

TITLE 14

BOARD OF PUBLIC UTILITIES

**CHAPTER 1
RULES OF PRACTICE**

Authority

N.J.S.A. 48:2-12, 48:2-13, 48:2-24 and 48:3-60.

Source and Effective Date

R.2002 d.337, effective September 19, 2002.
See: 34 N.J.R. 1769(a), 34 N.J.R. 3639(a).

Chapter Expiration Date

Chapter 1, Rules of Practice, expires on September 19, 2007.

Chapter Historical Note

Chapter 1, Rules of Practice, was adopted and became effective prior to September 1, 1969. Chapter 1, Rules of Practice, expired February 14, 1991.

Chapter 1, Rules of Practice, was adopted as R.1992 d.224, effective June 1, 1992. See: 23 N.J.R. 2487(a), 24 N.J.R. 2063(c).

Pursuant to Executive Order No. 66(1978), Chapter 1, Rules of Practice, was readopted as R.1997 d.264, effective May 28, 1997. See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).

Chapter 1, Rules of Practice, was readopted as R.2002 d.337, effective September 19, 2002. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

Clearing procedural hurdles at the BPU. R. William Potter, 150 N.J.L.J. 828 (1997).

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SUBCHAPTER 1. GENERAL PROVISIONS

14:1-1.1 Scope

These rules shall govern practice and procedure before the Board of Public Utilities.

Amended by R.1997 d.264, effective July 7, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).
Amended Board name.

14:1-1.2 Construction and amendment

(a) These rules shall be liberally construed to permit the Board to effectively carry out its statutory functions and to secure just and expeditious determination of issues properly presented to the Board.

(b) In special cases and for good cause shown, the Board may, unless otherwise specifically stated, relax or permit deviations from these rules.

1. The Board shall, in accordance with the general purposes and intent of its rules, waive section(s) of its rules if full compliance with the rule(s) would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to

render safe, adequate and proper service, or the interests of the general public;

2. Any person or entity seeking waiver of any of the Board's rules or parts thereof, shall apply in writing to the Secretary of the Board. A written request for waiver shall include the following:

- i. The specific rule(s) or part(s) thereof for which waiver is requested;
- ii. The reasons for the request of waiver, including a full statement setting forth the type and degree of hardship or inconvenience that would result if full compliance with the rule(s) would be required; and
- iii. Documentation to support the request for waiver.

3. The Board reserves the right to request additional information before reaching a determination regarding the application for waiver.

(c) The rules may be amended by the Board from time to time.

Amended by R.1997 d.264, effective July 7, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).
Added (b)1 through 3.

Amended by R.2005 d.424, effective December 5, 2005.
See: 37 N.J.R. 2837(a), 37 N.J.R. 4558(b).

In (b)1, added "or other regulated entity" following "utility" throughout.

Case Notes

Board of Public Utilities failed to adequately articulate basis for waiving bidding regulations. *Petition of Hackensack Water Co. to Watershed Property Review Bd.*, 249 N.J.Super. 164, 592 A.2d 250 (A.D.1991), certification denied 127 N.J. 551, 606 A.2d 364, on remand.

14:1-1.3 Definitions

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

"Board" means the Board of Public Utilities.

"Commissioner" means a member of the Board of Public Utilities.

"Person" means an individual, firm, joint venture, partnership, copartnership, corporation, association, State, county, municipality, public agency or authority, bi-state or interstate agency or authority, public utility, regulated entity, cable television company, cooperation association, joint stock association, trust, limited liability company, governmental entity, or other legal entity, and includes any trustee, receiver, assignee, or personal representative thereof. A person may or may not be a regulated entity.

"Presiding officer" means any member of the Board or a staff member who is designated as a hearing examiner in an uncontested case.

“Regulated entity” means a person or entity that is subject to the jurisdiction of the Board, or that provides a product or service subject to the jurisdiction of the Board. This term includes a utility, as defined in this section.

“Secretary” means the Secretary, Assistant Secretary or any other person duly authorized to act in such capacity by the Board.

“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.1997 d.264, effective July 7, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).

Amended “Board” and “Commissioner”.
Amended by R.2005 d.424, effective December 5, 2005.
See: 37 N.J.R. 2837(a), 37 N.J.R. 4558(b).

Added definitions “Regulated entity” and “Utility.”
Amended by R.2006 d.354, effective October 2, 2006.
See: 37 N.J.R. 3621(a), 38 N.J.R. 4236(c).

Added definition “Person”.

14:1-1.4 Offices

The statutory office of the Board and the office of the Secretary of the Board are located at Two Gateway Center, Newark, New Jersey 07102.

Amended by R.1997 d.264, effective July 7, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).

14:1-1.5 Hours

(a) All offices of the Board are open on weekdays from 9:00 A.M. to 5:00 P.M., unless otherwise authorized by the Board.

(b) The offices are closed on State recognized legal holidays, Saturdays and Sundays.

Amended by R.1997 d.264, effective July 7, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).

In (b), inserted “State recognized”.

14:1-1.6 Communications

(a) All communications, including formal pleadings, correspondence and other papers, shall be addressed to the Secretary, Board of Public Utilities, Two Gateway Center, Newark, New Jersey 07102.

