

CHAPTER 9 SEWER AND WATER

Authority

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

Source and Effective Date

R.1991 d.179, effective April 1, 1991.
See: 22 N.J.R. 907(a), 23 N.J.R. 1012(a).

Executive Order No. 66(1978) Expiration Date

Chapter 9, Sewer and Water expires on April 1, 1996.

Chapter Historical Note

Unless otherwise expressly noted, all provisions of this Chapter 9 were adopted by the Board of Public Utility Commissioners, pursuant to authority delegated at N.J.S.A. 48:2-13 et seq. and were filed and became effective prior to September 1, 1969.

Subchapter 6, Small Water Company Takeover Act Regulations, was originally adopted as R.1985 d.182, effective April 15, 1985. See: 16 N.J.R. 3380(a), 17 N.J.R. 910(a).

Pursuant to Executive Order No. 66(1978), Chapter 9 expired on April 15, 1990. Chapter 9 was subsequently adopted as new rules by R.1991 d.179, effective April 1, 1991. See: Source and Effective Date.

Subchapter 7, Purchased Water Adjustment Clause and Subchapter 8, Purchased Sewerage Treatment Adjustment Clause adopted as R.1991 d.488, effective October 21, 1991. See: 23 N.J.R. 946(b), 23 N.J.R. 3171(a).

See section annotations for specific rulemaking activity.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. PLANT

- 14:9-1.1 Plant construction
- 14:9-1.2 Inspection of property

SUBCHAPTER 2. SERVICE

- 14:9-2.1 Service connections
- 14:9-2.2 Pressure and volume of water service
- 14:9-2.3 Quality of water
- 14:9-2.4 Sewage treatment

SUBCHAPTER 3. METERS

- 14:9-3.1 Testing of water meters
- 14:9-3.2 Periodic testing of water meters
- 14:9-3.3 Determination of Water Meter Accuracy

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. UNIFORM SYSTEM OF ACCOUNTS

- 14:9-5.1 Adoption by reference of rules concerning preservation of records; water utilities

SUBCHAPTER 6. SMALL WATER COMPANY TAKEOVER ACT REGULATIONS

- 14:9-6.1 Purpose
- 14:9-6.2 Definitions
- 14:9-6.3 Construction
- 14:9-6.4 Applicability

- 14:9-6.5 Severability
- 14:9-6.6 Scope
- 14:9-6.7 Departmental action
- 14:9-6.8 Joint public hearing
- 14:9-6.9 Contested case
- 14:9-6.10 Joint takeover order by the Department and BPU
- 14:9-6.11 Acquisition costs
- 14:9-6.12 Compliance with joint order
- 14:9-6.13 Differential rate for customers of small water company for use of service of acquiring entity's system or facilities

SUBCHAPTER 7. PURCHASED WATER ADJUSTMENT CLAUSE

- 14:9-7.1 Scope
- 14:9-7.2 Definitions
- 14:9-7.3 Petitions for Purchased Water Adjustment Clauses; Truing Up Schedules; time for filing
- 14:9-7.4 Petitions for Purchased Water Adjustment Clauses; content; procedures
- 14:9-7.5 Formula for determination of basic costs by a water utility using a flat rate basis
- 14:9-7.6 Formula for determination of Base Costs by a water utility using a metered basis

SUBCHAPTER 8. PURCHASED SEWERAGE TREATMENT ADJUSTMENT CLAUSE

- 14:9-8.1 Scope
- 14:9-8.2 Definitions
- 14:9-8.3 Petitions for Purchased Sewerage Treatment Adjustment Clauses; Truing Up Schedules; time for filing
- 14:9-8.4 Petitions For Purchased Sewerage Treatment Adjustment Clauses; content; procedures
- 14:9-8.5 Formula for determination of basic costs by a sewer utility using a flat rate basis
- 14:9-8.6 Formula for determination of Base Costs by a sewer utility using a metered basis

SUBCHAPTER 1. PLANT

14:9-1.1 Plant construction

The construction and installation of plant and facilities of sewer and water utilities must be in accordance with N.J.A.C. 14:3-2.1 (Plant construction) and in addition must be in accordance with standard specifications as set forth by the American Water Works Association and the rules and regulations of the New Jersey Department of Health, as applicable. When and if any controversy arises as to the necessity for adopting specifications calling for construction of a higher standard, the matter may be referred to the Board for determination.

14:9-1.2 Inspection of property

(a) Each utility shall inspect each valve in the system periodically to determine its accessibility for operation, and its operating condition. Large valves, 12-inch and over, shall be inspected once every two years and other valves once every four years.

(b) Each water utility shall, once a year, test every hydrant to determine its working condition. It shall also formulate and put into practice a comprehensive and definite plan for flushing hydrants and dead ends of mains. This plan for flushing may be combined with the periodical testing of hydrants.

(c) A record of all inspections and tests shall be kept for a period of not less than five years.

