 (toll free).

2. A statement that in the event the customer is either unable to make payment of a bill or wishes to contest a bill the customer should contact the utility. The notice shall contain information sufficient for the customer to make appropriate inquiry.

3. A statement that if a customer is presently unable to pay an outstanding bill, the customer may contact the utility to discuss the possibility of entering into a reasonable deferred payment agreement. In the case of a residential customer receiving more than one different service from the same utility, the statement shall state that deferred payment agreements are available separately for each utility service.

(d) On all notices of discontinuance to residential electric and gas customers there shall be included, in addition to (c) above:

1. A statement that the customer may contact the Board of Public Utilities to request assistance in the resolution of a bona fide disputed charge and further, that a customer may also request a formal hearing concerning such disputed charge.

2. A statement that if, within five days, a request is made to the Board of Public Utilities for an investigation of the disputed charge, the customer's service shall not be discontinued because of non-payment of bills provided all undisputed charges are paid.

3. A statement that a customer may have counsel, or a third party of his choosing present when appearing before a utility to contest a bona fide disputed charge.

(e) The statement required to be included on notices of discontinuance of electric and gas customers pursuant to (c) and (d) above shall be printed on the back of the notice under the headline "STATEMENT OF CUSTOMER'S RIGHTS". The headline shall be printed in type no less than one-half inch in height (36 point). The individual statements shall be printed in type no less than 1/6 inch in height (12 point). No other matter shall be printed upon the back of the notice.

(f) Each water utility shall, on a semiannual basis, solicit information from its fire protection service customers in order to determine the name of the insurance company currently providing insurance protection to the customer and the policy number under which said protection is being provided.

1. At least 30 days prior to the discontinuance of fire protection service, the water utility providing that service shall give notice via certified mail to the following:

- i. The fire protection service customer of record;
- ii. The property owner, if different than the customer of record;
- iii. The mayor of the municipality in which the service is provided;
- iv. The fire chief of the municipality in which the service is provided;
- v. The enforcing housing code official of the municipality in which the service is provided;
- vi. The enforcing uniform fire code official of the municipality in which the service is provided;
- vii. The welfare officer of the municipality in which the service is provided;
- viii. The Director of County Welfare in the county in which the service is provided;
- ix. The District Director of the Division of Youth and Family Services;
- x. The District Office Manager of the Division of Youth and Family Services;
- xi. The insurance company providing fire protection coverage; and
- xii. The Board of Regulatory Commissioners.

2. In the event that fire protection service is ultimately discontinued, the servicing water utility shall immediately notify, via certified mail, the parties listed in (f)1 above and the:

Customer Service Division
Insurance Service Office
Commercial Risk Services
2 Sylvan Way
Parsippany, New Jersey 07054

As amended, R.1978 d.155, eff. May 16, 1978.

See: 9 N.J.R. 290(e), 10 N.J.R. 261(e).

As amended, R.1980 d.555, eff. December 29, 1980.

See: 12 N.J.R. 552(a), 13 N.J.R. 105(b).

(a)3, (d)1-3, and (e) added.

Amended by R.1985 d.166, effective April 15, 1985.

See: 16 N.J.R. 2747(a), 17 N.J.R. 974(a).

Added text in (c)3 "In the case . . . each utility service."

Amended by R.1991 d.221, effective May 6, 1991.

See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).

Added toll-free number at (c)1.

Amended by R.1992 d.456, effective November 16, 1992.

See: 24 N.J.R. 2341(a), 24 N.J.R. 4271(a).

Add new (f)1 and 2; requirements regarding notification of discontinuance fire protection service.

Case Notes

Homeowners' association was not entitled to stay of discontinuance by water utility of fire hydrant service. In Matter of Vernon Valley Water Company v. Stone Hill Property Owners Association. 93 N.J.A.R.2d (BRC) 1.

Check sent by customer to water utility did not constitute accord and satisfaction; customer entitled to credit but not punitive damages. Slowinski v. City of Trenton. 92 N.J.A.R.2d (BRC) 71.

A Superior Court order was res judicata with respect to administrative petition claiming that judgment finding building owner liable for utility bills was erroneous. Jones v. Public Service Electric and Gas Company, 92 N.J.A.R.2d (BRC) 61.

Service discontinuance by gas and electric utility; appropriate notice given and discontinuance not on basis of non-payment of contested charges. Buczek v. Public Service Electric & Gas, 92 N.J.A.R.2d (BRC) 13.

14:3-7.12A Winter termination of residential electric and gas service (Winter Termination Program)

(a) A regulated electric or gas utility shall not discontinue service during the period from November 15 through March 15, referred to in this section as the "heating season", unless otherwise ordered by the Board, to those residential customers who demonstrate at the time of the intended termination that they are:

1. Recipients of benefits under the Lifeline Credit Program;
2. Recipients of benefits under the Federal Home Energy Assistance Program (HEAP), or certified as eligible therefore under standards set by the New Jersey Department of Human Services;
3. Recipients of Federal Aid to Families with Dependent Children (AFDC);
4. Recipients of Federal Supplemental Security Income (SSI);
5. Recipients of Pharmaceutical Assistance to The Aged and Disabled (PAAD);
6. Recipients of general welfare assistance benefits; or
7. Persons unable to pay their utility bills because of circumstances beyond their control. Such circumstances shall include but shall not be limited to unemployment, illness, medically related expenses, recent death of a spouse and any other circumstances which might cause financial hardship.

(b) Those residential electric or gas customers whose services have been discontinued for non-payment and have not been reconnected as of November 15, and who are otherwise eligible for protection under the Winter Termination Program, shall be required to make a down payment of up to 25 percent of the outstanding balance as a condition precedent to the receipt of services during the current heating season. The customer shall be notified, at the time of enrollment in a budget payment plan as required by (c) below, that the 25 percent down payment shall represent a

maximum required amount and is not to be regarded as a minimum required payment. The utility shall consider the customer's ability to pay in determining the appropriate level of the required down payment, but in no instance shall such required payment exceed 25 percent of the outstanding balance. The utility shall refer to the Board for resolution, all disputes regarding the appropriate level of down payments.

(c) All residential electric or gas customers who are eligible for and who seek the protection of the Winter Termination Program shall enroll in a budget payment plan on an annual basis.

(d) All residential electric or gas customers who are eligible for and who seek the protection of the Winter Termination Program shall make good-faith payments during the heating season, if they have the ability to do so. Said payments should be equal to a budget payment amount, although a lesser amount shall be accepted from those customers who do not have the ability to pay the full budget amount.

1. If an eligible customer has the ability to make a good-faith payment but refuses to do so, or if there is any other dispute related to good-faith payments, the servicing utility shall refer said dispute to the Board for a determination. In addition, the servicing utility shall inform each eligible customer involved in such a dispute that the matter has been forwarded to the Board for a determination and that the customer may also notify the Board of the dispute if he or she so chooses. Until the Board has rendered a determination in such an instance, the servicing utility shall not unilaterally discontinue service during the heating season.

(e) Customers who are eligible for and who seek the protection of the Winter Termination Program shall forward all energy related financial assistance, such as Home Energy Assistance Program (HEAP) heating benefits, to their electric or gas utility, if either utility is their major heat supplier.

(f) During the heating season, the affected electric or gas utilities shall not request a security deposit or an addition to an existing security deposit from a customer who is eligible for and seeks the protection of the Winter Termination Program.

(g) During the heating season, all notices of discontinuance of residential electric or gas services shall be accompanied by a Winter Termination Program fact sheet, printed in both English and Spanish, setting forth all terms and conditions of the Program. The affected electric and gas utilities shall submit drafts of their proposed fact sheets to the Board no later than October 1, in order that the Board may approve their form and substance prior to the heating season. The form and substance of the Winter Termination Program fact sheets shall be subject to Board review and approval on an annual basis.

(h) Customers who are eligible for and seek the protection of the Winter Termination Program shall participate in the low income seal-up programs, if eligible therefore, currently approved by the Board and administered by the affected electric and gas utilities. The implementation of this requirement shall be effectuated through the following procedures:

1. Descriptive information on the low income seal-up programs shall accompany the Winter Termination Program fact sheet as required in (g) above;

2. The utility shall refer to its seal-up contractor, the names of responding protected customers who are eligible for the low income seal-up programs. The contractor or the utility shall contact the customers to schedule the seal-up. Scheduling shall take place as soon as practicable after receipt of the customer response to the notice of discontinuance;

3. Winter Termination Program customer seal-ups shall be performed as soon as practicable. If a utility projects that it cannot complete these seal-ups prior to the end of the heating season, it shall submit an alternate implementation schedule to the Board for review on or before January 31;

4. The contractor shall perform a general audit of the dwelling and perform the most cost effective weatherization measures first. The contractor shall record and report to the utility any structural deficiencies requiring greater weatherization measures beyond the scope of the seal-up. The utility shall refer the customer names to those agencies providing low income weatherization programs;

5. The utility shall inform all agencies administering the Low Income Weatherization Grant Program in its territory of the new seal-up and weatherization grant provisions of the Winter Termination Program;

6. The utility shall monitor the usage and billing payment record of participating customers. The utility shall also compile historic consumption and billing data for these customers as well as a list of specific conservation measures installed in order to provide a basis for evaluating the Program. This information shall be submitted to the Board for analysis by May 1;

7. Electric utilities shall provide seal-up to those eligible participating customers who heat with electricity or any fuel other than natural gas in accordance with the existing Board approved low income seal-up programs;

8. Electric utilities shall not be required to provide the seal-up to those customers who heat with natural gas. The electric utilities shall forward the names of these gas heating customers to the appropriate gas utility for processing;

9. Tenants shall be required to secure landlord permission for the weatherization work. A landlord consent form, or the means to obtain one shall be forwarded to customers along with the descriptive information and Winter Termination Program fact sheet as required in (h)1 above;

10. The utility may utilize the services of the local Community Action Program (CAP) Agencies or other local social service organizations, to certify the economic eligibility for the low income seal-up programs for those customers who seek the protection of the Winter Termination Program because they are unable to pay their utility bills because of circumstances beyond their control. This option shall be related solely to the economic eligibility of a customer for the low income seal-up programs and shall not be utilized as a means of determining the eligibility of a customer for protection under the Winter Termination Program. Economic eligibility for the seal-up measures for these customers shall be determined by those standards applicable to the low income seal-up programs as established and approved by the Board;

11. As participation in the low income seal-up programs is a continued program eligibility requirement, the utility shall refer to the Board, for purposes of an administrative review, the names of all protected customers who refuse such participation. Pending said administrative review, the utility, shall not unilaterally discontinue service for failure to participate in the low income seal-up programs. Discontinuance for said failure to participate shall not occur unless authorized by the Board. Tenants who are unable to obtain appropriate landlord/owner permission shall not be considered to have refused participation in the low income seal-up programs. The utility shall provide the Board with the names and addresses of those tenants who have indicated their inability to obtain landlord/owner consent.

(i) An electric or gas utility may terminate service to a customer who is eligible for the Winter Termination Program if said customer connects, disconnects or otherwise tampers with the meters, pipes, wires or conduits of the utility for the purpose of obtaining electric or gas service without payment therefor.