(b) All communications, except for comments on rule proposals, or other communications specifically exempted by rule, or by waiver, pursuant to N.J.A.C. 14:1-1.2(b), shall be deemed to be officially received when delivered at the office of the Board, but a Commissioner or the Secretary or an Assistant Secretary of the Board may in his or her discretion receive papers and correspondence for filing. Comments on rule proposals shall be deemed to be officially received in accordance with N.J.A.C. 14:1-1.6A.

(c) If the Board receives a document via fax, the document will neither be date/time stamped as formally received by the Board nor be entered into the case or rulemaking record. Such documents shall only be distributed to the addressee.

Amended by R.1997 d.264, effective July 7, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).

In (a), inserted “formal” preceding “pleadings”, substituted “shall be addressed” for “should be addressed”, and amended Board name and address; and added (c).

Amended by R.2006 d.354, effective October 2, 2006.
See: 37 N.J.R. 3621(a), 38 N.J.R. 4236(c).

In (a), inserted “communications, including”; and rewrote (b) and (c).

14:1-1.6A Submittal of comments on rule proposals, pilot study for electronic submittal

(a) This section governs submittal of comments on all rule proposals published by the Board in the New Jersey Register. This section also establishes an 18-month pilot study to test the efficacy of Board acceptance of rule proposal comments in electronic form.

(b) The pilot study authorized under this section shall begin upon the publication date of the first rule proposal published by the Board in the New Jersey Register after October 2, 2006. The pilot study shall continue until April 2, 2008.

(c) Comments on rule proposals shall be submitted by e-mail, hand delivery, or regular mail, on or before the date identified in the rule proposal published in the New Jersey Register. If no e-mail address for comments is provided in the proposal, the Board shall not accept or make part of the rulemaking record a comment submitted by e-mail.

(d) Comments submitted by e-mail shall be sent to the e-mail address specified in the rule proposal. E-mail comments shall be submitted in Microsoft Word format, or in PDF format with searchable text and cut and paste capability.

(e) Rule proposal comments shall not be subject to the requirements for number of copies at N.J.A.C. 14:1-4.2. If rule proposal comments are submitted by hand delivery or regular mail, the Board requests, but does not require, that the commenter submit an original and five copies of the comments.

(f) The date upon which a comment on a rule proposal shall be deemed received shall be as follows:

1. The date upon which the Board receives the comment at the e-mail address set forth in the published proposal.
2. The date upon which the comment is hand delivered to Board offices, to a Commissioner, or to the Secretary; or
3. The date upon which a comment sent by regular mail to Board offices is postmarked, in accordance with N.J.A.C. 1:30-5.4(d).

(g) Within six months after the completion of the pilot study authorized by this section, the Board shall publish rule amendments. The rule amendments shall briefly summarize

the results of the pilot study and shall continue, modify, or end the acceptance of rule proposal comments in electronic form.

New Rule, R.2006 d.354, effective October 2, 2006.
See: 37 N.J.R. 3621(a), 38 N.J.R. 4236(c).

14:1-1.7 Official records

(a) The Secretary shall have custody of the Board's seal and its official records, including the minutes of all action taken by the Board.

(b) Copies of rules and orders and decisions of the Board will be furnished by the Secretary upon payment of appropriate fees.

14:1-1.8 Cameras and recording devices

(a) Proceedings before the Board shall be conducted with fitting dignity and decorum.

(b) The use of cameras and recording devices, including still cameras, movie cameras, television cameras, tape recorders and stenotype machines, hereinafter referred to as "equipment", in open meetings or other public proceedings conducted by the Board is permitted.

(c) Any accredited member of the news media desiring to use such equipment shall first contact the Board's Office of Communications to arrange for the set-up and removal of equipment so as not to interfere with the orderly conduct of the proceedings.

(d) No such equipment shall be placed on the counsel tables, witness stand or on the Board or presiding officer's bench, without the approval of the Board or presiding officer; equipment which would require the user to move about the room during the proceedings is prohibited. Moving about the meeting room in order to more advantageously use such equipment is prohibited, while the meeting is in session.

(e) Except for portable equipment which is used at an individual's seat in the audience, such equipment must be in place and ready for use prior to the start of the meeting or during a recess. A pre-arranged recess for the set-up or removal of such equipment may be arranged through the Office of Communications.

(f) The Board or presiding officer may, for good cause shown, suspend the operation of all or part of this rule with respect to a particular meeting.

(g) The Board or presiding officer may at any time limit or prohibit the use of any or all such equipment in meetings where in the opinion of the Board or presiding officer use of such equipment may obstruct the conduct of the meeting.

Amended by R.1997 d.264, effective July 7, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).

In (c) and (e), substituted "Office of Communications" for "Office of Public Information".

SUBCHAPTER 2. FEES AND CHARGES

14:1-2.1 Amount of fees and charges

The Board has been empowered, authorized and required by law to charge and collect fees and charges more particularly set forth in N.J.S.A. 48:2-56. Pursuant to N.J.S.A. 48:2-72, however, the collection of such fees and charges shall be inapplicable to public utilities subject to assessment as provided in Title 48 of the New Jersey Statutes Annotated.