SUBCHAPTER 2. SERVICE

14:9-2.1 Service connections

(a) Upon making service connections, the tapping of the main shall be done; and the curb cock and couplings, the service lines from main to curb, and curb box and/or the connection to the collecting main and the service from the collecting main to the curb, shall be furnished by the utility or its agent at the expense of the utility. The exact cost of the remainder of the service connection shall be paid by the customer, and the said remainder shall be placed by the customer or by agreement between the customer and the utility, by the utility or its agent; provided, however, that if placed by the customer it shall conform to reasonable specifications prescribed by the utility.

(b) Whenever a connection from main to curb is made through which regular service is not immediately desired, except during the course of construction, the customer shall bear the entire expense of making the connection but shall be entitled to a refund for such part of the cost as the utility is hereinbefore required to assume whenever regular service is begun within 10 years of the installation of the connection.

Case Notes

Water and sewer lines from a structure to the public easement connections are private property of the structure owner and located on private property; for State to make these connections absent owner's consent, it must exercise eminent domain power; relocation of lines by State not permitted in lieu of damages to owner. *State v. Sun Oil Co.*, 160 N.J.Super. 513, 390 A.2d 661 (Law Div.1978).

Petitioner's practice of charging service connection fee to new customers contrary to regulation. In re: *Califon Water Co.*, 1 N.J.A.R. 414 (1980).

14:9-2.2 Pressure and volume of water service

(a) Each water utility shall supply water service at adequate pressure and volume to the curb, or the point of connection with the customer's service line.

(b) Each water utility shall maintain sufficient pressure and volume of water at all fire hydrants to assure adequate streams for the fighting of fires.

Case Notes

Water company that undertakes to supply water within designated and protected market can fairly be charged with duty to assure that its delivery system is in working order to furnish adequate supply for all purposes, to the extent of its capabilities; however, to extent that claims for losses caused by negligent failure to maintain adequate water pressure are insured and assigned, insurer's subrogation claims are unenforceable against water company. *Ebert v. South Jersey Gas Co.*, 260 N.J.Super. 104, 615 A.2d 294 (L.1992).

Private water company was immune from liability for fire insurance companies' subrogation claims arising from its negligent failure to maintain adequate water pressure for fire fighting, overruling *Reimann v. Monmouth Consol. Water Co.*, 9 N.J. 134, 87 A.2d 325; *Sydney Grossman Hotel Corp. v. Lakewood Water Co.*, 27 N.J. 91, 141 A.2d 541; *Brooks v. City of Orange*, 61 N.J. 576, 297 A.2d 1; *J.H.M. Realty Corp. v. Town of Belleville*, 61 N.J. 577, 297 A.2d 2; calling into doubt *Baum v. Somerville Water Co.*, 84 N.J.L. 611, 87 A. 14 (E. & A.); *Atlas Finishing Co. v. Hackensack Water Co.*, 10 N.J.Misc. 1197, 163 A. 20 (Sup.Ct.); rejecting *German Alliance Ins. Co. v. Home Water Supply Co.*, 226 U.S. 220, 33 S.Ct. 32, 57 L.Ed. 195; *Stuart v. Crestview Mut. Water Co.*, 34 Cal.App.3d 802, 110 Cal.Rptr. 543 (2 Dist.); *Libbey v. Hampton Water Works Co., Inc.*, 118 N.H. 500, 389 A.2d 434; *H.R. Moch Co., Inc. v. Rensselaer Water Co.*, 247 N.Y. 160, 159 N.E. 896; *Rose v. Sapulpa Royal Water Co.*, 631 P.2d 752 (Okl.). *Weinberg v. Dinger*, 106 N.J. 469, 524 A.2d 366 (1987).

14:9-2.3 Quality of water

Each water utility shall furnish water free of excess impurities or sedimentation and shall make every effort to assure that its product is potable and uncolored.

14:9-2.4 Sewage treatment

Each sewer utility shall provide sewer service in such a manner as to prevent escape of offensive odors, the overflow of effluent and the discharge of any untreated sewage. Each such utility shall operate its facilities in such a manner as to eliminate possible danger to public health and welfare.

SUBCHAPTER 3. METERS

14:9-3.1 Testing of water meters

Each utility having more than 100 meters in use shall provide and maintain suitable and adequate facilities for testing its water service meters, including complete testing equipment of a form approved by the Board. Utilities may cooperate in arranging for such facilities. No equipment shall be used in testing meters unless it shall have been examined, calibrated and sealed by the appropriate State, county or municipal agency having jurisdiction over weights and measures. Appropriate evidence of such examination, calibration and sealing shall be affixed to the equipment.

14:9-3.2 Periodic testing of water meters

(a) Unless it has been otherwise authorized by the Board, no utility furnishing metered water service shall allow a meter to remain in service for a period longer, or for a registration greater, than that specified in the table below without checking it for accuracy and readjusting it if found to be incorrect beyond the limits established in Section 3 (Determination of water meter accuracy) of this Subchapter:

1. $\frac{5}{8}$ inch meter, ten years or 750,000 gallons;
2. $\frac{3}{4}$ inch meter, eight years or 1,000,000 gallons;
3. One inch meter, six years or 2,000,000 gallons;
4. All meters above one inch, four years.