1. No discontinuance shall occur until the customer has been afforded all reasonable due process considerations, including an opportunity to be heard. Toward this end, the electric and gas utilities shall comply with the following requirements prior to discontinuing service to any customer who has allegedly tampered with the meter or other company facilities resulting in the receipt of unmetered service:

i. The utility shall notify the Board of all pertinent facts related to the alleged tampering;

ii. The Board shall have seven days after receipt of said information to complete an impartial and informal investigation of the matter. In the event that a utility

comes forward with sufficient credible evidence that shows that the meters, pipes, wires, conduits or attachments through which a customer is thus being furnished with electric or gas service have been tampered with, the Board shall immediately notify the customer and the burden shall shift to the customer to come forward with sufficient evidence to rebut the charges of the utility. Failure to do so will result in a finding that tampering did occur for the purpose of obtaining the utility service without payment and that the customer is responsible therefor;

iii. Upon a finding by the Board that tampering did occur, the utility shall give written notification to the customer, by certified mail, return receipt requested, and to the local public welfare agency and the local municipal health agency, by regular mail, as to the date upon which service to the customer shall be terminated. Said notification shall be made at least seven days prior to the date of the proposed service termination. The utility shall further advise the customer in the written notification that if he or she claims to be dependent on life sustaining equipment, the customer must furnish a physician's certificate within the aforementioned seven day period, wherein the condition requiring such equipment is identified and verified;

iv. Any relief requested under N.J.A.C. 14:3-3.6(d) regarding medical emergencies shall be reviewed on a case-by-case basis.

2. A customer, otherwise eligible for the Winter Termination Program, whose electric or gas service had been discontinued prior to the start of the heating season and who has subsequently caused the unauthorized restoration of said service shall, when said unauthorized service has been registered on the meter, be required to make a down payment of up to 25 percent of the outstanding account balance as of the most current meter reading as a pre-condition for the continuation of service during the heating season.

New Rule, R.1987 d.516, effective December 21, 1987.

See: 18 N.J.R. 2315(a), 19 N.J.R. 2405(b).

Amended by R.1991 d.221, effective May 6, 1991.

See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).

Corrected erroneous reference at (i)1ii., to tampering "not" occurring; correct indication is to tampering occurring.

14:3-7.13 Disputes as to bills

(a) A utility shall not discontinue service because of nonpayment of bills in cases where a charge is in dispute, provided the undisputed charges are paid and a request is made to the Board for an investigation of the disputed charge. In such cases the utility shall notify the customer that unless steps are taken to invoke formal or informal Board action within five days, service will be discontinued for nonpayment. Once a formal or informal dispute is before the Board, all collection activity on the charge in dispute shall cease. When the Board has determined that a formal or informal dispute has been resolved, the utility is

required to provide at least seven days written notice before service may be discontinued.

(b) In appropriate cases the Board may require all or a portion of disputed charges to be placed in escrow.

(c) Whenever a residential customer advises the utility prior to the date of a proposed discontinuance for nonpayment that he wishes to discuss a deferred payment agreement because he is presently unable to pay a total outstanding bill, the utility shall make a good faith effort to provide the customer with an opportunity to enter into (a) reasonable deferred payment agreement(s). Such an opportunity shall be extended to a residential electric and/or gas customer either prior to or after the occurrence of discontinuance of service for non-payment. In negotiating such (a) deferred payment agreement(s); a residential electric and/or gas customer may not be required to pay, as a down payment more than 25 percent of the total outstanding bill due at the time the agreement(s) is made or executed. In the case of a residential customer who received more than one utility service from the same utility and the amount which is in arrears is a combination of those services the utility shall offer a separate deferred payment agreement for each service based on the outstanding balance for that service prior to any proposed discontinuance for non-payment. The utility shall not require such a customer to accept two or more deferred payment agreements that extend over the same time period. The customer shall have the option to enter into (a) deferred payment agreement(s) for (a) particular service(s), and have the remaining service(s) disconnected until satisfactory arrangements for payment can be made.

(d) Such agreements which extend for more than two months shall be in writing and shall provide that a customer who is presently unable to pay an outstanding debt for utility services may make reasonable periodic payments until the debt is liquidated while continuing payment of current bills. While a deferred payment agreement for each separate service need not be entered into more than once a year, the utility may offer more than one such agreement in a year. The Board of Public Utilities may order a utility to accept more than one deferred payment agreement in a year if said action is reasonable. If the customer defaults on any of the terms of the agreement, the utility may discontinue service after providing the customer with a notice of discontinuance. In the case of a residential customer who receives more than one utility service from the same utility and has subsequently entered into a separate agreement for each separate service, default on one such agreement shall constitute grounds for discontinuance of only that service.

(e) A public utility shall pay or credit interest at a rate equal to that prescribed by the Board in N.J.A.C. 14:3-7.5 (Return of deposits) on any overpayment made by a residential customer due to a billing error, unless the overpayment is fully refunded or credited to the customer's account within two billing cycles after written notification by the customer to the utility wherein the alleged error is identified, described and documented in sufficient detail.

1. For purposes of this subsection, "billing error" shall mean a charge to a residential customer in excess of that approved by the Board for the type of service supplied to that customer or in excess of the charge due for the service supplied to that customer as measured or recorded by meter or other device; except that neither the amount of any estimated bill in and of itself, nor the amount due on a budget account installment shall constitute a billing error.

2. The period of time constituting "two billing cycles" shall be determined by the billing practices of the public utility in place at the time of receipt by the utility of the written notification by the customer of the error. In no event shall such period be considered to be less than 60 days.

3. Each public utility shall annually provide written notice of the provisions of this subsection to each of its residential customers.

(f) A utility shall not assess a late payment charge on an unpaid bill unless such charge is provided for in the utility's applicable rate schedule approved by the Board.

1. A late payment charge shall not be approved if it is applicable to bills less than 25 days after rendering.

2. A late payment charge shall not be approved for a rate schedule applicable to a state, county or municipal government entity or any residential customer.

As amended, R.1978 d.155, effective May 16, 1978.

See: 9 N.J.R. 290(e), 10 N.J.R. 261(e).

As amended, R.1980 d.555, effective December 29, 1980.

See: 12 N.J.R. 552(a) 13 N.J.R. 105(b).

(c): Extended deferred payment opportunity to before or after discontinuance of service; 25 percent limit established.

Amended by R.1985 d.166, effective April 15, 1985.

See: 16 N.J.R. 2747(a), 17 N.J.R. 974(a).

Substantially amended.

Amended by R.1988 d.569, effective December 19, 1988.

See: 20 N.J.R. 963(b), 20 N.J.R. 3141(a).

(a): Added text "Once a formal . . ."; added (e).

Amended by R.1991 d.149, effective May 6, 1991.

See: 22 N.J.R. 619(b), 23 N.J.R. 1450(b).

Requires a utility to allow a customer at least 25 days to make payment before it could assess a late payment charge, late payment charge could be assessed only under a rate schedule approved by the Board which provides for such a charge. Prohibits late payment charges to a state, county or municipal government entity or residential customer.

Case Notes

Credit to home owner's electric bill account was proper. *Clendaniel v. Atlantic Electric Company*, 94 N.J.A.R.2d (BRC) 89.

Credit to elderly couple's water bill account was proper. *Mount v. Trenton Water Works*, 94 N.J.A.R.2d (BRC) 86.

Check sent by customer to water utility did not constitute accord and satisfaction; customer entitled to credit but not punitive damages. *Slowinski v. City of Trenton*. 92 N.J.A.R.2d (BRC) 71.

Service discontinuance by gas and electric utility; appropriate notice given and discontinuance not on basis of non-payment of contested charges. *Buczek v. Public Service Electric & Gas*, 92 N.J.A.R.2d (BRC) 13.

14:3-7.14 Discontinuance of residential service to tenants

Electric, gas, water and sewer public utilities shall make every reasonable attempt to determine when a landlord-tenant relationship exists at residential premises being serviced. If such a relationship is known to exist, discontinuance of residential service is prohibited unless the utility has posted notice of discontinuance in the common areas of multiple family premises and has given individual notice to occupants of single and two-family dwellings and has offered the tenants continued service to be billed to the tenants, unless the utility demonstrates that such billing is not feasible. The continuation of service to a tenant shall not be conditioned upon payment by the tenant of any outstanding bills due upon the account of any other person. The utility shall not be held to the requirements of this provision if the existence of a landlord-tenant relationship could not be reasonably ascertained.

As amended, R.1978 d.155, effective May 16, 1978.
See: 9 N.J.R. 290(e), 10 N.J.R. 261(e).

Case Notes

Homeowners' association was not entitled to stay of discontinuance by water utility of fire hydrant service. In *Matter of Vernon Valley Water Company v. Stone Hill Property Owners Association*. 93 N.J.A.R.2d (BRC) 1.

14:3-7.15 Notification to municipalities of discontinuance of gas and electric service to residential customer

(a) All electric and gas public utilities shall annually notify all municipalities located within their service area that, upon request, they, and/or any enforcing agency enforcing the Uniform Fire Code (N.J.A.C. 5:18) within the municipality, will be sent a daily list of the residential customer of record and premises located within the municipality at which gas or electric service was discontinued involuntarily on the preceding day.

(b) The list referred to in subsection (a) of this section shall contain the following information.

1. The name and address of every residential customer of record whose service was discontinued on the previous day for reasons other than at the customer's request and whose service remains discontinued as of 8:00 A.M. on the day the list is sent. The list shall also set forth the address of the premises where service was discontinued. Included on the list shall be those customers whose service has been discontinued for reasons such as non-payment of bills, the absence of a customer of record, the existence of an unsafe condition, and theft of service. These examples shall not be construed as being exclusive.

2. If there is no customer of record, this fact shall be shown by indicating "unknown" next to the address of the premises.

3. If the reason for the discontinuance of service is the existence of an unsafe condition, this fact shall be indicated next to the address of the premises. All other reasons for the discontinuance of service shall not be included on the list.

4. Those customers whose service has been discontinued on a Friday, Saturday or Sunday and whose service remains discontinued as of 8:00 A.M. on the following Monday shall be included on the list sent on that Monday. If a Monday falls on a holiday on which the utility company's commercial offices are closed, the list shall be sent on the next regular workday. Pursuant to N.J.A.C. 14:3-3.6(c), public utilities may not discontinue residential service on Saturday, Sunday or a holiday on which the utility company's commercial offices are closed or after 1:00 P.M. of the business day prior to a weekend or such holiday for nonpayment.

5. When none of the customers within the municipality has service discontinued as of 8:00 A.M. on the day the list is to be sent, the utility shall not be required to send a list or otherwise notify the municipality that there were no discontinuances. The next list subsequently sent shall state the date on which the last list was sent.

6. The date of discontinuance of service for each customer on the list.

7. Specification of whether gas and/or electric service was discontinued for each customer on the list.

(c) The list referred to in subsection (a) of this section may be sent by ordinary mail.

(d) Beginning on February 15, 1980, and on every February 15 thereafter, all electric and gas utilities shall file with the Board a report containing the following information:

1. A breakdown of the expenses incurred in complying with this regulation in the preceding calendar year;
2. Any additional information which the Board in its discretion may require in writing or the public utility may wish to submit.

(e) Beginning on February 15, 1980, and on every August 15 and February 15 thereafter, all electric and gas utilities shall file with the Board a report containing the following information:

1. Those municipalities which requested the list referred to in subsection (a) of this section and those which have not requested the list as of the date of the report;
2. Those enforcing agencies referred to in (a) above enforcing the Uniform Fire Code which requested the list referred to in (a) above.
3. Any additional information which the Board in its discretion may require in writing or the public utility may wish to submit.

R.1979 d.352, effective October 10, 1979.

See: 11 N.J.R. 522(c).

Amended by R.1986 d.242, effective July 7, 1986.

See: 18 N.J.R. 463(a), 18 N.J.R. 1401(a).

(a) added text "and/or any ... within the municipality"; added (e)2.

14:3-7.16 Diversion of service

(a) The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

“Beneficiary” is the person, corporation or other entity financially benefiting from the service.