Amended by R.1997 d.264, effective July 7, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).
Added second sentence.

14:1-2.2 Payment of fees and charges

(a) No petition, report, notice, document, or other paper will be accepted for filing, and no request for copies of any forms, pamphlets, documents or other papers will be granted, nor action taken by the Board, unless such filings and requests are accompanied by the required fees or charges as provided by law.

(b) All checks for payment of such fees and charges shall be made payable to the order of "Treasurer, State of New Jersey" and delivered or mailed to the Secretary of the Board, Two Gateway Center, Newark, New Jersey 07102.

Amended by R.1997 d.264, effective July 7, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).

SUBCHAPTER 3. APPEARANCE BEFORE THE BOARD

14:1-3.1 Appearances

Any person appearing before or transacting business with the Board in a representative capacity may be required by the Board to file evidence of his or her authority to act in such capacity.

14:1-3.2 Ethical conduct

All attorneys appearing in proceedings before the Board in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of the State of New Jersey.

Amended by R.1997 d.264, effective July 7, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).

14:1-3.3 Former employees

Except with the written permission of the Board, no former member or employee of the Board or member of the Attorney General's staff assigned to the Board may appear in a representative capacity or as an expert witness on behalf of other parties at any time within six months after severing his or her association with the Board, nor may he or she appear after said six-month period in any proceeding wherein he or she previously took an active part when associated with the Board.

SUBCHAPTER 4. PLEADINGS

14:1-4.1 Pleadings enumerated and defined

(a) Pleadings before the Board shall be petitions, answers, and replies which, for purposes of these rules, are defined as follows:

1. "Petition" means the pleading filed to initiate a proceeding invoking the jurisdiction of the Board;
2. "Answer" means the pleading filed by a respondent or other party against whom a petition is directed or who is affected by the filing of a petition; and
3. "Reply" means the pleading filed by the petitioner or others in response to an answer.

14:1-4.2 Number of copies

(a) Unless otherwise required by the Board, there shall be filed with the Board for its own use, an original and 10 conformed copies of each pleading or other paper and amendment thereof.

(b) Where a pleading originating a proceeding is filed by a party other than a utility or other regulated entity subject to the jurisdiction of the Board, one additional conformed copy shall be filed for each respondent named therein for service by the Secretary in accordance with the provisions of N.J.A.C. 14:1-4.5.

Amended by R.2005 d.424, effective December 5, 2005.
See: 37 N.J.R. 2837(a), 37 N.J.R. 4558(b).

In (b), added "or other regulated entity" following "utility."

Case Notes

Parties in certificate proceedings identified as petitioners, objectors or intervenors; 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).

14:1-4.3 Attachments to pleadings

All balance sheets, income statements and journal entries submitted with pleadings must conform to the applicable Uniform System of Accounts.

Case Notes

Persons opposing petitions classified as objection unless granted permission to intervene; 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).

14:1-4.4 Defective pleadings

Pleadings will be liberally construed with the view to effect justice. The Board may disregard errors or defects in pleadings which do not affect the substantial rights of the parties. However, if the defect in a pleading prejudices a substantial right of any party the Board may, on notice, strike the pleading or take such other action as it deems appropriate.

14:1-4.5 Service and notice of proceedings

(a) Unless otherwise provided for by statute or in these rules or unless otherwise ordered or permitted by the Board, the following provisions shall govern:

1. A petition filed on behalf of a public utility or other regulated entity shall be served by such utility or other regulated entity or its agent or attorney upon each respondent named in such petition;
2. A petition originating a proceeding filed by a party other than a public utility or other regulated entity shall be served by the Secretary of the Board upon each respondent named in such petition.
 - i. Each utility or other regulated entity shall furnish to the Secretary of the Board and keep current the name, title, street address, telephone number and e-mail address of the person responsible for receiving service of petitions on its behalf;
3. Every other pleading, including all answers, replies, notices, briefs and other papers, shall be served by the party filing the same, whether a utility or other regulated entity or not, on all other parties of record concurrently with or prior to the filing thereof; and
4. Whenever public notice is required, the same shall be at the expense of the party directed to give such notice.

Amended by R.2005 d.424, effective December 5, 2005.

See: 37 N.J.R. 2837(a), 37 N.J.R. 4558(b).

In (a), added "or other regulated entity" following "utility" throughout; added (a)2i.

Case Notes

Ex parte relief denied; order of Board and Department of Environmental Protection redirecting solid waste to local landfill for 180 days founded on sufficient credible competent evidence, and was not arbitrary, capricious or unreasonable. In re: New Jersey Bd. of Public Utilities, 200 N.J.Super. 544, 491 A.2d 1295 (App.Div.1985).

Utility must provide notice of application and hearings; notice requirements equally applicable to decision to activate suspended rates; discussion of rate proposal process. In re: Revision of Rates by Toms River Water Co., 82 N.J. 201, 412 A.2d 430 (1980).

Notice compliance noted; determination of complex petition for electric and gas rate increases. In re: Public Service Electric & Gas Co., 6 N.J.A.R. 633 (1981).

Review of Certificate issuance and intervention permitted by competitor due to failure to serve copy of certificate petition on competitor; approval and disapproval of routes; penalty for operation of route in violation of Department order. In re: Camptown, Inc., 6 N.J.A.R. 285 (1982).