14:9-3.3 Determination of Water Meter Accuracy

(a) A water meter shall be considered correct if, when flowing water at both intermediate and full flow capacities, as set forth in the American Water Works Association M-6 Manual, it shows an error which is not greater than one and one half percent.

(b) An error at any flow capacity in excess of one and one half percent shall be subject to an adjustment of charges as defined in N.J.A.C. 14:3-4.7.

Amended by R.1991 d.147, effective May 6, 1991.
See: 22 N.J.R. 618(a), 23 N.J.R. 1449(a).

Adopted one and one half percent error margin.

Case Notes

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.

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. UNIFORM SYSTEM OF ACCOUNTS

14:9-5.1 Adoption by reference of rules concerning preservation of records; water utilities

(a) On September 14, 1972, the Board of Public Utilities, pursuant to authority of N.J.S.A. 48:2-1 et seq. and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted by reference the "Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities" originally proposed to various states for adoption by the National Association of Regulatory Utility Commissioners as promulgated and published in April, 1972, for use by the electric, gas and water utilities.

(b) The Board of Public Utilities adopts these rules as its modified regulations governing the preservation and destruction of records for all classes of electric, gas and water utilities subject to its jurisdiction and as a supplement to its uniform system of accounts for all classes of electric, gas and water utilities.

(c) Copies of the full text of these rules are available for examination in the Board's offices at Two Gateway Center, Newark, New Jersey 07102, and are included in the Case Files in these dockets. Additional copies may be purchased from the National Association of Regulatory Utility Commissioners, P.O. Box 684, Washington, D.C. 20044.

R.1972 d.181, effective September 18, 1972.
See: 4 N.J.R. 24(b).

SUBCHAPTER 6. SMALL WATER COMPANY TAKEOVER ACT REGULATIONS

14:9-6.1 Purpose

This subchapter implements the provisions of N.J.S.A. 58:11-59 et seq., commonly known as the "Small Water Company Takeover Act". This subchapter establishes procedures by which a small water company that does not comply with appropriate statutory and regulatory standards concerning actual or imminent public health problems may be acquired or "taken over" by the most suitable public or private entity pursuant to a joint order issued by the New Jersey Department of Environmental Protection and the New Jersey Board of Public Utilities.

14:9-6.2 Definitions

Unless the context clearly indicates otherwise, the following terms, when used in this subchapter, shall have the following meanings:

"Act" means the "Small Water Company Takeover Act", N.J.S.A. 58:11-59 et seq.

"Actual or imminent public health problems" means any violations by a small water company of appropriate statutory and regulatory standards, including but not limited to the New Jersey Safe Drinking Water Regulations, N.J.A.C. 7:10-1 through 13, which adversely affects the quality, pressure or volume of water delivered as determined by the Department. Violations by a small water company of ap-

appropriate statutory and regulatory standards that do not adversely affect the quality, pressure or volume of water delivered as determined by the Department shall not be considered actual or imminent public health problems for the purposes of this subchapter, including but not limited to, aesthetic water quality problems or minor design deficiencies.

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

“Capable” means financially and operationally able to provide safe, adequate and proper water service for the customers of the small water company to be acquired currently or in the foreseeable future. BPU shall be consulted by the Department concerning any public or private water systems’ financial status.

“Commissioner” means the Commissioner of Environmental Protection or his designated representative.

“Department” means the Department of Environmental Protection.

“Division” means the Division of Water Resources of the Department of Environmental Protection.

“Proximate” means and includes all public or private water companies, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq., municipalities or any other suitable governmental entities wherein the small water company provides service regardless of their ability to reasonably physically interconnect with the small water company to be acquired.

“Public Advocate” means the Department of the Public Advocate.

“Small water company” means any company, purveyor or entity, other than a governmental agency, that provides water for human consumption and which regularly serves less than 1,000 customer connections.

14:9-6.3 Construction

(a) This subchapter shall be liberally construed to permit the Department and BPU to discharge their statutory functions.

(b) The Department and BPU may jointly amend, repeal or rescind this subchapter from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and any regulations promulgated pursuant thereto.

14:9-6.4 Applicability

This subchapter shall apply to all small water companies within the State of New Jersey.

14:9-6.5 Severability

If any section, subsection, provision, clause or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

14:9-6.6 Scope

(a) Any small water company not in compliance with appropriate statutory and regulatory standards, including but not limited to the New Jersey Safe Drinking Water Regulations, N.J.A.C. 7:10-1 through 13, concerning actual or imminent public health problems as determined by the Department may be subject to the provisions of this subchapter.

(b) Violations by a small water company of appropriate statutory and regulatory standards not adversely affecting the quality, pressure or volume of water delivered as determined by the Department shall not be considered actual or imminent public health problems for the purposes of this subchapter.

14:9-6.7 Departmental action

(a) Prior to the implementation of procedures under the Act, the Department shall actively pursue appropriate and available enforcement options to bring a small water company into compliance with the appropriate statutory and regulatory standards concerning actual or imminent public health problems including but not limited to:

1. Issuance of directive letters;
2. Issuance of administrative orders;
3. Direct negotiation;
4. Appropriate legal proceedings; or
5. All other enforcement options deemed reasonable and appropriate by the Department consistent with its statutory mandate.