“Diversion” is an unauthorized connection to pipes and/or wiring by which utility service registers on the tenant customer’s meter although such service is being used by other than the tenant-customer of record without his or her knowledge or cooperation. The unauthorized connection must not be apparent from the premises.

“Landlord” means both those persons, corporations or other entities who currently lease residential dwellings, as well as condominium associations or other owners’ associations in instances where occupants own their premises in a multi-family building.

“Premises” are those areas of the residence where service outlets are visible and under the direct control of the tenant-customer of record.

“Tenant-customer” is a residential customer of record at the time of the complaint who rents a dwelling unit in a multi-family building or owns a condominium.

“Utility” or “company” means those public electric and/or natural gas utilities under the jurisdiction of the Board of Public Utilities.

(b) Each electric and/or gas utility shall file tariff amendments to provide that tenant-customers shall not be required to pay for service supplied outside their premises without the tenant-customers’ consent.

(c) Each electric and/or gas utility shall notify tenant-customers who apply for service that if the utility’s tariff provides for billing through one meter for the tenant-customers’ own usage and for service diverted outside the tenant-customers’ premises, the tenant-customers may not be required to pay for such diverted service absent their consent or cooperation for such service.

(d) Investigation of alleged diversions shall be conducted as follows:

1. Where a tenant-customer alleges in good faith that the level of consumption reflected in his or her utility bill is unexplainably high, the tenant-customer may request the utility supplying gas and/or electricity to conduct a diversion investigation at no cost to the customer. Such request shall be made in writing by the tenant-customer by completing and returning to the utility a diversion investigation application provided by the utility. The application shall state that the utility may bill the customer for the cost of the second investigation within a 12-month period that fails to uncover the utility diversion. The utility must investigate the alleged diversion within two months of the receipt of the investigation request. Each diversion investigation must include a meter test conducted in accordance with N.J.A.C. 14:3-4.5.

- i. The utility shall have the right of reasonable access pursuant to N.J.A.C. 14:3-3.8. For purposes of utility access, the alleged diversion is presumed to constitute a hazardous condition until the utility investigates.

- ii. If as a result of such investigation, the utility determines that the service from the pipes and/or wires serving the tenant-customer, has been diverted, the utility shall notify the landlord or his or her agent and instruct him or her to correct the diversion within 30 days through rewiring or repiping. However, this provision shall in no way prohibit a utility from disconnecting service if the utility determines that an unsafe condition exists.

2. The utility shall attempt to determine the identity of the beneficiary.

- i. A tenant-customer seeking relief shall be responsible for furnishing to the utility the identity and address of the landlord or agent, and of the beneficiary, if known;

- ii. Additionally, the tenant-customer shall provide any other information which may assist the utility in its investigation.

3. The utility shall furnish to the tenant-customer, the tenant-customer’s landlord, and to the beneficiary (if different from the landlord) within 14 days of the investigation, a written report on the findings of the investigation. This report shall include information on the estimated cost of diverted service based upon prior use, degree day analysis, load study and/ or cooling degree hours, whichever is appropriate. If the utility locates a diversion, the utility shall attempt to reach an agreement with the parties involved or, in lieu of such agreement, proceed to the conference described in (f) below. If no diversion is located, these diversion proceedings shall end when the utility has completed and filed its investigation report pursuant to (j) below.

(e) Utility service shall be continued as follows:

1. As of the date of the tenant-customer’s allegation, the utility shall continue the tenant-customer’s service provided the tenant-customer pays (or makes an agreement to pay) amounts not in dispute.

2. A utility may not terminate service to a customer involved in a diversion dispute until one of the following has occurred, whichever is latest:

- i. Four weeks have elapsed after the conference described in (f) and no Board intervention has been sought; or

- ii. The Board has rendered a decision on a formal petition, or Board staff has rendered a decision on an informal complaint if either is filed as described in (h).

(f) If an agreement has not been reached within two weeks of the completion of the utility's investigation, the utility shall invite the landlord, tenant-customer, beneficiary and any other parties which it has reason to believe may be involved with the diversion to a conference with a company representative. Reasonable efforts shall be made to hold the conference within 30 days of the investigation at a mutually convenient time and place.

1. Prior to the conference, the utility shall attempt to have the landlord correct the diversion through rewiring and/or repiping. If the landlord or his or her agent fails to appear or to eliminate the diversion, or if the beneficiary fails to appear, the utility shall adjust the beneficiary's billing and future bills by the process described in (g) below. The utility may also refuse to establish utility service for any new tenant of the landlord if the diversion remains uncorrected and the tenant-customer moves from the premises.

2. At the conference, the parties shall negotiate the adjusted billing and payments pursuant to (g) below.

3. At the conference, the utility shall have the burden of presenting the results from the investigation and seeking remuneration from the beneficiary.

4. If the diversion has not already been corrected, an attempt shall be made at the conference to have the landlord or his or her agent to file an agreement with the tenant-customer and the utility that necessary correction to the facilities shall be made within a specified time.

5. At the conference the utility shall provide all parties with a copy of these regulations.

6. The utility shall provide to all parties within two weeks of the date of the conference a detailed summary of the conference which shall include determinations, conclusions, a copy of the investigation report and the names of the participants.

(g) After the conference, billing where diversion has occurred shall be adjusted as follows:

1. The tenant-customer whose service has been diverted by another party shall be billed by the utility only for service used, based upon the estimation contained in the investigation report described in (a)4 above.

2. Where the utility can locate a diversion but not the beneficiary, the tenant-customer shall not be liable for the diverted service. Where the beneficiary can be identified, liability shall be imposed as follows:

i. If the beneficiary is currently a customer of the utility on another account, the utility shall bill that beneficiary for the amount the utility estimates is attributable to the diversion plus all related expenses incurred by the utility in accordance with the company's tariff.

ii. If the beneficiary is not a customer of the utility, the utility may bill that beneficiary for the excess usage which is not attributable to the tenant-customer plus all related expenses incurred by the utility.

3. In cases where the diversion of gas or electricity is a result of a construction error in the pipes and/or wires which was not the responsibility of the beneficiary or landlord, the account of the tenant-customer involved shall be adjusted to charge only for service used based upon a prior use, degree day analysis, load study and cooling hours whichever is appropriate.

4. In instances where the tenant-customer benefited from or cooperated in the diversion, the utility may collect from the tenant-customer of record for the diverted service plus that portion of the related expenses incurred by the utility in accordance with the company's tariff.

5. The utility may permit the beneficiary to amortize the amount due for the diverted service. In cases of diversion due to construction error, the company may allow the customer to amortize the amount due for the diverted service in equal installments over a period of time equal to the period of the diversion, for up to a maximum of four years.

6. Billings shall be corrected retroactively to the most recent of the following dates:

- i. The date of the beginning of the diversion;
- ii. The date of the beginning of the tenancy; or
- iii. The date four years prior to the date of the tenant-customer's diversion complaint.

(h) If an agreement cannot be reached at the conference, the landlord, tenant-customer and beneficiary shall be advised by the utility that, within three weeks of the date on which the conference summary is available, they may request Board intervention.

(i) Each electric and/or gas utility shall send the following notice to its tenant-customer with the tenant-customer's initial bill and annually thereafter:

Pursuant to Board of Public Utilities regulation, no tenant-customer may be billed or disconnected for failure to pay for electric and/or gas service which was diverted outside of his/her premises without the tenant-customer's permission. Upon suspecting that his/her utility bill is unexplainably high because of a diversion of service, the tenant-customer should notify immediately by calling the following number: ____.

(j) The utility shall keep records of diversion complaints and their resolution in accordance with the Board's existing regulations governing customer record retention per N.J.A.C. 14:3-6.1, 14:3-7.8. Each electric and/or gas utility shall report to the Board, one year after the effective date of these regulations and annually thereafter, on the utiliza-

tion of the diversion complaint proceedings provided for in sections (a)-(k) above. This report shall be provided on a Board-approved report format.

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

Cross References

Basis of discontinuance of service, see N.J.A.C. 14:3-3.6.

SUBCHAPTER 8. SUGGESTED FORMULAE FOR EXTENSION OF UTILITY SERVICE

14:3-8.1 General provisions

(a) These formulae shall not be binding on the parties but are suggested as a guide to customers and utilities. Parties are still free to exercise their rights under N.J.S.A. 48:2-27. When an applicant for an extension is dissatisfied with the utility's proposal he may petition the Board for a finding that the extension should be made without charge.

(b) An extension shall be construed to mean the extension of facilities located on streets, highways, and/or rights-of-way acquired by the utility for common distribution and shall not include the meter or transformer or any part of the house service connections, nor shall the cost of extension as referred to in these regulations include the cost of fire hydrants or their branches. The utility may require that the applicant furnish security to insure the use of services which security will be returned upon the commencement of service.

(c) Extension deposits are not to carry interest; except when the amount of the deposit exceeds the actual cost of the extension, the rate established in N.J.A.C. 14:3-7.5 for customer deposits shall be paid on the excess amount. In the event that the actual cost of the extension is less than the amount deposited, interest shall be computed from the date of deposit, or if more than one deposit payment is made, from the date on which the excess amount is deposited if other than the initial date of deposit. This provision shall take effect one month after the effective date of this subchapter, and shall apply to excess extension deposits received by a utility after that date. Interest on excess extension deposits previously collected and held by a utility shall be apportioned so that interest shall be computed from one month after the effective date of this subsection.

Amended by R.1985 d.202, effective May 6, 1985.
See: 17 N.J.R. 174(a), 17 N.J.R. 1136(a).
(c) added.

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).

14:3-8.2 Residential land developer; extension other than telephone

(a) Except as otherwise provided, where applications for extensions into newly developed tracts of land are made by individuals, partnerships or corporations interested in the development or sale of land, but not as ultimate residents, the utility may require a deposit from the applicant covering the estimated cost of the extension as defined in N.J.A.C. 14:3-8.1(b), necessary to serve the tract. The estimated cost of the extension shall include the tax consequences incurred by the utility as a result of receiving deposits under the Tax Reform Act of 1986. The deposit shall be subject to adjustment when the actual cost of construction is determined. The actual cost of construction shall be determined and presented to the developer within 30 days after actual costs are known, but not more than 90 days after the date construction is completed.

(b) Except as otherwise provided, extension deposits are to be returned as provided in (c) below to the depositor when new houses abutting on the extended facilities are completed and the house is occupied by a bona fide owner or responsible tenant who has entered into a contract for use of the utility's service and, in addition, in the case of water main extensions, when the municipality agrees to pay fire protection charges related directly to said extensions.

(c) Except as otherwise provided, the deposit shall be returned in an amount equal to five times the estimated annual revenue from each such completion and occupancy. The deposit for a water or sewer main extension shall be returned in an amount equal to two and one-half times the estimated annual revenue from each such completion and occupancy and from fire protection charges on said extension. If during the 10-year period from the date of the original deposit, the actual annual revenue during any year of said 10-year period from premises abutting upon said extension and from amounts received from the municipality for fire protection service in the case of water main extensions shall exceed the annual revenue which was the basis for the previous deposit return, there shall be returned to the depositor an amount equal to five times such excess, two and one-half times such excess in the case of a water or sewer main extension. In no event shall more than the deposit be returned to the depositor nor shall any part of the deposit remaining after 10 years from the date of the original deposit be returned.