For required hearing on proposed increase in the Levelized Energy Adjustment Clause, 20 days public notice must be given. In re: Rockland Electric Co., 4 N.J.A.R. 365 (1982).

Notice compliance noted; determination of reasonable rate increase. In re: Pacio Disposal, 4 N.J.A.R. 44 (1981).

Notice compliance noted; rate increase denied; revised tariff ordered reflecting judge's findings as to operating expenses, rate base and rate of return, and time schedule for completion of capital improvements. In re: Califon Water Co., 1 N.J.A.R. 414 (1980).

14:1-4.6 Verification

All pleadings initiating a proceeding or otherwise seeking affirmative relief shall be verified except for those matters brought upon the Board's own motion or the motion of the Attorney General of the State of New Jersey.

14:1-4.7 Changes in facts or circumstances

(a) Whenever, subsequent to the date of a pleading, there is any significant change in respect to matter contained in

such pleading, the party who filed the pleading shall promptly file an amendment showing or explaining the changed facts or circumstances.

(b) The filing of such amendment shall be considered a new filing as of the date of its filing unless otherwise ordered or permitted by the Board.

SUBCHAPTER 5. PETITIONS

14:1-5.1 Form and content

(a) All petitions shall comply with the provisions of N.J.A.C. 14:1-4 to the extent applicable; shall clearly and concisely state the facts and relief sought; shall cite by appropriate reference the statutory provision or other authority under which the Board's action is sought; and in addition, shall contain such information or statements as are required by provision of the statute and the applicable provision of these rules, or such other rules or orders adopted by the Board pertaining to certain petitions, or as may be required by the Board in a particular proceeding.

(b) Special requirements with respect to certain types of petitions are set forth in N.J.A.C. 14:1-5.5.

(c) Petitions directed to particular respondents shall conclude with a direction that the respondent satisfy the prayer of the petition or file and serve an answer within 20 days in accordance with these rules.

Case Notes

Interim policy for the purchase of power from PURPA Qualifying Facilities. In the Matter of the Consideration and Determination of Cogeneration and Small Power Production Standards, 94 N.J.A.R.2d (BRC) 141.

Cogenerator's petition to compel electric and gas company to enter into a long term contract to purchase energy from the petitioner denied. In the Matter of the Petition of MidAtlantic Gogen, Inc. for an Order Directing Public Service Electric and Gas Co., 94 N.J.A.R.2d (BRC) 119.

Reconsideration of Board of Regulatory Commissioners' decision approving the construction of distribution substation denied; "prudent avoidance/prudent field management" test. In the Matter of the Appeal of Atlantic City Electric Company, 94 N.J.A.R.2d (BRC) 85.

Electric utility authorized to sell \$450 million of new securities and to redeem various first mortgage bonds. Petition of Jersey Central Power & Light Company, 92 N.J.A.R.2d (BRC) 65.

14:1-5.2 Applications to other regulatory bodies

(a) Where the relief sought in a petition also requires the approval or authorization of any other State or Federal regulatory body, the petition to the Board shall so state and include the following:

1. The current status of such application;
2. If the application to the other regulatory body or bodies has already been filed, a copy of each such application shall be attached to the petition to the Board, together with a copy of any order or certificate issued relating thereto; and
3. If such an application or amendment thereof is filed with another State or Federal regulatory body subsequent to the date of filing with the Board but prior to its determination, three copies of such application or amendment thereof, together with three copies of any order or

certificate issued relating thereto, shall be filed with the Board and served upon other parties of record.

14:1-5.3 Joinder of requests for relief

(a) A petitioner may join in a single petition more than one independent or alternative request for relief subject, however, to the payment of the statutory filing fees applicable to each of the approvals sought.

(b) The Board may in its discretion sever matters so joined for hearing and determination or take such other action as may be in the public interest.

14:1-5.4 Procedures of Board on filing of petition

(a) If in the opinion of the Board the petition complies substantially with these rules and appears on its face to state a matter within this Board's jurisdiction, and necessary copies have been received and fees paid, the Secretary of the Board shall file same.

(b) If after review the Board determines that a petition is deficient, the Board may refuse to consider and may issue an order dismissing said petition. In the case of a petition proposing increases in charges to customers, the time frame for Board decision set forth in N.J.S.A. 48:2-21(d) shall not begin to run until a complete petition has been filed with the Board.

(c) Unless otherwise directed by the Board, petitions and subsequent pleadings shall be served by the parties as provided for in N.J.A.C. 14:1-4.5.

(d) If within the time allowed for answer, the respondent makes an offer of satisfaction which is accepted by the petitioner, such offer and acceptance signed by the parties or their attorneys shall be filed with the Board and if not disapproved by the Board within 20 days, the petition shall be deemed satisfied and the proceedings closed without further action.

(e) When the respondent has not satisfied the petition, the Board may schedule a hearing thereon and issue such decision or order as the facts and circumstances appear to require.

Administrative correction to (c).
See: 24 N.J.R. 4410(b).