(b) A Departmental order issued on a case-by-case basis to a small water company concerning the availability of water, the potability of water and the provision of water at adequate volume and pressure may initiate the proceedings under the Act and this subchapter.

1. A Departmental order shall specify on a case-by-case basis a reasonable time period in which the small water company must comply with the appropriate statutory and regulatory standards concerning actual or imminent public health problems as determined by the Department and shall provide the public health problems as determined by the Department and shall provide the small water company with the opportunity for an evidentiary hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F et seq. to determine whether there has been compliance with appropriate statutory and regulatory standards.

2. If administrative hearing procedures have been initiated by a small water company concerning any outstanding Departmental order, the Department shall move to join any new order issued with the ongoing administrative hearing procedures.

3. The Department may issue another order concerning any small water company if the outstanding Departmental order remains over one year old or administrative hearing procedures have commenced.

(c) Should the Department conclude, following the expiration of the times for compliance or following an evidentiary hearing if one has been requested, that the small water company has not complied with the Department's order, the Department may invoke and initiate the provisions as set forth in N.J.A.C. 7:19-5.8.

1. The Department shall provide BPU with immediate notice of the small water company's noncompliance and the decision to invoke and initiate the provisions as set forth in N.J.A.C. 7:19-5.8.

14:9-6.8 Joint public hearing

(a) Designated hearing officers from the Department and BPU or an Administrative Law Judge shall conduct a joint informational public hearing in the proximate area of the non-complying small water company, preferably in the evening, concerning the non-complying small water company after 30 days notice pursuant to (b) below.

(b) Notice of the time, place and subject matter of the joint public hearing shall be given at least 30 days prior to the scheduled hearing date by the Department and BPU as follows:

1. Publication of a display advertisement in a newspaper circulating within the proximate area of the small water company for a minimum of one day per week for two weeks prior to the scheduled date of the joint public hearing;

2. Issuance of press releases and utilization of other appropriate methods of notice;

3. Written notice by certified or registered mail sent to the following parties:

- i. The non-complying small water company;
- ii. The Public Advocate;
- iii. Capable proximate public and private water companies; and
- iv. Capable proximate municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq., municipalities and any other suitable governmental entities wherein the non-complying small water company provides water service.

(c) The joint public hearing shall be conducted to receive public comments regarding the possible options available to

bring the non-complying small water company into compliance with the appropriate statutory and regulatory standards concerning actual or imminent public health problems. The acquisition of the non-complying small water company by the most suitable public or private entity shall be discussed. Information should be required from participants at the joint public hearing concerning any estimates of expenditures, including acquisition and improvement costs, that may be required to:

1. Assure the availability of water;
2. Assure the potability of water; and
3. Assure the provision of water at adequate volume and pressure.

(d) The Department shall make a technical presentation at the joint public hearing of the non-complying small water company's deficiencies, indicate necessary improvements and discuss, after consultation with BPU, possible options and preliminary improvement costs.

1. The Department's presentation shall be based on information reasonably available to the Department and be intended to focus attention on the relevant issues concerning the non-complying small water company.

2. Written summaries of the Department's presentation required by (d) above shall be mailed to the parties set forth in (a)3 above at least five days before the scheduled joint public hearing date.

3. Copies of the written summaries required by (d)2 above shall be made available to other interested persons at the joint public hearing.

(e) The non-complying small water company shall be ordered to appear at the joint public hearing and provide all available information pertaining to the value of its water supply facilities and the cost of correcting deficiencies.

(f) Public comments shall be solicited at the joint public hearing and transcribed for the record at the expense of the non-complying small water company.

(g) The designated Department and BPU hearing officers, or an Administrative Law Judge shall require answers from any appropriate interested parties attending the joint public hearing, if possible, to all reasonable questions put forward at the joint public hearing.

(h) Cross-examination shall not be permitted by any interested parties at the joint public hearing.

(i) All participants at the joint public hearing shall be afforded the opportunity to testify under oath.

(j) Within 60 days after the joint public hearing held pursuant to this section, the designated Department and BPU hearing officers or an Administrative Law Judge shall review the record and prepare a joint report detailing no

more than three options and their estimated costs, including the rationale for selection of each option in order of priority, for utilization by the Department and BPU in selecting an option.

(k) The joint report required by (j) above shall be mailed to all those noticed by certified or registered mail of the joint public hearing and shall be made available for public review. The Department and BPU shall undertake reasonable efforts to make copies of the joint report available to all other interested persons.

1. All interested persons shall be allowed to file comments concerning the report within 30 days of its issuance.

i. Failure to file any comments concerning the joint report by the small water company, capable proximate public or private water companies, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1, municipalities or any other suitable governmental entities wherein the non-complying small water company provides service shall create a rebuttable presumption that no objections to the joint report exist.

2. If the joint report required by (j) above recommends acquisition as an option, the Department and BPU may forward a copy of the joint report to the Office of Administrative Law to provide notice that the Department and BPU may request the services of an administrative law judge on an expedited scheduling basis to conduct the contested case hearing required by N.J.A.C. 7:19-5.9.