EXAMPLE

Cost of Extension to Utility and Net Deposit Collected from Land Developer	\$1,500.00
Estimated Annual Revenue, First House Completed and Occupied	\$ 100.00
Factor	
Deposit Returned to Land Developer	\$ 500.00
Deposit Remaining with Utility	\$1,000.00

Estimated Annual Revenue, Second House Completed and Occupied	\$100.00
Factor	5
Deposit Returned to Land Developer	\$ 500.00
Deposit Remaining with Utility	\$ 500.00
Actual Revenues in a Subsequent Year from Above Houses	\$250.00
Estimated Annual Revenue from Above Houses	\$200.00
Excess Annual Revenues	\$ 50.00
Factor	5
Deposit Returned to Land Developer	\$ 250.00
Deposit Remaining with Utility	\$ 250.00

EXAMPLE

Cost of Extension to Utility and Net Deposit Collected from Land Developer	\$1,000.00
Estimated Annual Revenue, First House Completed and Occupied	\$150.00
Factor	2½
Deposit Returned to Land Developer	\$ 375.00
Deposit Remaining with Utility	\$ 625.00
Estimated Annual Revenue, Second House Completed and Occupied	\$150.00
Factor	2½
Deposit Returned to Land Developer	\$ 375.00
Deposit Remaining with Utility	\$ 250.00
Actual Revenues in a Subsequent Year from Above Houses	\$400.00
Estimated Annual Revenue from Above Houses	\$300.00
Excess Annual Revenues	\$100.00
Factor	2½
Deposit Returned to Land Developer	\$ 250.00
Deposit Remaining with Utility	\$ 0

Amended by R.1985 d.202, effective May 6, 1985.
See: 17 N.J.R. 174(a), 17 N.J.R. 1136(a).
Substantially amended.
Amended by R.1991 d.221, effective May 6, 1991.
See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).
Reference added in (a) to Tax Reform Act of 1986.

Case Notes

Determination by the Board of Public Utilities regarding cost of extension of public utilities was authorized exercise of agency discretion. *Van Holten Group v. Elizabethtown Water Co.*, 121 N.J. 48, 577 A.2d 829 (1990), on remand.

Developer of proposed large residential community failed to establish existence of "sufficient business" such that utility should be required to bear costs, and thus, developer was required to bear costs for such extensions. *Van Holten Group v. Elizabethtown Water Co.*, 121 N.J. 48, 577 A.2d 829 (1990), on remand.

Board had discretionary authority to establish equitable refund formula. *Van Holten Group v. Elizabethtown Water Company*, 94 N.J.A.R.2d (BRC) 96.

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

14:3-8.3 Individual residential customer; extension other than telephone

(a) Where the estimated cost to the utility for an extension to individual permanent residential customers does not exceed five times the estimated annual revenue, the utility shall make the necessary extension upon receiving from the customer an application for service. Such application shall be made by the owner of the property or by a responsible tenant.

(b) Where the estimated cost of an extension exceeds the amount which the utility must install without cost to the

customer, in accordance with (a) above, the excess cost of the extension shall be deposited and remain with the utility without interest until such time as the actual annual revenue from premises abutting upon said extension, as well as from amounts paid by the municipality for fire protection service in the case of a water main extension, exceeds the amount which was used as the basis for the initial deposit computation, or the basis for a previous return, there shall be returned to the depositor an additional amount equal to five times such excess. The deposit shall be subject to adjustment when the actual cost of construction is determined. The actual cost of construction shall be determined and presented to the customer within 30 days after actual costs are known, but not more than 90 days after the date construction is completed. In no event shall more than the deposit be returned nor shall any part of the original deposit remaining after 10 years from the date of the original deposit be returned.

EXAMPLE

Cost of Extension to Utility	\$1,000.00
Estimated Annual Revenue	\$ 100.00
Factor	
Offset to Deposit	\$ 500.00
Actual Annual Revenue	\$ 150.00
Estimated Annual Revenue used above	\$ 100.00
Excess Revenue	\$ 50.00
Factor	
Deposit Returned to Customer	\$ 250.00
Deposit Remaining with Utility	\$ 250.00
Actual Revenue in Subsequent Year	\$ 200.00
Last Actual Revenue used as a Basis for Deposit Return above	\$ 150.00
Excess Revenue	\$ 50.00
Factor	
Deposit Return to Customer	\$ 250.00
Deposit Remaining with Utility	\$—0

(c) Where the cost to the utility for an extension to individual permanent residential customers exceeds the amount which the utility must install without cost to the customer, in accordance with subsection (a) of this Section, the utility and the customer may agree upon a monthly revenue guarantee not to exceed 1/60 of the total cost of the extension, in lieu of a deposit pursuant to subsection (b) of this Section.

Amended by R.1985 d.202, effective May 6, 1985.
See: 17 N.J.R. 174(a), 17 N.J.R. 1136(a).
Added text in (b): "The actual cost . . . construction is completed," and "remaining after 10 years from the date of the original deposit".

Case Notes

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

SUBCHAPTER 9. GENERAL PROVISIONS

14:3-9.1 Regulations not retroactive

The regulations of this Chapter shall not be construed to be retroactive with respect to the reconstruction of facilities

or the maintenance of records in accordance with those standards prescribed in this Chapter which were not in force when such facilities were installed or constructed or when the maintenance of such records commenced. However, the Board reserves the right to deal with specific cases as the particular conditions require.

14:3-9.2 Deviation and modification

(a) Should conditions exist where a deviation from any of these regulations should be made to suit such conditions, petition may be made to the Board for such deviation.

(b) These regulations may be amended or modified by the Board from time to time.

14:3-9.3 Tariffs

(a) Where these regulations are in conflict with any terms and conditions contained in any utility tariff, these regulations shall govern unless otherwise authorized by the Board.

(b) A utility's tariff shall not be construed to be in conflict with these regulations if said tariff provides for more liberal treatment of customers than that provided for in these regulations.

14:3-9.4 Authority

These regulations are made promulgated pursuant to authority vested in the Board by the New Jersey Statutes Annotated, and shall be construed in conformity with, and not in derogation of, such statutes.

14:3-9.5 Prior regulations

Except as otherwise provided in this Chapter, rules, regulations and standards heretofore promulgated with respect to the subject matter encompassed by these regulations are hereby superseded and revoked.

14:3-9.6 Rates; difference from filed tariffs

(a) In every instance where a utility, subject to the jurisdiction of the Board, enters into a contract or agreement with a customer for the sale of its service at rates different from those provided in the existing tariffs of the utility on file with the Board, it shall file four copies of such contract or agreement, with amendments and supplements, if any, not less than 30 days prior to the effective date thereof.

(b) The filing is to be accompanied by a detailed statement as to the:

1. Type of agreement; for example, firm or interruptible service;
2. Detail costs to the company associated with delivery and sale of the service;
3. Rates and other charges to the customer;
4. Effect on the company's income of such sale;

5. Reasons for the contract or agreement.

R.1973 d.157, effective June 19, 1973.
See: 5 N.J.R. 123(b), 5 N.J.R. 240(a).

Historical Note

Formerly Administrative Order 14:283.

Case Notes

Municipalities required to enter into solid waste disposal contracts only after advertising for competitive bids; Public Contracts Law did not repeal municipal public bidding for scavenger services statute; such contracts are not "schedules of charges" or "tariffs" to permit bidding exemption. In re: Application of Saddle River Boro., 71 N.J. 14, 362 A.2d 552 (1976).

Attempt to eliminate competition warranted revocation of solid waste authority and debarment order. Matter of Allegations, Cicalese, 95 N.J.A.R.2d (EPE) 217, certification denied 143 N.J. 319, 670 A.2d 1061.

Revocation of solid waste disposal company license was appropriate. In the Matter of Allegations of Violations of Law and Administrative Code by A. Fiore & Sons, Inc., 94 N.J.A.R.2d (EPE) 193.

Solid waste utility; loss of license; order to pay penalties and refunds. In the Matter of Industrial & Commercial Refuse Removal Service, Inc., 94 N.J.A.R.2d (EPE) 149.

Charge computation in assumed contract should have been submitted to Board for review as inconsistent with tariff. Board of Public Utilities v. Hamm's Sanitation, Inc., 2 N.J.A.R. 59 (1979).

SUBCHAPTER 10. SOLID WASTE COLLECTION AND SOLID WASTE DISPOSAL

Authority

Unless otherwise expressly noted, all provisions of this Subchapter 10 were filed and became effective July 8, 1971, as R.1971 d.109. See: 2 N.J.R. 76(f), 3 N.J.R. 160(a).

14:3-10.1 Applicability

The regulations in Chapter 3 of this Title shall be applicable to solid waste collection and solid waste disposal utilities.

Case Notes

Board of Public Utilities without jurisdiction to regulate sewerage charges of municipally owned systems which serve users in adjoining municipalities. Freehold Boro v. Freehold Twp., 193 N.J.Super. 724, 475 A.2d 691 (App.Div.1984).

Township ordinance banning sewage deposits in landfills invalid as being in direct conflict with legislative plan and offensive to concept of regionalization of facilities; State has preempted field of solid waste management. Southern Ocean Landfill, Inc. v. Mayor and Council, Ocean Twp., 64 N.J. 190, 314 A.2d 65 (1974).

Regulation subjects solid waste utilities to all regulations in N.J.A.C. 14:3. Board of Public Utilities v. Hamm's Sanitation, Inc., 2 N.J.A.R. 59 (1979).

14:3-10.2 Scope

Every utility engaged in solid waste collection and/or solid waste disposal shall be subject to the regulations as set forth herein, in addition to the Board's Rules of Practice and Administrative Orders heretofore promulgated as applicable to all utilities.

Authority

N.J.S.A. 48:13A-4.

Case Notes

Municipalities required to enter into solid waste disposal contracts only after advertising for competitive bids; Public Contracts Law did not repeal municipal public bidding for scavenger services statute; such contracts are not "schedules of charges" or "tariffs" to permit bidding exemption. In re: Application of Saddle River Boro., 71 N.J. 14, 362 A.2d 552 (1976).

Board of Public Utilities has statutory authority to penalize solid waste licensees who commit statute, regulation or order violations; regulations promulgated under statutory authority. Board of Public Utilities v. Hamm's Sanitation, Inc., 2 N.J.A.R. 59 (1979).

14:3-10.3 Certification

(a) No person shall engage in the business of solid waste collection or solid waste disposal as defined by statute unless he is the holder of a certificate of public convenience and necessity issued by the Board.

(b) No person may bid for a solid waste collection contract or solid waste disposal contract with a municipality or other political subdivision or commercial or industrial entity unless he is the holder of a certificate of public convenience and necessity issued by the Board.

Authority

N.J.S.A. 48:13A-6.

Case Notes

Municipal procedure for negotiation of public contracts after unsuccessful competitive bidding proper; unsuccessful bidder lacked standing to challenge award as it would not be entitled to contract if challenge successful; award justified; contention that contractor was morally irresponsible due to lack of PUC Certificate was patently frivolous. Interstate Waste Removal Co., Inc. v. Bd. of Commissioners, City of Bordentown, 140 N.J.Super. 65, 355 A.2d 197 (App.Div.1976).

14:3-10.4 Registration

No certificate shall be issued for solid waste collection or disposal until the proposed collection or disposal utility has been registered with and approved by the State Department of Environmental Protection as evidenced by its issuance of a certificate of registration.

Authority

N.J.S.A. 48:13A-6

14:3-10.5 Application for a certificate

(a) Each applicant for a certificate shall file an application with the Board and furnish among other things the following:

1. The names and addresses of all persons who have either financially or operationally a legal or beneficial interest in the applicant's business;
2. A statement of his experience, training or education in the solid waste collection and/or solid waste disposal industry together with all supporting data in order to enable the board to determine his qualifications to engage in such business;
3. Proof of financial responsibility including with each application a statement of financial condition;
4. A copy of the schedule of rates charged for the collection and/or disposal of solid waste including copies of contracts in force for said service. New utilities shall furnish a schedule of proposed rates and charges for the character of service proposed to be rendered;
5. A copy of the certificate of registration issued by the State Department of Environmental Protection;
6. Such other information as the Board may deem necessary for its determination of the qualifications of the applicant to engage in the business of solid waste collection and/or disposal.