14:1-5.5 Petitions for approval of franchises or consents

(a) Petitions for approval of a franchise or consent shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable. The following information shall also be supplied in the body of the petition or in attached exhibits:

1. A certified copy of the franchise or consent involved including the terms and conditions relating thereto;

2. Proof that all statutory requirements relating to the obtaining of the franchise or consent have been met; and

3. The reason why petitioner believes that the franchise or consent is necessary and proper for the public convenience and will properly conserve the public interest.

(b) In cases where the petition involves a new water or wastewater company, the petition shall, in addition to the requirements of (a) above, also provide the following information:

1. A certified copy of the certificate of incorporation;
2. Details of plant as to type, capacity, cost, status of plant construction, construction schedule and estimated number of customers to be served;
3. A map showing the location and size, in acres or square feet, of the franchise area and the composition, diameter, length and location of pipes to be initially installed; and
4. A statement as to status of petitioner's application to the Division of Water Policy of the Department of Environmental Protection for the diversion of water and approval of the proposed facilities. If the Department of Environmental Protection approval has not yet been given, the petitioner shall obtain and submit with the petition a copy of a letter from said Department expressing intent to approve the operation of the plant as it is proposed to be constructed.

(c) Under the terms of N.J.S.A. 48:2-14, a privilege or franchise granted by a municipality is not effective until approved by the Board.

(d) Grants which are limited to a term of years should contain provisions:

1. Safeguarding the public interest in continuous and uninterrupted service at and after the expiration of the term of the grant;
2. Requiring the maintenance of the property of the grantee in good order throughout the full term of the grant;
3. That the utility give reasonable assurance that the grantee will continuously afford safe, adequate and proper service at just and reasonable rates.

Amended by R.1997 d.264, effective July 7, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).

In (b)4, amended Department references.

Amended by R.1998 d.84, effective February 2, 1998.

See: 29 N.J.R. 4250(b), 30 N.J.R. 563(a).

Former N.J.A.C. 14:11-1.5(a) and (b) were recodified as (c) and (d).

Amended by R.2002 d.337, effective October 21, 2002.

See: 34 N.J.R. 1769(a), 34 N.J.R. 3639(a).

In (b), substituted "wastewater" for "sewer" in the introductory paragraph.

Case Notes

Request to limousine service operator to file petition for Certificate of Public Convenience and Necessity improper as such service not under jurisdiction of Board of Public Utilities. In re: Application of Wilmer's Livery Service, Inc., 159 N.J.Super. 226, 387 A.2d 1202 (App.Div.1978).

Necessary methods and procedures to apportion funding between interexchange and local exchange telephone companies. In the Matter of the Funding of the New Jersey Statewide Dual Party Relay System, 94 N.J.A.R.2d (BRC) 33.

The Board lacked authority to prohibit natural gas utility from selling or repairing appliances. In Matter of Petition of New Jersey Natural Gas Company for Permission to Revise Rates for Appliance Service, 93 N.J.A.R.2d (BRC) 19.

14:1-5.6 Petitions for the approval of the sale or lease of property

(a) Petitions for the approval of the sale, conveyance or lease of real or personal property, or the granting of an easement, or like interest therein as required by law shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4 to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. Ten copies of a separate sheet or sheets designated Schedule "A" containing a description of the property;
 - i. For real property, the location by municipality and county, a metes and bounds or other adequate description of the property, together with a description of the property and rights, if any, reserved by the utility shall be shown;
 - ii. For personal property, sufficient information to identify the property adequately shall be included;
2. The name of transferee or lessee, the consideration or rental and method of payment thereof, and rights reserved by the transferor or lessor;
3. A copy of the written agreement, if any; if there is no written agreement, it shall be so stated;
4. A certified copy of the resolution of the board of directors or other authority authorizing the transfer or lease;
5. The purpose for which the property was originally acquired, the date of acquisition, the use made of the property for utility purposes, the date when and circumstances under which it ceased to be useful for such purposes, the present use, the possible prospective use and the identity of the official or officials who determined that the property is not now or prospectively required or useful for utility purposes. Any utility requesting to convey land utilized for the protection of a public water supply to a corporation or other entity which is not subject to the jurisdiction of the Board shall submit to the Board a detailed explanation of the prospective use or uses of the land to be conveyed and an assessment of the impact that the conveyance, and the prospective use or uses of the land conveyed, would have on the water quality of the affected public water supply;

6. The basis of the price or rental: assessed valuation, appraisal, comparable sales, or other basis; whether it is the best price or rental attainable; an appraisal, if any, shall be attached as exhibit;

7. Whether the proposed consideration or rental represent the fair market value of the property to be conveyed or leased;

8. What steps were taken to put this property on the market and accomplish its sale or lease; if bids were solicited, the names of bidders and the consideration or rental offered shall be included;

9. Whether there is any relationship between the parties other than that of transferor and transferee, or lessor and lessee;

10. The actual cost at date of acquisition, and the cost and nature of any improvements;

11. The amount at which the property is now carried on the utility's books;

12. Copies of proposed journal entries to record the transaction when the consideration is more than \$20,000;

13. If property is income producing, details, such as carrying charges, taxes, and assessed valuation, shall be included;

14. If the property is encumbered by any mortgage, describe the mortgage, the amount thereof, and the time required to obtain a release, shall be included; and

15. When the property to be sold or leased has a net book cost or fair market value of more than \$500,000, the petitioner must attach to the petition copies of the advertisement required by (b) below, and proof of publication.