14:9-6.9 Contested case

(a) A contested case hearing(s) shall be held before the Commissioner, the BPU Commissioner, or an Administrative Law Judge concerning the non-complying small water company to determine through a fact-finding adversarial hearing the expenditures that may be necessary to make improvements necessary to the non-complying small water company to insure compliance with the appropriate statutory and regulatory standards concerning actual or potential public health problems. Also to be considered at this contested case hearing(s) shall be the issue of acquisition costs and the most suitable public or private entity to acquire the non-complying small water company.

(b) At the contested case hearing(s) opportunity shall be afforded the parties to respond, appear and present evidence and argument on all issues involved pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the "New Jersey Uniform Administrative Procedure Rules of Practice", N.J.A.C. 1:1.

(c) The entire record addressed pursuant to this subchapter shall be considered by the Commissioner, BPU Commissioner or Administrative Law Judge in deciding the issues set forth in (a) above. All portions of this record considered admissible pursuant to the "New Jersey Uniform Administrative Procedures Rules of Practice", N.J.A.C. 1:1, shall be exhibits in the contested case hearing.

(d) In addition to any notice requirements required pursuant to (b) above, notice of time, place and subject matter of the contested case hearing shall be given by certified or registered mail to the following parties:

1. The non-complying small water company;
2. The Public Advocate;
3. Capable proximate public and private water companies; and
4. Capable proximate municipalities, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq. and any other suitable governmental entities wherein the small water company provides water service.

(e) The contested case hearing(s) shall be transcribed for the record at the expense of the non-complying small water company.

14:9-6.10 Joint takeover order by the Department and BPU

(a) Upon receipt of the entire record of the joint public hearing and the contested case hearing(s), the Department and BPU shall jointly determine in a written order the appropriate actions to be taken on the basis of the entire record. If the acquisition option is not selected, then procedures under the Act terminate.

(b) If the Department and BPU have determined that the costs of improvements to and the acquisition of the non-complying small water company are necessary and reasonable, the Department and BPU shall jointly order the acquisition of the non-complying small water company by the most suitable entity.

1. The Department has responsibility for technical determinations and BPU has responsibility for the rate making function.
2. The Department will consult with BPU technical staff prior to making any technical determinations with regard to this joint order.
3. This order shall include an action by BPU subject to refund which provides for the immediate inclusion in the rates of the acquiring entity of the anticipated costs of necessary improvements, or, if the determination of acquisition costs has been deferred, as soon as possible thereafter as may be practicable and feasible consistent with N.J.A.C. 7:19-5.11. The order shall also include the approved tariffs.

(c) If anticipated improvement costs are customer provided, the improvements shall be considered contributions in all future rate cases. Separate records shall be maintained as to contributions occurring under this process.

(d) The BPU shall extend or transfer the franchise area of the acquiring public or private entity to the extent necessary to cover the service area of the non-complying small water company taken over pursuant to the Act and this subchapter.

(e) If this joint order results in an increase in the rates, this process shall be considered a proceeding initiated by the application of a utility for an increase in rates for the purposes of N.J.S.A. 52:27E-19.

(f) Any acquisition costs which are deemed necessary and reasonable, based on evidence from the contested case hearing(s), and agreed to by the small water company and the acquiring entity and approved by BPU, after consultation with the Department and the Public Advocate, may be included in the rates.

14:9-6.11 Acquisition costs

(a) If the parties have not agreed to acquisition costs, BPU's and the Department's designated representatives shall convene at least one meeting within 60 days of the issuance of the joint hearing report pursuant to N.J.A.C. 7:19-5.9(i) and again within 15 days after issuance of the joint order prepared pursuant to N.J.A.C. 7:19-5.10. Representatives of the Public Advocate, non-complying small water company and acquiring entity shall be notified of each meeting which will concern the possibility of mutual agreement on compensation for the acquisition and the other details pertaining to takeover of the non-complying small water company by the acquiring entity.

1. Meetings shall be continued if the Department and BPU determine in writing that a reasonable possibility of success for an agreement exists.

2. BPU and Departmental representatives shall certify in writing to the Department and BPU the status of these meetings every three months.

(b) If no agreement between parties exist, compensation for the acquisition of the non-complying small water company shall be determined through the use of the eminent domain procedures pursuant to the "Eminent Domain Act of 1971", N.J.S.A. 20:3-1.

14:9-6.12 Compliance with joint order

(a) The acquiring entity which receives a joint order pursuant to N.J.A.C. 7:19-5.10 shall acquire the non-complying small water company and make necessary improvements to assure the availability of water, the potability of water and the provision of water at adequate volume and pressure as mandated by N.J.S.A. 58:11-62.

(b) The non-complying small water company shall immediately comply with the joint order and facilitate its sale to the acquiring entity as mandated by N.J.S.A. 58:11-62.

(c) The failure of any utility to comply with a joint order pursuant to N.J.A.C. 7:19-5.10 shall permit the BPU and the Department to proceed to enforce the joint order consistent with their statutory mandate.