Authority

N.J.S.A. 48:13A-6.

Case Notes

Requirements for obtaining certificate of public convenience and necessity to operate solid waste transfer station were neither overly broad nor burdensome. Matter of Recycling & Salvage Corp., 246 N.J.Super. 79, 586 A.2d 1300 (A.D.1991).

Discussion of moral integrity as an issue in Certificate decision; local regulation of solid waste disposal and zoning thereof preempted by Solid Waste Management Act and Solid Waste Utility Control Act. Little Falls Twp. v. Bardin, 173 N.J.Super. 397, 414 A.2d 559 (App.Div. 1979), certiorari denied.

14:3-10.6 Issuance of certificate

(a) Upon receipt of an application, the Board may process the application with or without public hearings to determine whether a certificate shall be issued to the applicant; however, no order of denial shall be entered until applicants are offered a hearing with regard thereto.

(b) The Board may impose such conditions as it finds to be proper and necessary when issuing a certificate of public convenience and necessity either in the form of a certificate or by its order.

(c) The Board may deny, after hearing, any request for authority to issue or transfer a certificate of public convenience and necessity which by such issuance or transfer

could result in duplicate authority being granted to engage in the business of solid waste collection and/or disposal.

Amended by R.1991 d.221, effective May 6, 1991.
See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).
Stylistic changes only.

Authority

N.J.S.A. 48:13A-6.

Case Notes

Proper denial of right to cross-examination during Certificate proceedings; local regulation of solid waste disposal and zoning thereof preempted by Solid Waste Management Act and Solid Waste Utility Control Act. *Little Falls Twp. v. Bardin*, 173 N.J.Super. 397, 414 A.2d 559 (App.Div.1979), certiorari denied.

Board empowered to grant Certificate applications ex parte without a full hearing; competitors did not have right to intervene; no requirement for showing or finding that existing service inadequate. In re: Application for Certificate of Public Convenience and Necessity, 134 N.J.Super. 500, 342 A.2d 219 (App.Div.1975).

14:3-10.7 Application form

Every person engaged in solid waste collection or solid waste disposal on May 6, 1970, or thereafter shall, before obtaining a certificate of public convenience and necessity, complete the application form available for such purpose upon request at the Board's offices.

Authority

N.J.S.A. 48:13A-6.

14:3-10.8 Accounting classifications

(a) Every solid waste collection or disposal utility shall be divided into three classes for accounting classification purposes on the basis of gross annual intrastate operating revenues from solid waste collection or disposal operations:

1. Class I—Solid waste collection or disposal systems having three year average annual gross intrastate operating revenues of \$250,000 or more;
2. Class II—Solid waste collection or disposal systems having three year average annual intrastate gross operating revenues of \$50,000 or more but less than \$250,000;
3. Class III—Solid waste collection or disposal systems having three year average annual intrastate gross operating revenues of less than \$50,000.

Authority

N.J.S.A. 48:2-16.

14:3-10.9 Rates

(a) The Board upon complaint or on its own initiative may, after hearing, upon notice, by order in writing, direct any solid waste disposal or solid waste collection utility to furnish proof that its rates for service do not exceed just and reasonable rates for such service.

(b) Should the Board find, after hearing, that the rates are excessive, it may order the utility earning such excessive rates to make an adjustment in its rates, contracts or agreements to a sum which shall result in just and reasonable rates.

(c) Rates for service which have for their objective the making effective of initial rates or of revisions, changes or alterations of existing rates and which are not filed because of the need for additional revenue from services covered by existing rates and which do not propose increases in charges to customers shall be filed in accordance with Section 6.15 (Tariff filings which do not propose increases in charges to customers) of Chapter 1 of this Title.

(d) Rates for service or petitions which have as their objective the making effective of revisions, changes or alterations of existing rates which propose to increase the charges for the service either directly or by the alteration of any classification practice, rule or regulation as to result in such an increase shall be filed in accordance with Section 6.16 (Tariff filings or petitions which propose increases in charges to customers) of Chapter 1 of this Title.

Authority

N.J.S.A. 48:13A-7.

14:3-10.10 Tariffs

Tariffs showing territory served, standard terms and conditions, rate schedules for various types of service and contracts shall be filed in accordance with Subchapter 7 of Chapter 11 of this Title.

Authority

N.J.S.A. 48:13A-11 and 48:2-21.

Case Notes

Municipalities required to enter into solid waste disposal contracts only after advertising for competitive bids; Public Contracts Law did not repeal municipal public bidding for scavenger services statute; such contracts are not "schedules of charges" or "tariffs" to permit bidding exemption. In re: Application of Saddle River Boro., 71 N.J. 14, 362 A.2d 552 (1976).

14:3-10.11 Failure to render service

(a) Should any solid waste collection or solid waste disposal utility fail to render service pursuant to its filed tariff, the Board may order any utility engaged in such business to extend its collection or disposal service into the area where service has been discontinued, and the Board shall permit just and reasonable rates to be charged for such service in the extended area as found by the Board in the same manner as its determination for initial rates. See Section 10.9 (Rates) of this Chapter.

(b) No solid waste collection or disposal utility shall discontinue service to any customer without first filing a petition with the Board, which petition shall give the reasons for such discontinuance. Such proposed discontinuance shall not become effective until approved by the Board.

(c) Where service to a customer is interrupted and it appears that the interruption will continue for more than one day or one pick up, a report shall be made to the Board forthwith giving a full account and statement of the reasons for such interruption and the estimated duration.

Authority

N.J.S.A. 48:13A-8.

Case Notes

Municipal incinerator authority, as created by the Solid Waste Utility Control Act, is not subject to Board's jurisdiction and cannot be compelled by Board to continue service until given permission to cease. *Jersey City Incinerator Authority v. Dept. of Public Utilities*, 146 N.J.Super. 243, 369 A.2d 923 (App.Div.1976), certiorari dismissed as moot 75 N.J. 600, 384 A.2d 830 (1978).

Curtailed of agreed upon six day-per-week collection to one day-per-week constituted a regulatory violation as a substantial discontinuance of service without prior Board approval. *Board of Public Utilities v. Hamm's Sanitation, Inc.*, 2 N.J.A.R. 59 (1979).

14:3-10.12 Agreements to limit bidding or territorial withdrawal

No solid waste collection or solid waste disposal utility shall agree with any other utility or person to limit bidding or withdraw from the specific territory or endeavor to eliminate competition.

Authority

N.J.S.A. 48:13A-10.

Case Notes

Fourteenth Amendment precludes court from automatic revocation of probation and imposition of prison term for nonpayment of restitution. *State v. Townsend*, 222 N.J.Super. 273, 536 A.2d 782 (A.D.1988).

Evidence supported determination by the Board of Public Utilities that garbage collection corporation and its president possessed dangerous probability of success of monopolizing specific areas. *Matter of Inter County Refuse Service, Inc.*, 222 N.J.Super. 258, 536 A.2d 775 (A.D.1988), certification granted 111 N.J. 618, 546 A.2d 535.

Regulation prohibiting certain anticompetitive conduct by solid waste collectors was valid. *Matter of Inter County Refuse Service, Inc.*, 222 N.J.Super. 258, 536 A.2d 775 (A.D.1988), certification granted 111 N.J. 618, 546 A.2d 535.

Transfer of all stock in corporation did not free corporation from moral turpitude of transferee and did not preclude revocation of corporation's certificate of public convenience and necessity. *Matter of Inter County Refuse Service, Inc.*, 222 N.J.Super. 258, 536 A.2d 775 (A.D.1988), certification granted 111 N.J. 618, 546 A.2d 535.

Authority of the Board of Public Utilities to exclude individual from solid waste collection business where such person has violated the Solid

Waste Utility Control Act or regulation adopted thereunder may be reasonably implied, though the Act does not expressly authorize exclusion from the business. *Matter of Scioscia*, 216 N.J.Super. 644, 524 A.2d 855 (A.D.1987), certification denied 107 N.J. 652, 527 A.2d 471.

Total exclusion of individual from solid waste business following his conviction for conspiracy to restrain trade was not unreasonable. *Matter of Scioscia*, 216 N.J.Super. 644, 524 A.2d 855 (A.D.1987), certification denied 107 N.J. 652, 527 A.2d 471.

Evidence was sufficient to support conclusion of the Board of Public Utilities, in proceeding to revoke firm's certificate of public convenience and necessity, that firm and manager had violated the Solid Waste Utility Control Act prohibition against monopolization. *Matter of Scioscia*, 216 N.J.Super. 644, 524 A.2d 855 (A.D.1987), certification denied 107 N.J. 652, 527 A.2d 471.

Board of Public Utilities, in determining whether to grant a new certificate or to revoke an existing certificate, is not restricted to determining whether the applicant itself has violated the Solid Waste Utility Control Act and its implementing regulations, but also may consider whether any principal of the applicant has been guilty of such a violation. *Matter of Scioscia*, 216 N.J.Super. 644, 524 A.2d 855 (A.D.1987), certification denied 107 N.J. 652, 527 A.2d 471.

Board of Public Utilities could not be required to adopt regulation excluding from the solid waste business a violator of Solid Waste Quality Control Act. *Matter of Scioscia*, 216 N.J.Super. 644, 524 A.2d 855 (A.D.1987), certification denied 107 N.J. 652, 527 A.2d 471.

Solid waste collector not exempt from Antitrust Act; evidence sufficient that defendants involved in single overall conspiracy to eradicate competition in garbage collection industry. *State v. Scioscia*, 200 N.J.Super. 28, 490 A.2d 327 (App.Div.1985), certification denied 101 N.J. 277, 501 A.2d 942 (1985).

Attempt to eliminate competition warranted revocation of solid waste authority and debarment order. *Matter of Allegations, Cicalese*, 95 N.J.A.R.2d (EPE) 217, certification denied 143 N.J. 319, 670 A.2d 1061.

14:3-10.13 Sale or transfer of assets; securities; debt issuances

(a) No sale or transfer of assets of a solid waste collection or solid waste disposal utility or any change in majority control of such utility shall be consummated without prior authorization of the Board. Filings for authority shall be in accordance with Sections 6.10 (Petitions for the approval of the sale or lease of property) and 6.14 (Petitions for authority to transfer capital stock) of Chapter 1 of this Title.

(b) Petitions for authority to issue stock, bonds, notes, other evidence of indebtedness or to execute mortgages shall be filed in accordance with Section 6.13 (Petitions for authority to issue stocks, bonds, notes, other evidence of indebtedness or to execute mortgages) of Chapter 1 of this Title.

Authority

N.J.S.A. 48:3-7, 48:3-9 and 48:3-10.

Case Notes

Board of Public Utilities' decision, that transfers of utility stock resulting in a change in majority interest require Board approval, could be applied retroactively, even though numerous utilities had reasonably relied on prior Board decision; Board indicated that it would consider party's reliance on the prior decision as mitigating factor tempering its enforcement policy. *Matter of Declaratory Ruling Pursuant to N.J.S.A. 48:3-10 and N.J.A.C. 14:3-10.13(a)*, 234 N.J.Super. 139, 560 A.2d 689 (A.D.1989).

Enforcement policy of the Board of Public Utilities regarding Board approval of utility stock transfers did not have to be effectuated by administrative rule-making process. *Matter of Declaratory Ruling*

Pursuant to N.J.S.A. 48:3-10 and N.J.A.C. 14:3-10.13(a), 234 N.J.Super. 139, 560 A.2d 689 (A.D.1989).

