

CHAPTER 14**CERTIFICATE OF NEED FOR
ELECTRIC FACILITIES****Authority**

N.J.S.A. 48:7-16 through 25 and Reorganization Plan No. 002-1991, paragraph 2, as set out under N.J.S.A. 13:1D-1.

Source and Effective Date

R.1994 d.97, effective January 28, 1994.
See: 25 N.J.R. 5745(a), 26 N.J.R. 1159(a).

Executive Order No. 66(1978) Expiration Date

Chapter 14, Certificate of Need for Electric Facilities, expires on January 18, 1999.

Chapter Historical Note

Chapter 14, Certificate of Need for Electric Facilities, was adopted as R.1984 d.2, effective February 6, 1984. See: 15 N.J.R. 1735(b), 16 N.J.R. 250(b). Pursuant to Executive Order No. 66(1978), Chapter 14 was readopted as R.1989 d.124, effective January 30, 1989. See: 20 N.J.R. 2188(b), 21 N.J.R. 573(a).

Pursuant to Executive Order No. 66(1978), Chapter 14 was readopted as R.1994 d.97. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS**14A:14-1.1 Scope**

No electric facility shall be constructed without the issuance of a Certificate of Need by the Department of Energy. This chapter established the procedures for issuance of a Certificate of Need by the Department.

14A:14-1.2 Communications and submissions

(a) Each applicant shall submit to the Department all documents and information in accordance with the requirements of N.J.A.C. 14A:1 and with particular attention to the following requirements:

1. Documents: Typewritten or printed, cut or folded to 8½ x 11 inches in size with left hand margins 1½ inches; double spaced, except that quotations may be single spaced; contained in hard cover loose leaf binders.
2. Exhibits: Exhibits and larger documents shall, where practicable, conform to the requirements of (a)1 above.
3. Captions: All submissions shall contain the caption, docket number and other information identifying the participants and the nature of the application, and the signature of a person authorized to act in the name of the applicant.
4. Copies: All submissions shall be furnished as an original and three copies, unless the Commissioner determines that additional copies shall be submitted.
5. The Department may review with the applicant the scope and level of detail required of each submission prior to filing of same submission.

14A:14-1.3 Proprietary information

Proprietary information submitted pursuant to this chapter shall be entitled to confidential treatment. Such information shall be clearly marked by the applicant.

SUBCHAPTER 2. DEFINITIONS**14A:14-2.1 Definitions**

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

“Board” means the Board of Public Utilities.

“Commissioner” means the Commissioner of the Department of Commerce, Energy and Economic Development.

“Construction” means on-site work to install any permanent equipment or structure for any facility. “Construction” does not include any of the following:

1. The installation of environmental monitoring equipment or any work related thereto;
2. A soil or geological investigation;
3. A topographical survey;
4. Any other study or investigation to determine the environmental acceptability or feasibility of the use of the site for any particular facility;
5. Any work to provide access to a site for any of the purposes specified in 1, 2, 3, and 4 above.

“Demand forecast” means a mathematically based projection of either power or energy demand during a specified period of time for the franchise territory of the utility and for the reliability council to which the utility belongs.

“Division” means the Division of Energy Planning and Conservation in the Department of Commerce, Energy and Economic Development.

“Electric facility” means:

1. Any electric power generating unit or combination of units at a single site with a combined production of 100 megawatts or more and any facilities appurtenant thereto; or
2. Any electric generating units added to an existing electric generating facility which will increase its installed capacity 25 percent or by more than 100 megawatts, whichever is smaller;
3. For the purposes of this definition, the size in megawatts of any facility or additions thereto shall be measured by determining the Summer Maximum Net Capability of that facility. The Summer Maximum Net Capability means the capacity rating in megawatts which can be delivered by an electric generating unit for at least two hours less the power generated and used for unit auxiliaries and other station use based on tests conducted for summer peak load conditions. For steam and turbine units, summer peak load conditions mean ambient air and humidity conditions forecasted to occur at the time of the annual summer peak. Cooling water temperature shall be in the range experienced at the unit’s location during the summer peak season (June–September).

“Installed reserve” means the difference between the net system generating installed capacity and system maximum load.

“Load” means the amount of power or energy needed to be delivered to a given point on an electric system.

“Operating flexibility” means the operating characteristics of the electric generating facility with respect to fuel switching, start-up time, generating output adjustments, life expectancy, maintenance requirements, and other factors related to operation.

“Site” means any location on which an electric facility is constructed or sites including out-of-state locations.

“State instrumentality” means any agency, board or commission defined in or subject to the provisions of N.J.S.A. 52:27F-15a.

Amended by R.1989 d.124, effective February 21, 1989.

See: 20 N.J.R. 2188(a), 21 N.J.R. 573(a).

Amended “commissioner” and “electric facility” added “division” and deleted “Department”.

Amended by R.1989 d.364, effective July 17, 1989.

See: 21 N.J.R. 882(a), 21 N.J.R. 2048(a).