14:9-6.13 Differential rate for customers of small water company for use of service of acquiring entity's system or facilities

If the joint order pursuant to N.J.A.C. 7:19-5.10 has been issued BPU may, in its discretion, allow the acquiring entity to charge and collect a differential rate from the customers of the non-complying small water company for the use of service of the acquiring entity's water supply system or facilities pursuant to N.J.S.A. 58:11-63.

SUBCHAPTER 7. PURCHASED WATER ADJUSTMENT CLAUSE

14:9-7.1 Scope

The rules contained in this subchapter shall apply to the increase or decrease in purchased water charges incurred by a water utility, as defined in N.J.S.A. 48:2-13.

14:9-7.2 Definitions

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

"Base consumption" means the level of consumption as established in the most recent base rate or adjustment clause case of a water utility.

"Base cost of purchased water" means the cost of contractually purchased water as established in the most recent base rate or adjustment clause case of a water utility. Actual cost shall be reflected as cost per 1,000 gallons unless otherwise specifically approved by the Board.

"Deferred accounting treatment" means the deferring on the books and records of a water utility the difference between the expense imposed upon it by a water purveyor for purchased water, and the amount of expense currently approved by the Board for inclusion in rates for recovery of this expense.

"New cost of purchased water" means the Board recognized new increment to the base cost of water from a purveyor to a water utility.

"Public entity" means any governmental entity, including a utilities authority, empowered by law to establish rates or charges for the sale of water.

"Purchased water adjustment clause" means the methodology by which a water utility obtains recognition in its rates

of an increase or decrease in the cost of water purchased by it from a water purveyor.

“Revenue tax factor” means the tax factor applied to recoup the Gross Receipts and Franchise Taxes at the rate established in a water utility’s last base rate or adjustment clause case.

“Water purveyor” means any governmental entity, including a utilities authority or commission, empowered by law to establish sales or charges for the sale of water; or a private entity, whose rates for the sale of water are regulated by the Board.

“Water utility using a flat rate basis” means any water utility whose rates and tariffs are not designed on a metered flow basis.

“Water utility” means any investor owned or municipal water utility subject to the regulation of the Board which purchases water from a water purveyor.

“Water utility using a metered basis” means any water utility whose rates and tariffs are designed on a metered flow basis.

“Truing Up Schedule” means a detailed analysis reconciling the proposed or new cost of purchased water with the most recent base cost approved by the Board.

Case Notes

Purchased Water Adjustment Clause; water company entitled to base rate increase to recover costs associated with New Jersey Water Supply Authority contract. In Matter of Shorelands Water Company for Approval of Increase in Rates, 93 N.J.A.R.2d (BRC) 27.

14:9-7.3 Petitions for Purchased Water Adjustment Clauses; Truing Up Schedules; time for filing

(a) A water utility with purchased treatment costs exceeding 10 percent of its total Operating and Maintenance expense shall file a petition with the Board for approval of a purchased water adjustment clause to reflect in its rates an increase or decrease in the cost of water purchased by it. The petition shall be filed as soon as the water utility can reasonably compile the data required by this subchapter after notification of an increase or decrease in charges by its water purveyor, but in no event later than 30 days after such notification.

(b) No purchased water adjustment clause shall be approved unless a water utility, within the prior three years, has had its base rates set by the Board in a decision and order which established base level data against which the new cost of purchased water can be measured.

(c) Within 30 days after its purchased water adjustment clause has been in effect for one year, a water utility shall file schedules with the Board which true up its actual recovery of costs under the clause with the previous Board allowed recovery of such costs.

Case Notes

Purchased Water Adjustment Clause; water company entitled to base rate increase to recover costs associated with New Jersey Water Supply Authority contract. In Matter of Shorelands Water Company for Approval of Increase in Rates, 93 N.J.A.R.2d (BRC) 27.

14:9-7.4 Petitions for Purchased Water Adjustment Clauses; content; procedures

(a) A petition for approval of a purchased water adjustment clause, for an increase or decrease therein, and for the filing for approval of a truing up schedule shall include the following:

1. A copy of the contract for purchased water approved in the water utility’s most recent base rate case or water adjustment clause case, whichever is later, and copies of the present and the proposed purchased water contracts, including price and detailed financial statements of associated expenses;

2. The actual number and classes of customers as approved in the water utility’s most recent base rate case or purchased water adjustment clause case, whichever is later, and as of the end of the most recent calendar year;

3. The actual volume of water purchased as approved in the water utility’s most recent base rate case or purchased water adjustment clause case, whichever is later, and as of the end of the most recent calendar year;

4. A calculation of a proposed cost per unit of volume using the methodology approved by the Board in the water utility’s most recent base rate case or purchased water adjustment clause case, whichever is later;

5. Copies of the Board’s Orders, including stipulations, if any, in the water utility’s latest base rate case and in its most recent intervening purchased water adjustment clause case;

6. A proposed tariff schedule, entitled “Purchased Water Adjustment Clause,” to implement the proposed purchased water adjustment clause. Said schedule shall set forth all rate schedules in the water utility’s tariff which are affected by the clause;

7. Volumes and costs under the water utility’s present contract and the proposed contract, with specific calculations showing the basis of any volume and/or cost differential from the base cost of purchased water on a cost per unit basis;

8. A schedule truing up the proposed cost of purchased water with the most recent level of base cost of purchased water and the most recent level of Board approved rates. This schedule shall contain an adjustment for any under/over recovery of revenues related to the cost of purchased water allowed in the adjustment clause; and

9. A detailed description of the efforts of the water utility to investigate and analyze the basis for any increase in rates proposed by its water purveyor as well as a detailed description of the water utility's findings. The utility shall also fully describe its efforts in actively participating in the process to assure that these rates are just and reasonable.