Transfer, without prior approval of the Board of Public Utilities, of all stock in public utility engaged in solid waste collection business violated the Solid Waste Control Act and was void. Matter of Inter County Refuse Service, Inc., 222 N.J.Super. 258, 536 A.2d 775 (A.D. 1988), certification granted 111 N.J. 618, 546 A.2d 535.

14:3-10.14 Approval of consolidations, mergers or dissolutions

No solid waste disposal or solid waste collection utility shall be consolidated or merged with another solid waste disposal or solid waste collection utility or be dissolved without prior approval of the Board. Filings should be in accordance with Section 6.18 (Petitions for approval of a merger or consolidation) of Chapter 1 of this Title.

Authority

N.J.S.A. 48:3-7.

14:3-10.15 Filing of annual reports and customer lists

(a) Every utility engaged in solid waste collection and solid waste disposal shall file no later than March 31 of each year an annual report on forms to be prescribed by the Board for filing, showing its financial condition on a calendar year basis. Such reports shall also contain a statement of income and expenses for a calendar year period.

(b) Every utility engaged in solid waste collection shall file no later than March 31 of each year, with the Department of Environmental Protection and Energy, a complete list, made under oath, of all residential, commercial, industrial and institutional customers.

1. The list of residential customers shall be subdivided by municipality. Within each municipality, the customers shall be sequentially numbered and set forth in numerical order by street address and the streets set forth in alphabetical order. The list shall include each customer's complete name and address (including post office box, zip code and any other identifying data) as of December 31 of the preceding year.

2. The list of commercial, industrial or institutional customers shall be set forth as in (b)1 above and, in addition, shall include for each customer the rate schedule(s) applied, frequency and type of service supplied, and number of containers and the size of each.

3. If a change occurs in the total number and/or names of commercial, industrial or institutional customers supplied in the preceding year, the collector shall provide an explanation for the change and the date and docket number of the Board's order, if any, authorizing such change.

4. Pursuant to N.J.S.A. 47:1A-2 of the Right to Know Law, N.J.S.A. 47:1A-1 et seq., the customer lists filed with the Department pursuant to this section shall not be deemed to be public records and the public, including solid waste or other utilities, shall not have the right to inspect, copy or obtain a copy of same. Upon receipt of customer lists, the Department shall keep the lists under lock and take appropriate measures to maintain the lists in confidence. Access to such lists shall be limited to agents, employees and attorneys of the Department and, in the discretion of the Department, certified local health agency certified by the Department pursuant to the N.J.S.A. 26:3A-2 or local boards of health responsible for enforcement of laws related to the collection and disposal of solid waste. All such governmental agencies shall be subject to the confidentiality requirements contained in this paragraph. In order to obtain a customer list, a certified local health agency or local board of health must submit a written request to the Department setting forth the information requested and the reasons for the request. The Department in its discretion may deny a request for release of a customer list if the Department determines to take enforcement action or if the Department determines for any other reason that granting the request would not be in the public interest.

5. If a collector's Certificate of Public Convenience and Necessity is revoked, or for other good cause as the public interest may demand, the Board in its discretion may disclose the customer list of such collector for purposes of insuring safe, adequate and proper service.

6. Customer list formats are as follows:

i. MODEL RESIDENTIAL CUSTOMER LIST FORMAT

<u>CUSTOMER #</u>	<u>NAME</u>	<u>ADDRESS</u>
1.	ABC	One A Street, Allentown, NJ 10000
2.	DCE	One B Street, Allentown, NJ 10000
1.	FGH	One A Street, Basking Ridge, NJ 20000
2.	IJK	One B Street, Basking Ridge, NJ 20000

ii. MODEL COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL CUSTOMER LIST FORMAT

<u>CUSTOMER #</u>	<u>NAME</u>	<u>ADDRESS</u>
1.	ABC	One A Street, Allentown, NJ 10000

<u>RATE SCHEDULE(S) APPLIED</u>	<u>FREQUENCY AND TYPE OF SERVICE/PER PULL</u>
No. 10 Waste	2 x Week/Roll Off

<u>NUMBER AND SIZE OF CONTAINER</u>
2-8 Cubic Yard

Amended by R.1990 d.6, effective January 2, 1990.
See: 21 N.J.R. 2702(b), 22 N.J.R. 47(a).

Added new (b) making requirements for filing of customer lists much more specific.

Amended by R.1993 d.508, effective October 19, 1993.
See: 24 N.J.R. 3286(c), 25 N.J.R. 4763(a).

Authority

N.J.S.A. 48:2-16.

14:3-10.16 Records

Every utility engaged in solid waste collection or solid waste disposal shall keep books, records and accounts in accordance with the Uniform System of Accounts as the Board may prescribe by regulation or administrative order.

Authority

N.J.S.A. 48:2-16.

14:3-10.17 Evidence of insurance

Any utility engaged in solid waste collection or solid waste disposal shall file with the Board evidence of insurance or self-insurance which certificate or evidence shall be in a form prescribed by the Board. The limits of liability shall be as promulgated from time to time by the Board.

Authority

N.J.S.A. 48:13A-6.

14:3-10.18 Performance bond

Every utility engaged in solid waste collection and solid waste disposal shall furnish a performance bond in conjunction with every contract (as described in Section 10.3(b) Certification) it enters into as the Board may prescribe.

Authority

N.J.S.A. 48:13A-8.

14:3-10.19 Proceedings

The rules of practice adopted by the Board for other public utilities shall apply to proceedings involving utilities engaged in solid waste disposal and solid waste collection.

Authority

N.J.S.A. 48:2-12 and 48:2-32.

14:3-10.20 Certificates for solid waste disposal

(a) No person, or any person controlling, controlled by, or under common control with such person, shall hold a certificate as a solid waste collector or solid waste disposal operator authorizing operation for the collection or disposal of solid waste, if such person, or any such controlling person, controlled person, or person under common control, holds another certificate to operate as a solid waste collector or solid waste disposal operator.

(b) For the purpose of this regulation, where reference is made to control (in referring to a relationship between any persons), such reference shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation, through or by com-

mon directors, officers or stockholders, a voting trust or trusts, a holding or investment company or companies, or through or by any other direct or indirect means; and to include the power to exercise control.

(c) The Board may, for good cause shown consistent with the public interest, find that multiple certificates shall be issued, notwithstanding the provisions set forth in subsections (a) and (b) of this Section.

(d) This rule does not prohibit a person, or any person controlling, controlled by or under common control with such person from holding one certificate as a solid waste collector and one certificate as a solid waste disposal operator.

Recodified from N.J.A.C. 14:9-4.1 by R.1991 d.221, effective May 6, 1991.

See: 22 N.J.R. 907(a), 23 N.J.R. 1012(a), 23 N.J.R. 1439(b).

14:3-10.21 Property, equipment and facilities

(a) All public utilities engaged in the business of solid waste collection or solid waste disposal shall own and have title to all property, equipment and facilities used and useful in providing safe, adequate and proper service.

(b) The solid waste utility may use property, equipment and facilities to which it does not have title provided it enters into an agreement (lease) and said agreement is filed with the Board. Such filing shall contain a statement therein whereby the lessor of the property, equipment and facilities to be used for utility purposes agrees that his interest in such property, equipment and facilities becomes subject to the jurisdiction and regulation of the Board for term of said agreement.

(c) The Board may for good cause shown determine the extent of the property, equipment and facilities which may be used by the solid waste utility not having title thereto.

Recodified from N.J.A.C. 14:9-4.2 by R.1991 d.221, effective May 6, 1991.

See: 22 N.J.R. 907(a), 23 N.J.R. 1012(a), 23 N.J.R. 1439(b).

14:3-10.22 Rate adjustments for construction and demolition (Type 13C) waste

(a) All solid waste disposal utilities with approved tariff rates for Type 13 waste on file with the Department may, after January 29, 1996, increase or decrease the approved disposal rates for the construction and demolition portion of the Type 13 waste stream (Type 13C waste) without prior Department approval.

(b) After January 29, 1996, solid waste disposal utilities shall implement rate adjustments for Type 13C waste in accordance with the following:

1. The authority to implement rate adjustments for Type 13C waste without the prior approval of the Department shall be effective until the earlier of enactment of

Federal legislation authorizing flow control over C&D waste or an order of the Court imposing further or supplementary relief with respect to C&D or modifying its prior order;

2. By April 29, 1996, every solid waste disposal utility shall submit a status report to the Department, on forms provided by the Department (or on duplication of same). The status report shall, at a minimum, include:

- i. The tonnage of Type 13C waste received;
- ii. The rates charged for Type 13C waste; and
- iii. An assessment of the market stability of the C&D waste stream.

3. The Department reserves its authority to require the submission by one, some or all solid waste disposal utilities of additional status reports or a schedule of fixed rates for Type 13C waste.

(c) After January 29, 1996, a solid waste disposal utility may file a revenue neutral petition to adjust rates for some or all other waste types to recover revenues lost due to a reduction in the Type 13C waste stream in order to ensure that sufficient revenues are maintained during the effective period of these rules.

1. All such petitions filed during the effective period of these rules shall be filed on forms provided by the Department (or on duplication of same) and shall provide the following information:

- i. Part "A" (1995) of the petition shall contain a statement of gross revenues at present rates by waste type and volume. The petition should then segregate Type 13 waste between C&D waste and the remaining components of Type 13 waste. The petition should then multiply C&D volume by the Type 13 rate to identify projected revenue shortfall attributable to loss of C&D waste;
- ii. Part "B" (1996) of the petition should then delete Type 13C waste from the volume listed in part "A" and show the calculation of revised tariff rates based on dividing the previous Revenue Requirement by waste flow allocation. Petition shall include the revised tariff, including a rate specific to Type 13C material, if applicable; and
- iii. A copy of the form of notice to customers.

2. The Department shall review the petition and prepare an order accepting the revised tariff on an interim basis.

(d) Each solid waste disposal utility that makes a filing pursuant to (c) above shall publish a notice of such filing in a newspaper of general circulation in the utility's service area which shall, at a minimum, set forth both the current and the proposed rates for each waste type which is the subject of the rate petition. Each solid waste disposal utility shall submit a copy of the public notice to the Department for approval at least 10 days prior to publication. The notice required by this subsection shall be in accordance with N.J.S.A. 48:2-32.4.

(e) After January 29, 1996 and until these rules are superseded or repealed, in-State solid waste disposal utilities may enter into long term contracts for receipt of Type 13C waste without prior review and approval of the Department. Solid waste disposal facilities shall submit copies of such contracts to the Department within five days of execution.

(f) Notwithstanding any existing tariff provision to the contrary, a designated district facility utilized for weighing or weighing and inspection may assess a reasonable fee for such services without prior Department approval; provided that such fee, if established, shall be a new fee and applicable only to Type 13C waste. The Department reserves the right to exercise oversight in the event an unreasonable fee is assessed.

(g) No solid waste disposal utility shall adjust its rates for any other waste type without prior review and approval of the Department in accordance with the procedures established in (c) above.

Emergency New Rule, R.1996 d.114, effective January 26, 1996 (operative January 29, 1996; expires March 26, 1996).
See: 28 N.J.R. 1305(a).

SUBCHAPTER 11. SOLID WASTE COLLECTION REGULATORY REFORM

14:3-11.1 Purpose

(a) The purpose of this subchapter is to:

1. Establish rules and procedures for regulatory reform and the eventual termination of traditional public utility rate regulation of the solid waste collection industry; and
2. Establish a responsible State supervisory role to ensure safe, adequate and proper solid waste collection service at competitive rates.

Law Review and Journal Commentaries

Environmental Law—Solid Waste. P.R. Chenoweth, 138 N.J.L.J. 72 (1994).