Changed definition of “electric facility” to comport with definition in N.J.S.A. 28:7-18d.

SUBCHAPTER 3. NOTICE OF INTENT

14A:14-3.1 Submissions

(a) Each applicant shall provide the Department with a Notice of Intent at least one year prior to the anticipated submission of an application for a certificate of need.

1. The Notice of Intent shall be submitted to the Department in accordance with the requirements of N.J.A.C. 14A:14-1.2;
2. The applicant shall publish in such newspapers of general circulation as the Commissioner shall designate a notice indicating that a Notice of Intent was filed.

Amended by R.1989 d.124, effective February 21, 1989.

See: 20 N.J.R. 2188(a), 21 N.J.R. 573(a).

Replaced old text with new.

14A:14-3.2 Contents

(a) The Notice of Intent shall provide the information and method that the applicant has used in determining the need for the proposed facility. The Notice of Intent shall contain the following:

1. A description of the proposed facility including:
 - i. Capacity;
 - ii. Fuel/energy source;
 - iii. Combustion/generation technology;
 - iv. Location;
 - (1) Acreage;
 - (2) Geology;
 - (3) Climatology;

v. Environmental impacts on:

- (1) Air;
- (2) Water;
- (3) Other sources as required.

vi. Scheduled completion date.

2. An explanation of the need for the facility based upon data submitted in the most recent 15-year demand forecast;

3. A description of alternatives to the proposed facility and an assessment of the feasibility thereof. The description and assessment shall include but not be limited to:

- i. Types of facilities, capacities, sites and replacement or alternative technologies, including but not limited to conservation.
- ii. An evaluation and documentation of replacement or alternative technologies specified in (a)3i above that are considered to be reasonable and feasible.
- iii. Citations to any judicial or legislative requirements of the Department or other State and Federal entities.

14A:14-3.3 Early assessment stage

(a) After receipt of the Notice of Intent, the Commissioner shall:

1. Hold at least two public informational hearings in the franchise area served by the applicant and such other hearings, conferences or meetings as necessary. Costs of the hearings shall be borne by the applicant.

i. Notice of each public information hearing shall be published:

- (1) In a newspaper of general circulation in the region where the public information hearing is to be held; and
- (2) In any other newspapers of general circulation which the Commissioner determines appropriate to reach the greatest possible number of affected citizens.

ii. The public informational hearings shall be conducted for the purpose of:

- (1) Soliciting views of concerned individuals and groups of the proposed electric facility;
- (2) Providing advice to the utility on the proposed facility and on relevant alternative ways of meeting projected electricity demand which will minimize rate increases, reduce any adverse environmental impacts of the proposed electric facility, and address other objections to the proposed facility (exclusive of safety

concerns regulated by the Atomic Energy Act, 42 U.S.C. 2011 et seq.);

(3) Developing a comprehensive view of the way in which the proposed electric facility and any suggested alternatives thereto will affect the long range energy plans and economic development of the State and otherwise promote the public interest.

2. Publish in a manner designed to reach the maximum number of affected persons, interim reports identifying key issues raised during the public informational hearings and reporting on the progress of the analysis of the proposed electric facility.

3. Publish a list of the groups and persons that participated in any meetings or conferences with the Commissioner during the Early Assessment Stage.

4. Within nine months, issue an Early Assessment Report. The report shall:

- i. Address the major concerns raised during the early assessment stage; and
- ii. Evaluate the need for the proposed facility in relation to feasible alternatives.

SUBCHAPTER 4. CERTIFICATE OF NEED**14A:14-4.1 Submissions**

(a) An application for a Certificate of Need may be filed by the applicant at any time after one year subsequent to the filing of the Notice of Intent. A non-returnable application fee of up to \$250,000 shall accompany the application.

(b) All applications for a Certificate of Need shall comply with the requirements of N.J.A.C. 14A:14-1.2. Where the requirements create material inconsistencies with the requirements of other State instrumentalities or the Office of Administrative Law, the Department shall resolve the inconsistencies on a case-by-case basis. In all cases the application shall contain the following information:

1. Name of applicant.
2. Name or designation of the proposed facility.
3. Date of application.

14A:14-4.2 Contents

(a) At a minimum the substantive contents of the Application for a Certificate of Need shall be as follows:

1. A description of the procedural history of the application.
2. A response to issues raised in the Early Assessment Report.
3. A list of the permits and requirements of other State instrumentalities that must be obtained and a timetable for applying for and obtaining same.

4. Other information required by the Department.

14A:14-4.3 Evaluation of application

(a) The Department shall determine when the Application for a Certificate of Need is complete for the following purposes:

1. Complete for comment: An Application for a Certificate of Need that meets the requirements of N.J.A.C. 14A:14-3.2 shall be declared complete for comment. An application that is declared complete for comment shall be:

i. Submitted by the Department to the appropriate State instrumentalities including but not limited to the Board of Public Utilities, the Department of the Public Advocate, as well as to the chief executive officer of each municipal corporation and county in which any facility will be located, for review and comment.

ii. Returned by the State instrumentalities to the Department with review and comments within 120 days of referral of the Application by the Department. At a minimum, the review and comments shall include:

(1) Certification of the factors and issues that will be subject to review during the course of any permit or approval processes conducted by the State instrumentality; and

(2) A description of any relevant policy or other considerations that will guide the State instrumentality in evaluating the application.