(b) Base consumption and base costs as set forth in the water utility's previous base rate case shall be established in each subsequent base rate filing.

(c) Interest on any over recovery shall be considered in each purchased water adjustment clause proceeding and reflected appropriately.

(d) The amount of a rate adjustment allowed by the Board in a purchased water adjustment clause proceeding shall be listed separately and identified on customer bills.

(e) A copy of the petition and all exhibits shall be served upon the Department of the Public Advocate, Division of Rate Counsel, simultaneously with the filing thereof with the Board.

(f) In reviewing the petition, the Board may consider such additional relevant information or financial analysis as it deems appropriate.

(g) Filings pursuant to these rules shall be considered contested cases and shall be heard in accordance with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

14:9-7.5 Formula for determination of basic costs by a water utility using a flat rate basis

$$\begin{aligned} & \text{Adjustment Clause} = \text{New Cost of Purchased Water} \\ & \pm \text{Compression or Deferred Accounting} \\ & \times \text{Revenue Tax Factor} \\ & \div \frac{\text{Annual Charge Per Customer}}{\text{Number of Customers by Class}} = \text{Annual Charge Per Customer} \\ & \div \frac{\text{Annual Charge Per Customer}}{\text{Billing Cycle}} \end{aligned}$$

Case Notes

Purchased Water Adjustment Clause; water company entitled to base rate increase to recover costs associated with New Jersey Water Supply Authority contract. In Matter of Shorelands Water Company for Approval of Increase in Rates, 93 N.J.A.R.2d (BRC) 27.

14:9-7.6 Formula for determination of Base Costs by a water utility using a metered basis

$$\begin{aligned} & \text{Adjustment Clause} = \text{New Cost of Purchased Water} \\ & \pm \text{Compression or Deferred Accounting} \\ & \times \text{Revenue Tax Factor} \\ & \div \frac{\text{Base Consumption (Pumpage less unaccounted for water)}}{\text{Base Consumption (Per Tariff Units)}} \\ & \div \text{Billing Cycle} \end{aligned}$$

Case Notes

Waste disposal rates; reasonableness of additional disposal and transportation costs; refunds for put-or-pay penalty charges; no refunds for failure to invoke Force Majeure clause; interim rate determined. In Matter of Petition of Bridgewater Resources, Inc., 92 N.J.A.R.2d (BRC) 27.

SUBCHAPTER 8. PURCHASED SEWERAGE TREATMENT ADJUSTMENT CLAUSE

14:9-8.1 Scope

The rules contained in this subchapter shall apply to the increase or decrease in purchased sewerage treatment charges incurred by a sewer utility, as defined in N.J.S.A. 48:2-13.

14:9-8.2 Definitions

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

“Base sewerage treatment” means the level of sewerage treatment as established in the most recent base rate or adjustment clause case of a sewer utility.

“Base cost of purchased sewerage treatment” means the cost of contractually purchased sewerage treatment as established in the most recent base rate or adjustment clause case of a sewer utility. Actual cost shall be reflected as cost per 1,000 gallons unless otherwise specifically approved by the Board.

“Deferred accounting treatment” means the deferring on the books and records of a sewer utility the difference between the expense imposed upon it by a sewerage treatment purveyor for purchased sewerage treatment, and the amount of expense currently approved by the Board for inclusion in rates for recovery of this expense.

“New cost of purchased sewerage treatment” means the Board recognized new increment to the base cost of pur-

chased sewerage treatment from a purveyor to a sewer utility.

“Public entity” means any governmental entity, including a utilities authority, empowered by law to establish rates or charges for the sale of sewerage treatment.

“Purchased sewerage treatment adjustment clause” means the methodology by which a sewer utility obtains recognition in its rates of an increase or decrease in the cost of sewerage treatment purchased by it from a sewerage treatment purveyor.

“Revenue tax factor” means the tax factor applied to recoup the Gross Receipts and Franchise Taxes at the rate established in a sewer utility’s last base rate or adjustment clause case.

“Sewerage treatment purveyor” means any governmental entity, including a utilities authority or commission, empowered by law to establish sales or charges for the treatment of sewerage; or a private entity, whose rates for the sale of sewerage treatment are regulated by the Board.

“Sewerage treatment utility using a flat rate basis” means any sewer utility whose rates and tariffs are not designed on a metered flow basis.

“Sewer utility” means any investor owned sewer utility subject to the regulation of the Board which purchases sewerage treatment from a sewerage treatment purveyor.

“Sewer utility using a metered basis” means any sewer utility whose rates and tariffs are designed on a metered flow basis.