14:3-11.2 Authority

These rules are promulgated pursuant to the authority vested in the DEPE by N.J.S.A. 48:13A et seq., 13:1E-1 et seq., 48:2-21 and P.L. 1991, c.381, Sections 6, 7, 9 and 19 and shall be construed in conformity with, and not in derogation of, such statutes.

14:3-11.3 Scope

These rules shall govern the pricing practices of the solid waste collection industry and will provide for the compilation of data to monitor the extent and effect of competition in the solid waste collection industry.

14:3-11.4 Rates

(a) The rates or charges that may be imposed by solid waste collectors shall be determined in accordance with the provisions of P.L. 1991, c.381. The Act provides the method of determining the rates bands which defines the parameters by which a solid waste collector may increase or decrease its rates.

(b) No petition for rate increases, except as provided by Section 12 of P.L. 1991, c.381 and N.J.A.C. 14:3-11.8(d), may be submitted after April 13, 1992.

(c) Notwithstanding the requirements of (a) and (b) above, the provisions of N.J.S.A. 48:13A-7.8 and N.J.S.A. 48:13A-7.9 shall not apply to any solid waste collector transporting C&D waste exempted from the waste flow requirements pursuant to N.J.A.C. 7:26-3.6(a)9.

Emergency amendment R.1996 d.114, effective January 26, 1996 (operative January 29, 1996; expires March 26, 1996).
See: 28 N.J.R. 1305(a).

14:3-11.5 Definitions

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

“Act” means P.L. 1991, c.381, known as the Solid Waste Collection Regulatory Reform Act.

“CPI” means the averaged Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics for the New York Urban and Philadelphia area for all urban consumers for the calendar year period just ended.

“DEPE” means the Department of Environmental Protection and Energy.

“Materials recovery” means the processing and separation of solid waste utilizing manual or mechanical methods for the purpose of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

“Materials recovery facility” means a transfer station or other authorized solid waste facility at which nonhazardous solid waste, which materials is not source separated by the generator thereof prior to collection, is received for on-site processing and separation utilizing manual or mechanical methods for the purposes of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

“Rate Adjustment Annual Report Form” means the form developed by the DEPE, which includes requests for the following information to be completed by the solid waste collector:

1. Rate changes by customer class;

2. Customer turnover; and

3. Such other information as the DEPE determines is reasonably necessary to provide a report to the Legislature as required by the Act, to assess whether effective competition exists under Section 19 and 20 and to otherwise fulfill its responsibilities under the Act.

“Rate bands” means the minimum/maximum parameters established under N.J.A.C. 14:3-11.7(c) by which a solid waste collector may adjust the service fee of their uniform tariff during the transition period.

“Rate Counsel” means the Department of the Public Advocate, Division of Rate Counsel.

“Septic waste” means pumping from septic tanks and cesspools, but shall not include wastes from a sewage treatment plant.

“Solid waste” means garbage, refuse, and other discarded material resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids, except for solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms.

“Solid waste collection” means the activity related to pickup and transportation of solid waste from its source or location to an authorized solid waste facility, but does not include activity related to the pickup, transportation or unloading of septic waste.

“Solid waste collection services” means the services provided by persons engaging in the business of solid waste collection.

“Solid waste collector” means a person engaged in the collection of solid waste and holding a certificate of public convenience and necessity pursuant to sections 7 and 10 of P.L. 1970, c.40 (N.J.S.A. 48:13A-6 and 48:13A-9).

“Solid waste disposal” means the storage, treatment, utilization, processing or final disposal of solid waste.

“Solid waste disposal services” means the services provided by persons engaging in the business of solid waste disposal.

“Solid waste facility” means and includes the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any person pursuant to the provisions of P.L. 1970, c.39 (N.J.S.A. 13:1E-1 et seq.) or any other act, including transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and rights therein and

appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

“Transition period” means the 48 month successive period commencing on April 14, 1992 and terminating on April 13, 1996.

“Transition year” means the successive 12-month period commencing on April 14 of that year. The first transition year commences April 14, 1992.

“Uniform tariff” means a tariff filed in the form required by N.J.A.C. 14:11-7.8, using the component rate structures and formulas provided by N.J.A.C. 14:11-7.7 and 7.8(b) through (d) and containing the certification required by N.J.A.C. 14:11-7.8(e).

“Verification Form” means the form developed by the DEPE, which includes requests for the following information to be completed by the solid waste collector:

1. Service rates;
2. Disposal rates;
3. Rate band effects on service fees; and
4. Such other information as the DEPE determines is reasonably necessary to provide a report to the Legislature as required by the Act, to assess whether effective competition exists under Section 19 and 20 and to otherwise fulfill its responsibilities under the Act.

14:3-11.6 Annual Fee

(a) Every solid waste collector shall pay an annual fee of \$100.00. The annual fee shall be paid within 30 days from the date of the invoice issued by the DEPE. The annual fee will cover part of the costs of supervising the solid waste collection industry. The annual fee is in addition to the annual assessment required by N.J.S.A. 48:2-59 et seq.

(b) All checks for payment of the fees and charges established pursuant to (a) above shall be made payable to the order of the Treasurer, State of New Jersey.

1. Payment of such fees and charges shall be mailed to DEPE, Bureau of Revenue, 428 East State Street—4th Floor, CN 402, Trenton, New Jersey 08625-0402.

(c) Nonpayment of the annual fee set forth in (a) above shall result in suspension or revocation of the Certificate of Public Convenience and Necessity, subject to the notice and hearing requirements of N.J.S.A. 52:14B-9.

14:3-11.7 Rate band determination

(a) Every person engaged in the business of solid waste collection in the State of New Jersey shall have a Uniform Tariff on file with the DEPE.

(b) The transition period represents the consecutive 48 month period commencing April 14, 1992 and terminating April 13, 1996. The transition year periods are as follows:

Transition Period	
Year One	April 14, 1992 through April 13, 1993
Year Two	April 14, 1993 through April 13, 1994
Year Three	April 14, 1994 through April 13, 1995
Year Four	April 14, 1995 through April 13, 1996

(c) Rate bands shall be determined as follows:

1. A solid waste collector who has filed a Uniform Tariff, which has not been rejected by the DEPE, may adjust its uniform tariff service charge within the rate bands. Solid waste collectors not in compliance with N.J.A.C. 14:11-7.6 through 7.9 are not permitted by law to make adjustments to their rates or charges.

2. Except as provided in (c)3 below, annual rate band adjustments shall be made in accordance with the following:

i. In Year One, a solid waste collector may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of five percent plus the annual percentage change in the CPI;

ii. In Year Two, a solid waste collector may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of five percent plus the annual percentage change in the CPI plus the total percentage permitted by (c)2i above.

iii. In Year Three, a solid waste collector may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of 10 percent plus the annual percentage change in the CPI plus the total percentage permitted by (c)2ii above.

iv. In Year Four, a solid waste collector may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the annual percentage change in the CPI plus the total percentage permitted by (c)3iii above.

3. In the event a solid waste collector files an initial Uniform Tariff pursuant to Section 5 of the Act during any year of the Transition Period, such solid waste collector is entitled to the rates approved by the DEPE in accordance with its initial Uniform Tariff. No additional rate band adjustments for uniform tariff services charges shall be permitted in the transition year of filing, except as provided in N.J.A.C. 14:3-11.8. Rate band adjustments to the uniform tariff service rates or charges for the subsequent Transition Years will be as follows:

i. If an initial Uniform Tariff is filed and approved in Transition Year One, there is no additional rate band adjustment for the uniform tariff service rates or charges in Year One.

(1) In Transition Year Two, a solid waste collector who filed such an initial Uniform Tariff in Transition Year One, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of five percent plus the annual percentage change in the CPI.

(2) In Transition Year Three, a solid waste collector who filed such an initial Uniform Tariff in Transition Year One, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of 10 percent plus the annual percentage change in the CPI plus the total percentage permitted by (c)3i(1) above.

(3) In Transition Year Four, a solid waste collector who filed such an initial Uniform Tariff in Transition Year One, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the annual percentage change in the CPI plus the total percentage permitted by (c)3i(2) above.

ii. If an initial Uniform Tariff is filed in Transition Period Year Two, there is no additional rate band adjustment for the uniform tariff service rates or charges in Year Two.

(1) In Transition Year Three, a solid waste collector who filed such an initial Uniform Tariff in Transition Year Two, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of 10 percent plus the annual percentage change in the CPI.

(2) In Transition Year Four, a solid waste collector who filed such an initial Uniform Tariff in Transition Year Two, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the annual percentage change in the CPI plus the total percentage permitted by (c)3ii(1) above.

iii. If an initial Uniform Tariff is filed in Transition Period Year Three, there is no additional rate band adjustment for the uniform tariff service rates or charges in Year Three.

(1) In Transition Year Four, a solid waste collector who filed such an initial Uniform Tariff in Transition Year Three, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the annual percentage change in the CPI.

iv. If an initial Uniform Tariff is filed in Transition Year Four, there is no additional rate band adjustment for the uniform tariff service rates or charges in Transition Year Four.

4. A petition for an initial Uniform Tariff filed pursuant to (c)3 above shall conform to the provisions of N.J.A.C. 14:1-4 and 5.1 through 5.4 and N.J.A.C. 14:3-11.8(a)5, to the extent applicable, and shall in the body thereof, or in attached exhibits, provide the following:

i. Six copies of the proposed tariff or revision, change or alteration thereof, together with an explanation of the manner in which the tariff or change differs from the existing or a prior tariff, and the effect, if any, upon revenues. The revenue effect should include the proposed number of additional customers, the revenue to be generated by each customer, the proportionate increase in expenses associated with the expansion, the location in which the new business will be generated, and a list of competing collectors who service the same area;

ii. A statement of the reasons why the tariff or change proposed is necessary for the continued operation of the business;

iii. A statement of notices given to be issued, if any, together with a copy of the text of each of said notices to be approved by the DEPE;

iv. Pro forma income statements for each of the first two years of operations and balance sheets at the beginning and end of each year of said two year period; and

v. A list of available equipment to be used to service the proposed expansion which includes existing and to be purchased or leased equipment.

5. In no event shall initial Uniform Tariff sheet(s) filed pursuant to (c)3 above be deemed effective unless and until the DEPE shall have approved them in writing.

6. During the Transition Period, any adjustment within the established rate band may be applied to one or more individual customers; provided that the adjustment is within the applicable rate band pursuant to this subsection. Before a solid waste collector may implement such an adjustment, every customer affected thereby shall receive 10 days prior written notice of the adjustment, which notice shall include:

i. The date on which the adjustment becomes effective;

ii. The amount of the new rates and charges;

iii. A copy of the applicable rate schedule; and

iv. A statement that customers have the right at any time to choose an alternate solid waste collector and

that collection services are available to customers on a competitive basis.

7. Upon expiration of the Transition Period, a solid waste collector shall have the discretion to adjust their service charge to a sum which shall result in competitive pricing. During and after the Transition Period, the DEPE within its authority pursuant to the Act, will supervise the solid waste collection industry to promote effective competition and prohibit anti-competitive practices of undercharging and overcharging.

Case Notes

Rules promulgated under the Solid Waste Collection Regulatory Reform Act were not vague. *Waste Management of Cent. Jersey, Inc. v. State, Dept. of Environmental Protection and Energy*, 278 N.J.Super. 56, 650 A.2d 379 (A.D.1994).

Preventing new entrants from using solid waste collection rate bands during transition year in which they entered market was permissible. *Waste Management of Cent. Jersey, Inc. v. State, Dept. of Environmental Protection and Energy*, 278 N.J.Super. 56, 650 A.2d 379 (A.D.1994).