(b) Where the Board's approval of sale or lease is required by law and the property has a net book cost or fair market value of more than \$500,000, the property shall be advertised for sale or lease at least twice, one week apart, in a daily newspaper published or circulated in the county in which the property is located, within 150 days immediately prior to the filing of the petition for the approval of the sale or lease, except that advertising shall not be required for sales or leases of property for public utility purposes to another public utility or other person or company subject to any jurisdiction of this Board. The advertisement shall contain the following:

1. A description of the property to be sold or leased and improvements thereon. In the case of land, this shall include the street address, if any, and a description sufficient to identify the location of the property and its approximate size, which may be a description by metes and bounds or lot and block numbers;

2. The place where the property is located or may be inspected, together with the street address, if any;

3. Conditions of the sale or lease, if any, together with a provision that the utility may reject any or all bids;

4. A statement that the sale or lease is subject to the approval of the Board of Public Utilities;

5. A statement of the place and final date for submitting sealed bids which shall not be less than ten days after publication of the second advertisement together with a statement of the time and place of the opening of said bids, which shall not be more than five days following the final date for submitting bids, at a place in New Jersey; and

6. A sealed bid, in accordance with the requirements of (b)5 above, must be submitted by a prospective purchaser or lessee. However, an offer or agreement to purchase or lease in writing received by the utility or executed before the first date of advertising and still in effect at such date, shall be considered as if it were a sealed bid, provided such offer or agreement in writing meets all other conditions of sale or lease, if any, included within the advertising.

(c) In addition to any other transactions not requiring approval or which on their merits may be deemed to be in the ordinary course of business, any lease, grant or permission by a utility to occupy or use its real property or any interest therein which is terminable at the option of the utility upon notice not to exceed 90 days, and any release, by quit claim deed or otherwise by any utility of any lease, easement, or permission to occupy or use real property, shall be deemed to be in the ordinary course of its business. Neither notice to the Board nor petition for its approval shall be required with respect thereto.

(d) In addition to any other transactions which on their merits may be deemed to be in the ordinary course of business, the sale, lease, encumbrance or other disposition by any utility of such of its property or an interest therein as is set forth in (d)1 through 4 below, may be consummated without petition to the Board for approval, provided, however, that the utility shall have given written notice thereof to the Board, to be received not less than 30 days prior to the effective date of the proposed sale, lease, encumbrance or other disposition of such property. The transactions which may be completed without petition to the Board are as follows:

1. The sale of personal property having a net book cost and sale price not in excess of \$100,000 and which is no longer used by or useful to the utility;

2. Except as provided in this section, the lease or permission to use or occupy real property or any interest therein having a net book cost not in excess of \$500,000 and a net rental not in excess of \$50,000 per annum;

3. The sale or release of real property, or any interest therein, not used by or useful to the utility and having a net book cost and sale price not in excess of \$500,000; and

4. The grant by a utility of easements, licenses, tower leases and roof-top leases where such transactions do not compromise the needs of the utility and will not affect the utility's ability to provide safe, adequate and proper service.

(e) On expiration of the notice period and on payment of the statutory fee, the Secretary will certify on a true copy of the notice to be furnished to the Board that such sale, lease or release is deemed to be in the ordinary course of business and within the statutory provision. Such notice shall contain, to the extent applicable, the following:

1. The name of transferee or lessee, the consideration or rental and method of payment thereof, and rights, if any, reserved by the transferor or lessor;

2. A copy of the agreement or lease and a map of the real property;

3. A statement that the proposed consideration or rental represents the fair market value of the property to be conveyed, or the fair rental value of the property to be leased, giving the basis for the conclusion reached;

4. A statement of any relationship between the parties other than that of transferor and transferee, or lessor and lessee, or a statement that there is no such other relationship, as the case may be;

5. The amount at which the property is carried on the utility's books;

6. A statement as to whether or not the property is income producing and, if so, details as to whether the petitioner pays all carrying charges, including taxes. In addition, such statement shall include the assessed valuation of the property;

7. A statement, in the case of a proposed sale, that the property is not used by or useful to the utility, and in the case of a proposed lease, grant or permission, that the transaction will not compromise the ability of the utility to render service;

8. A verification by a properly authorized officer, partner or proprietor of the statements contained in the notice; and

9. A blank space of three inches shall be provided at the bottom of the first page of the notice for the Secretary's certification.

(f) The Board may, within the aforesaid 30-day notice period, suspend the provisions of this rule and require the filing of a petition for the approval of the sale, lease, encumbrance or other disposition.

(g) Where a property to be sold or leased has a net book or fair market value not exceeding \$500,000, the petition for the sale or lease of said property, which shall be verified and supported by such proofs as may be required by the Board, shall be acted upon by the Board on the basis of a staff report signed by the Executive Director of the Board or his or her assistant concurred in by a New Jersey licensed attorney employed by the Board, containing:

1. A finding that the approval of the petition will not adversely affect the ability of the utility to properly serve the public or otherwise prejudice the public interest; and

2. A recommendation that the petition be approved without hearing. Where approval without hearing is not recommended, the petition will be placed on the Board's agenda for disposition.