2. Complete for review: An Application for a Certificate of Need that has been returned to the Department pursuant to (a)1ii above, or to which no response has been received within the 120 day period shall be considered complete for review. The Department shall:

i. Identify for the Office of Administrative Law the issues that remain contested and are to be reviewed by the Office of Administrative Law and the policies to be followed in evaluating the case.

ii. As necessary, formulate appropriate procedures to govern the case.

iii. Transmit the application and supporting documents, including the Early Assessment Report or such documents as are necessary to the resolution of the case, to the Office of Administrative Law for review as a contested case pursuant to the Administrative Procedure Act, P.L. 1978, c.67 (C.52:14F-1 et seq.). Supporting documents may include a statement of policy by the Department regarding the proper manner of evaluating conformity by State instrumentalities to the requirements of the State Energy Master Plan adopted pursuant to the "Department of Energy Act", P.L. 1977, c.146 (C.52:27F-1 et seq.) and of evaluating the relationship of the proposed electric facility to overall State energy needs as determined by the State Energy Master Plan.

14A:14-4.4 Decision on application

(a) Within six months of receipt of the findings of the presiding administrative law judge the Department shall approve, conditionally approve or deny the Application for a Certificate of Need. In the case of a conditional approval the Department shall provide the applicant with a statement of the conditions to be met, including any modifications to the proposed electric facility. The decision of the Department shall be supported by a written report that:

1. Contains a determination that the proposed facility is necessary to meet the projected need for electricity in the area to be served and that no more efficient, economical, or environmentally sound alternative is available, based on the following factors:

i. The probable result of denial of a Certificate of Need would be to adversely affect the future adequacy, reliability, or efficiency of the electric energy supply to the public utility's customers, or to the people of New Jersey, taking into account:

(1) The accuracy of the public utility's demand forecast for the level of electric energy that would be supplied by the proposed facility;

(2) The probable effects of existing or prospective State and Federal conservation programs;

(3) The effect of promotional practices of the public utility that may have given rise to the demand for this facility;

(4) The ability of current and planned facilities not requiring Certificates of Need, and to which the public utility has access, to meet future demand; and

(5) The effect of the proposed facility in making efficient use of resources.

ii. The consequences of issuing the Certificate of Need outweigh the consequences of denying same, taking into account:

(1) The relationship of the proposed facility to overall State energy needs as determined by the State Energy Master Plan adopted pursuant to the "Department of Energy Act" P.L. 1977, c.146 (C.52:27F-1 et seq.);

(2) The role of the proposed facility in inducting future development; and

(3) The socially beneficial uses of the output of the proposed facility including its uses to protect or enhance environmental quality.

iii. That no more reasonable and prudent alternative to the proposed facility exists considering:

(1) The appropriateness of the size, type and timing of the proposed facility compared to those of reasonable alternatives;

(2) The cost of the proposed facility and the cost of the electric energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of the electricity that would be supplied by the reasonable alternatives;

(3) The impact of the proposed facility upon the social, economic, and health environments compared to the impact of reasonable alternatives; and

(4) The expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives.

iv. That design, construction, and operation of the proposed facility would comply with all relevant State and Federal laws, rules, regulations and policies.

2. Addresses the issues raised and arguments advanced in the materials and information compiled:

i. During the Early Assessment Stage as raised in the Early Assessment Report;

ii. In the recommendations made pursuant to N.J.A.C. 14A:14-4.3;

iii. In the analyses made by any outside consultants retained by the Department; and

iv. In the record of the contested case conducted by the Office of Administrative Law and the written decision issued by the presiding administrative law judge.

SUBCHAPTER 5. PERIODIC REVIEW

14A:14-5.1 Periodic review

(a) The Commissioner shall review a grant of a Certificate of Need every three years until the electric facility is placed in operation:

1. In accordance with the criteria set out in N.J.A.C. 14A:14-4.4; and

2. Giving due consideration to other information or data subsequent to approval of the Certificate of Need that is relevant and material to renewal.

(b) The decision concerning renewal of the Certificate of Need shall be made as follows:

1. Approval of renewal shall be made by the Commissioner;

2. Denial of renewal shall be made by the Commissioner with the agreement of the Board.

i. In the event that the Commissioner and the Board fail to deny the renewal, a designee of the Governor shall arbitrate the matter and the decision shall be binding.

ii. In the event that renewal is denied, the applicant shall have the option to continue the project, or to terminate or alter the project under terms and conditions established by the Board, which equitably balance the interests of the stockholders, the ratepayers, and the public utility.