Solid waste collection contract rules were proper. *Waste Management of Cent. Jersey, Inc. v. State, Dept. of Environmental Protection and Energy*, 278 N.J.Super. 56, 650 A.2d 379 (A.D.1994).

14:3-11.8 Adjustments in addition to rate bands

(a) The following pertain to disposal cost adjustments:

1. Before a solid waste disposal facility may implement an initial rate or a revised rate, whether interim or final, granted by order of the DEP, such solid waste disposal facility shall give at least 14 days written notice of such initial or revised rate to all solid waste collectors authorized to use such solid waste disposal facility. Said notification will be sent to the corporate address, provided the solid waste collector has made the address known to the disposal facility, in writing. The 14 day written notice requirement described above shall not apply to rate adjustments for Type 13C waste implemented during the effective period of these rules. The solid waste disposal facility shall post, in a conspicuous place at the facility, the rates applicable to Type 13C waste.

2. A solid waste collector may not implement an adjustment to the disposal fee of its Uniform Tariff until the solid waste collector has filed with the DEPE:

i. Two copies of revised tariff sheet(s) in the form prescribed by N.J.A.C. 14:11-7.8 reflecting the changes in the disposal costs received at an authorized solid waste disposal facility; and

ii. Two copies of the completed Verification Form.

3. In the event of a decrease in disposal rates or charges received at an authorized solid waste facility, a solid waste collector shall adjust its rates or charges by the full amount of such decrease and file with the DEPE within five days of such decrease, two copies of its revised tariff sheet(s) and Verification Form reflecting the decrease.

4. In the event of an increase in disposal rates or charges received at an authorized solid waste facility, a solid waste collector shall adjust its rates or charges by the full amount of such increase and file with the DEPE, within 30 days of the effective date of such increase, two copies of its revised tariff sheet(s) and Verification Form reflecting the increase. A solid waste collector who has realized a net savings in disposal costs may simultaneously file the information required pursuant to (c) below and shall adjust the authorized disposal increase by the net effect.

5. Two copies of the revised tariff sheet(s) and Verification Form shall be filed, as follows, with:

Office of Economic Regulation
Division of Solid Waste Management
840 Bear Tavern Road—CN 414
Trenton, NJ 08625

i. Filings shall include a self-addressed stamped envelope for the return of a stamped and dated copy of the filing.

ii. The stamped, dated copy of the filing shall constitute proof of filing.

iii. Before a solid waste collector may implement an adjustment pursuant to this subsection on (b), (d) or (e) below, every customer affected thereby shall receive 10 days prior written notice of the adjustment, which notice shall include:

(1) The date on which the adjustment becomes effective;

(2) The amount of the new rates and charges;

(3) A copy of the applicable rate schedule; and

(4) A statement that customers have the right at any time to choose an alternate solid waste collector and that collection services are available to customers on a competitive basis.

(b) The following pertain to extension of services and expansion of service:

1. Solid waste collectors filing revised initial Tariff sheet(s) for the purpose of extending the area of solid waste collection service or providing new or additional types of solid waste collection service, not already provided for in the collector's filed Uniform Tariff, shall provide the following:

i. Two copies of the initial Uniform Tariff sheet(s) together with an explanation of the type of revision or change being sought; and

ii. Two copies of a statement of the proposed effective date of the initial Uniform Tariff, which date shall not be earlier than 30 days after the filing unless otherwise permitted by the DEPE.

2. Proposed initial Uniform Tariff sheet(s) filed pursuant to (b)1 above shall conform to the provisions of 11.7(c)4 and 5 above.

3. In no event shall a initial Uniform Tariff filed pursuant to this subsection be deemed effective unless and until the DEPE shall have approved it in writing.

4. Rate band adjustments for initial Uniform Tariff sheet(s) filed pursuant to this subsection shall be made in accordance with N.J.A.C. 14:3-11.7(c)4.

(c) The following pertain to materials recovery adjustments:

1. A solid waste collector may implement an adjustment to its disposal charges of its Uniform Tariff resulting from any net savings in disposal costs due to decreased waste flows resulting from material recovery or net revenues received from end markets from the sale of recovered materials provided the solid waste collector shall have filed with the DEPE:

i. Two copies of the revised tariff sheet(s) in the form prescribed by N.J.A.C. 14:11-7.8 reflecting the net savings in disposal costs; and

ii. Two copies of a completed Verification Form.

2. Any adjustment in disposal costs made pursuant to this subsection shall be made on a county by county basis in proportion to the tonnages reported by transfer stations and materials recovery facilities, for each county for which the solid waste collector has a uniform tariff.

(d) The following pertain to petitions for increases/decrease based on hardship or exigent circumstances:

1. A solid waste collector may petition the DEPE for increases or decreases in its Uniform Tariff service charges only in the event of financial hardship, exigent circumstances or significant increases in energy costs. A petition for rate relief due to hardship, exigent circumstances or significant increases in energy costs is limited to the presentation of information which demonstrates that the circumstances warrant consideration by the DEPE, including, but not limited to, the presence of significant cross-subsidization between classes of customers or the inability to effectively compete.

2. The petitioner also has the burden of proof to demonstrate that:

i. It is charging at the limits permitted by the applicable rate band; and

ii. The adjustment is necessary so as to provide petitioner with an opportunity to earn a just and reasonable return.

3. A petition for changes in a uniform tariff service charge pursuant to this subsection shall be subject to all provisions pursuant to N.J.S.A. 48:2-21 et seq. and the regulations promulgated thereunder and shall conform to

the provisions of N.J.A.C. 14:1-4, 5.1 to 5.4 and (a)5 above, to the extent applicable, and shall contain the following (financial statements shall be prepared in accordance with the applicable Uniform System of Accounts):

i. A comparative balance sheet for the most recent three year period (on a calendar basis);

ii. Comparative income statement for the most recent three year period (on a calendar basis);

iii. A balance sheet at the most recent date available;

iv. A statement of the amount of revenue (categorized by type of service rendered and the number of customers served) derived in the calendar year last preceding the institution of the proceedings from the intrastate sale of services rendered, the rates or charges for which are the subject matter of the filing;

v. A pro forma income statement reflecting operating income at present and proposed rates and an explanation of all adjustments thereon, as well as calculation showing the indicated rate of return on the average net investment (for the period covered by the pro forma) that is, investment in plant facilities plus supplies and working capital to the extent claimed, less the reserve for depreciation and advances and contributions for facilities;

vi. A statement and financial presentation by the utility demonstrating the effect on customers of various classes on all current customers who are billed on a recurring basis and who will be affected by said filing;

vii. Each solid waste collector that makes a filing for rate increases pursuant to this subsection shall, upon approval of the DEPE, at the expense of the solid waste collector requesting an increase to its customers, fix a time and place for a public hearing including a court reporter, and serve published notice at least 20 days prior to such time on those persons affected by the proposed rate increase; and shall give such notice to the Department, Director of the Division of Rate Counsel, Department of the Public Advocate and the municipal clerk in each of the municipalities in which service is rendered and effected by said petition. Notice shall be at the cost and expense of the solid waste collector obligated to give or serve the notice; and

viii. Proof of service and/or notice required herein shall be filed with the DEPE at least five days before the date set for hearing.

4. A petition for change in rates or charges pursuant to this subsection shall not be implemented until the DEPE, by order, grants the petition and the solid waste collector has filed two copies of its revised tariff sheet(s) and Verification Form in accordance with (a)4 above.

(e) The following pertain to contracts of sale for collection services:

1. In every instance where a solid waste collector enters into a contract or agreement with a customer or government entity for the provision of collection services such solid waste collector shall file with the Department, Office of Economic Regulation, Division of Solid Waste Management, two copies of the proposed contract.

2. If the proposed contract is for services currently contained in the solid waste collector's approved uniform tariff, then the rates and charges shall be as stated in the approved uniform tariff or with the applicable rate band for such transition year. Filing of the contract as required in (e)1 above, will include a certification by the solid waste collector which sets forth the type of service to be provided in the contract, the rates and charges for the specified service as contained in the approved uniform tariff, and the rates and charges as contained in the contract.

3. If the proposed contract is for services not currently provided for in the solid waste collector's approved uniform tariff, then the proposed contract shall not be effective until it is approved by order of the Department. The solid waste collector shall provide:

- i. A summary of the terms and conditions of the contract;
- ii. The reasons for the contract or agreement, the change in rate (increase or decrease) and a description of the services that are unique which require a different rate structure;
- iii. The financial substantiation for the proposed rates in the form prescribed by N.J.A.C. 14:3-11.7(c)4;
- iv. The effect the proposed contract has on the company's income; and
- v. If any contract includes services which would be new services or would be in an expanded service area, the solid waste collector shall file initial Uniform Tariff sheet(s) pursuant to N.J.A.C. 14:3-11.7(c)4 above.

4. All contracts for residential service entered into pursuant to this subsection shall contain a provision which permits the party contracting to receive collection services to terminate such contract upon 30 days written notice.

Emergency amendment R.1996 d.114, effective January 26, 1996 (operative January 29, 1996; expires March 26, 1996).
See: 28 N.J.R. 1305(a).

Case Notes

Rules promulgated under the Solid Waste Collection Regulatory Reform Act were not vague. *Waste Management of Cent. Jersey, Inc. v. State, Dept. of Environmental Protection and Energy*, 278 N.J.Super. 56, 650 A.2d 379 (A.D.1994).

Preventing new entrants from using solid waste collection rate bands during transition year in which they entered market was permissible. *Waste Management of Cent. Jersey, Inc. v. State, Dept. of Environmental Protection and Energy*, 278 N.J.Super. 56, 650 A.2d 379 (A.D.1994).

Solid waste collection contract rules were proper. *Waste Management of Cent. Jersey, Inc. v. State, Dept. of Environmental Protection and Energy*, 278 N.J.Super. 56, 650 A.2d 379 (A.D.1994).

14:3-11.9 Notification/reporting requirements

(a) For the Transition Period Year One, the DEPE will notify each solid waste collector of the rate band for the period commencing April 14, 1992 by March 31, 1992. Thereafter, DEPE will notify each solid waste collector of the rate bands in effect for the forthcoming transition period by February 14, of the preceding transition year.

(b) Every six months commencing October 1, 1992 for Transition Years One and Two, every solid waste collector shall file with the DEPE, a Rate Adjustment Annual Report Form. The Rate Adjustment Annual Report Form shall be made available to each solid waste collector from the DEPE. For Transition Years Three and Four, the Rate Adjustment Annual Report Form shall be filed once a year. Report due dates are as follows:

Year One	October 1, 1992
	April 1, 1993
Year Two	October 1, 1993
	April 1, 1994
Year Three	April 1, 1995
Year Four	April 1, 1996

14:3-11.10 Refunds

(a) If the DEPE orders a solid waste collector to pay a refund pursuant to Section 10(b)(2) of the Act, the solid waste collector shall pay said refund, plus simple interest at a rate equal to 400 basis points over the short-term applicable Federal Rate established by the Internal Revenue Service under 26 U.S.C. 1274, in effect on the date of the order.

(b) Any solid waste collector whose rates or charges have been adjusted pursuant to Section 10(b)(2) of the Act shall file with the DEPE, revised Uniform Tariff sheet(s) and a Verification Form reflecting such adjustment, in accordance with N.J.A.C. 14:3-11.8(a)4; and

(c) Whenever a solid waste collector implements an adjustment pursuant to (a) above, every customer affected thereby shall receive 10 days prior written notice of the adjustment, which notice shall include:

- 1. The date on which the adjustment becomes effective;
- 2. The amount of the new rates and charges;
- 3. A copy of the applicable rate schedule; and
- 4. A statement that customers have the right at any time to choose an alternate solid waste collector and that collection services are available to customers on a competitive basis.