(h) Regardless of the recommendation referred to in (g)2 above, the Board may, in its discretion, require that the petition for the sale or lease of property be placed on the Board's agenda for disposition.

(i) Upon written request by a utility and in accordance with the general purposes and intent of this section, the Board shall grant said utility a waiver to the advertising requirement set out in (b) above if:

1. The waiver shall not adversely affect the public interest;

2. The subject property is no longer used or useful for utility purposes;

3. There is no prospective use of the property for utility purposes or no other likely prospective purchaser;

4. The sale of the property shall not affect the ability of the utility to render safe, adequate and proper service;

5. The selling price represents the fair market value of the property to be sold based on a current independent appraisal;

6. There is no relationship between the parties other than that of transferor and transferee, or lessor and lessee; and

7. The request states the reasons of the utility in seeking the waiver which may include, but are not limited, to the following:

i. The subject property is unique and requires an unusual sales contract or represents an unusual transaction;

ii. The advertising and bidding shall not result in a higher sales price;

iii. The advertising and bidding shall be detrimental to the sale of the property;

iv. The unlikelihood of the existence of other bona fide purchasers who could meet the requirements of the proposed sales contract;

v. The development of the property for private use will require extensive environmental permitting due to an existing contamination condition; and

vi. The inability of any other bidder to obtain the necessary permitting authorization to develop the property.

(j) The Board reserves the right to request additional information and documentation in support of a request for a waiver of the advertising requirement as set out in (i) above.

(k) For the purposes of this subchapter, the term "ordinary course of business" shall include, in addition to any other transaction which on its merits may be deemed to be in the ordinary course of business:

1. Any transaction involving the sale or other disposition of a utility's surplus personal property or equipment no longer used or useful to the utility, where there is no prospective use of the property for utility purposes and the sale or other disposition of the property will not affect the utility's ability to continue to provide safe, adequate and proper service; or
2. Any quit claim deed to resolve an ambiguity or dispute, corrective deed, exchange of personal property with comparable market values, or the exchange of contiguous real property where such exchange does not compromise the needs of the utility and the affected properties have comparable market values.

Amended by R.1997 d.264, effective July 7, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).

In (a)1, substituted "Ten" for "Twenty"; in (b), substituted "\$500,000" for "\$100,000"; in (b)4, amended Board name; in (d), changed written notice deadline from 15 days to 30 days; in (d)1, substituted "\$100,000" for "\$50,000"; in (d)2 and 3, substituted "\$500,000" for "\$100,000 and in (d)2, substituted "\$25,000" for "\$10,000; and added (g).

Amended by R.1998 d.84, effective February 2, 1998.

See: 29 N.J.R. 4250(b), 30 N.J.R. 563(a).

Former N.J.A.C. 14:11-1.15(a) and (b) were recodified as new (g) and (h); and former (g) through (i) were recodified as (i) through (k).
Amended by R.1998 d.269, effective June 1, 1998.

See: 30 N.J.R. 593(a), 30 N.J.R. 2054(a).

In (b), substituted "150 days" for "90 days" following "within" in the first sentence of the introductory paragraph; in (d), substituted "\$50,000" for "\$25,000" following "excess of" in 2; and in (f), substituted "30-day" for "15-day" following "aforesaid".

Amended by R.2002 d.337, effective October 21, 2002.

See: 34 N.J.R. 1769(a), 34 N.J.R. 3639(a).

In (a)15, substituted "\$500,000" for "\$100,000"; in (d), substituted "4" for "3" following "(d)1 through" in the introductory paragraph and added 4; in (e), deleted "by the Board" in the introductory paragraph and substituted "Secretary's" for "Board's" in 9; rewrote f; in (g), inserted "or her" following "or his".

Case Notes

Board of Public Utilities did not abuse its discretion in waiving regulatory requirement that electric utility petition for approval to sell its generating property to unregulated affiliate, where Board explained why none of petition requirements were required, and stipulation of settlement in proceedings involving deregulation of electric utilities was, in effect a proxy petition for the Board of Public Utilities' approval of transfer of assets. In re Public Service Electric and Gas Company's Rate Unbundling, Stranded Costs and Reconstruction Filings, 330 N.J.Super. 65, 748 A.2d 1161 (N.J.Super.A.D. 2000).

Cogeneration limited partnership sales of steam and electricity; jurisdiction of Board of Regulatory Commissioners. In Matter of Petition of Vineland Cogeneration Limited Partnership, 93 N.J.A.R.2d (BRC) 22.

14:1-5.7 Petitions for authority to change depreciation rates

(a) Petitions for the approval of change or variation in the rates of depreciation used shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The existing and proposed rates of depreciation;
2. The existing and proposed methods of calculating or determining the rates of depreciation;
3. The calculations or studies supporting the proposed change in depreciation rates;
4. The effect of the proposed changes on operating revenue deductions and operating income; and
5. A statement as to the date when it is proposed to make the changes in depreciation rates effective, which date shall not be earlier than 90 days after the filing of a petition under this rule.