“Truing Up Schedules” means a detailed analysis reconciling the proposed or new cost of purchased sewerage treatment with the most recent base cost approved by the Board.

14:9-8.3 Petitions for Purchased Sewerage Treatment Adjustment Clauses; Truing Up Schedules; time for filing

(a) A sewer utility with purchased sewerage treatment costs exceeding 10 percent of its total Operating and Maintenance expense shall file a petition with the Board for approval of a purchased sewerage treatment adjustment clause to reflect in its rates an increase or a decrease in the cost of sewerage treatment purchased by it. The petition shall be filed as soon as the sewer utility can reasonably compile the data required by this subchapter after notification of an increase or decrease in charges by its sewerage treatment purveyor, but in no event later than 30 days after such notification.

(b) No purchased sewerage treatment adjustment clause shall be approved unless a sewer utility, within the prior three years, has had its base rates set by the Board in a decision and order which established base level data against which the new cost of purchased sewerage treatment can be measured.

(c) Within 30 days after its purchased sewerage treatment adjustment clause has been in effect for one year, a sewer utility shall file schedules with the Board which true up its actual recovery of costs under the clause with the previous Board allowed recovery of such costs.

14:9-8.4 Petitions For Purchased Sewerage Treatment Adjustment Clauses; content; procedures

(a) A petition for approval of a purchased sewerage treatment adjustment clause, for an increase or decrease therein, and for the filing for approval of a truing up schedule shall include the following:

1. A copy of the contract for purchased sewerage treatment approved in the sewer utility’s most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later, and copies of the present and the proposed purchased sewerage treatment contracts, including price and detailed financial statements of associated expenses;
2. The actual number and classes of customers as approved in the sewer utility’s most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later, and as of the end of the most recent calendar year;
3. The actual volume of sewerage treatment purchased as approved in the sewer utility’s most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later, and as of the end of the most recent calendar year;
4. A calculation of a proposed cost per unit of volume using the methodology approved by the Board in the sewer utility’s most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later;
5. Copies of the Board’s Orders, including stipulations, if any, in the sewer utility’s latest base rate case and in its most recent intervening purchased sewerage treatment adjustment clause case;
6. A proposed tariff schedule, entitled “Purchased Sewerage Treatment Adjustment Clause,” to implement the proposed purchased sewerage treatment adjustment clause. Said schedule shall set forth all rate schedules in the sewer utility’s tariff which are affected by the clause;

7. Volumes and costs under the sewer utility's present contract and the proposed contract, with specific calculations showing the basis of any volume and/or cost differential from the base cost of purchased sewerage treatment on a cost per unit basis;

8. A schedule truing up the proposed cost of purchased sewerage treatment with the most recent level of base cost of purchased sewerage treatment and the most recent level of Board approved rates. This schedule shall contain an adjustment for any under/over recovery of revenues related to the cost of purchased sewerage treatment allowed in the adjustment clause; and

9. A detailed description of the efforts of the sewer utility to investigate and analyze the basis for any increase in rates proposed by its sewerage treatment purveyor as well as a detailed description of the sewer utility's findings. The utility shall also fully describe its efforts in actively participating in the process to assure that these rates are just and reasonable.

(b) Base levels of sewerage treatment and base costs as set forth in the sewer utility's previous base rate case shall be established in each subsequent base rate filing.

(c) Interest on any over recovery shall be considered in each purchased sewerage treatment adjustment clause proceeding and reflected appropriately.

(d) The amount of a rate adjustment allowed by the Board in a purchased sewerage treatment adjustment clause proceeding shall be listed separately and identified on customer bills.

(e) A copy of the petition and all exhibits shall be served upon the Department of the Public Advocate, Division of

Rate Counsel, simultaneously with the filing thereof with the Board.

(f) In reviewing the petition, the Board may consider such additional relevant information or financial analysis as it deems appropriate.

(g) Filings pursuant to these rules shall be considered contested cases and shall be heard in accordance with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

14:9-8.5 Formula for determination of basic costs by a sewer utility using a flat rate basis

$$\begin{aligned} &\text{Adjustment Clause} = \text{New Cost of Purchased Sewerage Treatment} \\ &\pm \text{Compression or Deferred Accounting} \\ &\times \text{Revenue Tax Factor} \\ &\div \frac{\hspace{10em}}{\text{Number of Customers by Class}} = \text{Annual Charge} \\ &\hspace{10em} \text{Per Customer} \\ &\div \frac{\hspace{10em}}{\text{Billing Cycle}} \end{aligned}$$

14:9-8.6 Formula for determination of Base Costs by a sewer utility using a metered basis

$$\begin{aligned} &\text{Adjustment Clause} = \text{New Cost of Purchased Sewerage Treatment} \\ &\pm \text{Compression or Deferred Accounting} \\ &\times \text{Revenue Tax Factor} \\ &\div \frac{\hspace{10em}}{\begin{aligned} &\text{Base Sewerage Treatment Costs} \\ &\text{Base Sewerage Treatment (Per Tariff Units)} \end{aligned}} \\ &\div \frac{\hspace{10em}}{\text{Billing Cycle}} \end{aligned}$$