(b) No public utility shall make any changes or variations in the rates of depreciation until such action is approved by the Board. Competitive services, as described in the Telecommunications Act of 1992, P.L. 1991, c.428, are exempt from this provision.

Amended by R.1998 d.84, effective February 2, 1998.

See: 29 N.J.R. 4250(b), 30 N.J.R. 563(a).

Former N.J.A.C. 14:11-1.12(a) was recodified as new (b); and former (b) was deleted.

Case Notes

Utility company did not meet its burden of showing that use of accelerated depreciation resulted in tax savings to customers. Princeton Meadows Utility Company, Inc. v. Board of Regulatory Commissioners, 94 N.J.A.R.2d (BRC) 71.

14:1-5.8 Petitions for authority to exercise power of eminent domain

(a) Petitions for authority to exercise the power of eminent domain shall conform to the requirements of N.J.A.C. 14:1-4 and 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The names, and addresses if known, of the owners of the property to be condemned or of any interest therein, with a specification of the interest of each such owner;
2. The names of such owner or owners whose whereabouts or address is unknown;
3. A map or plot plan. In addition, there shall be filed with the petition 20 copies of a separate sheet, designated Schedule "A", which shall contain a proper metes and bounds description of the property to be acquired;

4. A brief description of the improvements thereon, if any, and the present and potential character and uses of the property;

5. Allegations that the property desired is reasonably necessary for the service, accommodation, convenience and safety of the public, and that the taking of such property is not incompatible with the public interest, and would not unduly injure the owners of private property;

6. A statement of the reasons why the property cannot be purchased by negotiation; and

7. Where the petitioner has, after diligent search, been unable to determine the name and address of the owner of the property to be condemned or of any interest therein, such facts must be stated in an affidavit of inquiry prepared in the manner provided for in the Rules Governing the Courts of the State of New Jersey.

(b) Where the petitioner has, after diligent search, been unable to determine the name and address of any respondent, the petitioner shall publish notice of hearing, addressed to such respondent by name, or other appropriate designation if the name is unknown. Such publication shall be made twice in consecutive calendar weeks, once in each week, in a newspaper published in the county where the property is situated, or if none be published therein, then in a newspaper published in this State and circulating in said county, the second such publication to be made not less than 20 days prior to the hearing date. Said publication shall contain a description of the property to be condemned. Sworn proof of publication must be filed at least five days prior to the hearing date.

Amended by R.1997 d.264, effective July 7, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).

Case Notes

Water company entitled to exercise eminent domain in order to acquire easements for installation of underground water transmission main. *Middlesex Water Company v. City of Perth Amboy*, 93 N.J.A.R.2d (BRC) 23.

14:1-5.9 Petitions for authority to issue stocks, bonds, notes, other evidence of indebtedness or to execute mortgages

(a) Petitions for authority to issue any stocks, bonds, notes, or other evidence of indebtedness, payable in more than one year from the date thereof, and to execute mortgages shall conform to the provisions of N.J.A.C. 14:1-4 and 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in the attached exhibits, provide the following information:

1. A statement of the amount and terms of the proposed issue including the nature of the security therefor, if any; the purposes for which the proceeds are to be used; and the nature of all rights and limitations applicable to the security;

2. Where one of the purposes is the acquisition of property, a general description of the property, the name of the transferor, and a copy of the contract, if any, for such acquisition. In the case of property to be acquired for right-of-way purposes, a general description of the proposed route and a map or plot plan will be sufficient;

3. Where one of the purposes is the construction, completion, extension or improvement of facilities, a general description of the work proposed to be done, and an estimate of the cost thereof in reasonable detail. Where one of the purposes is the improvement or maintenance of service, there shall be included a description of the existing service as well as of the improvements, or betterments proposed;

4. Where one of the purposes is the refunding of securities, a description of the securities and obligations to be refunded, including the kind, amount, date of issue and date of maturity, together with the terms of refunding and all other material facts affecting the same must be set out;

5. Where one of the purposes is the issuance of capital stock based upon the investment of earnings in plant which might have been distributed in dividends, a complete and reasonably detailed enumeration of petitioner's property, priced at original cost, or estimated if not known. The petitioner shall produce evidence at the hearing in support of such enumeration and pricing;

6. Where one of the purposes is to reimburse the treasury for expenditures not theretofore capitalized by the issuance of securities, the petitioner shall also show the exact period and amount for which reimbursement is desired; comparative financial statements which shall include, as a minimum, balance sheets and utility plant by accounts as at the beginning and end of the period, as well as changes in the period, and, in the case of utility plant, additions and retirements shall be stated separately for each year; a statement indicating the source and application of funds during the period; a statement indicating the manner in which petitioner proposes to use the proceeds from the security issue; and the necessity and reasonableness of the proposed transaction;

7. Where one of the purposes is for the issuance of common capital stock in connection with the organization of a new corporation to operate as a public utility, the petition must contain the following:

i. A copy of the certificate of incorporation;

ii. The names and addresses of the elected or proposed officers, directors and stockholders of the company and the number of shares of capital stock to be held by each;

iii. The required number of stockholders and directors and the state in which they reside pursuant to the statute under which the corporation will be organized;