

Case Notes

Communication company authorized to acquire part interest in telephone utility. In Matter of Petition of Teleport Communications. 92 N.J.A.R.2d (BRC) 42.

14:1-5.15 Petitions for permission to keep books and records outside the State of New Jersey

(a) Petitions for authority to keep books, records, accounts, documents and other writings outside the State of New Jersey, filed with the Board, as required under N.J.S.A. 48:3-7.8, 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. A complete description of the specific books, records, accounts, documents and other writings proposed to be kept outside the State of New Jersey;
2. The exact location where the books and records will be kept;
3. If all books and records will not be kept outside the State, what remaining records will be kept at the New Jersey location;
4. The reason for proposing to keep its books and records at a location outside the State;
5. The availability of adequate required space, facilities and experienced personnel at the new location;
6. The cost to the petitioner of maintaining the books and records at the new location as compared with that of maintaining the records at the New Jersey location;
7. The extent of the financial advantage to the customers and other benefits to the public utility which will result from keeping the books and records outside the State;
8. Whether the books and records which will be kept at the location outside the State will be, on notice in writing of the Board, produced at such time and place within this State as the Board may designate;
9. Whether the petitioner will pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination, if the Board grants said permission;
10. The location where the petitioner will continue to maintain an office within the State of New Jersey for the convenience of its customers to pay bills, file complaints and conduct other business with the utility; and
11. The name and address of the petitioner's statutory agent.

SUBCHAPTER 6. ANSWERS AND REPLIES

14:1-6.1 Form and content

(a) Any party against whom a petition is directed and who desires to contest the same or make any representation to the Board in connection therewith shall file an answer in writing thereto with the Board.

(b) The answer shall be so drawn as to apprise the parties and the Board fully and completely of the nature of the defense and shall admit or deny specifically and in detail all material allegations of the petition.

(c) Matters alleged by way of affirmative defense shall be separately stated and numbered.

(d) Answers shall not be required in any rate proceeding instituted by a public utility.

14:1-6.2 Time for filing

(a) Unless otherwise provided in these rules or ordered by the Board, an answer, if made, must be filed within 20 days after the service of the pleading against which it is directed. A party desiring to reply to an answer shall file the same with the Board within 10 days after service of the answer.

(b) Whenever the Board believes the public interest requires expedited procedure, it may shorten the time for any answer or reply.

(c) Upon motion on notice to all parties to the proceeding, the Board may, in its discretion, extend or shorten the time to file an answer or reply.

SUBCHAPTER 7. CONFERENCES

14:1-7.1 Purposes

(a) The purpose of this subchapter is to foster early settlement of cases pending before the Board prior to the case being transmitted to the Office of Administrative Law and to provide a vehicle for the parties to file pre-transmittal motions with the Board for retention and disposition of certain issues. Pre-transmittal settlement conferences of parties or their attorneys may be held to provide opportunity for a settlement, subject to approval of the Board, of a proceeding or any of the issues therein, and for the submission and consideration of facts, argument, offers of settlement or proposals of adjustments, as time, the nature of the proceeding and the public interest may permit.

(b) Pre-transmittal conferences of parties or their attorneys may be held to expedite the disposition of any hearing. At such conferences there may be considered, in addition to the matters set forth in (a) above, the following:

1. Identification and simplification of the issues;
2. Admissions or stipulations of facts;
3. Identification of those matters or issues which should either be retained for disposition by the Board or be transmitted to the Office of Administrative Law; and
4. Such other matters as may be properly dealt with to aid in expediting the proceeding.

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Prehearing conferences: discussion of rate proposal process. In re: Revision of Rates by Toms River Water Co., 82 N.J. 201, 412 A.2d 430 (1980).

14:1-7.2 Initiation of conferences

(a) The Board or a Board-designated officer, with or without motion, may direct that a conference be held at any stage prior to transmittal to the Office of Administrative Law or at any time when the Board certifies a case unto itself pursuant to N.J.S.A. 52:14F-8(b).

(b) On motion of a party, the Board-designated officer may direct the parties or their attorneys to appear for a conference to consider the matters set forth in N.J.A.C. 14:1-7.1(b).

14:1-7.3 Stipulation of conference results

(a) Upon conclusion of the pre-transmittal conference, the parties or their attorneys shall reduce the results thereof to the form of a written stipulation reciting the matters agreed upon, and three copies thereof shall be filed with the Board within 10 days of the date of the conference. If no stipulations are reached, the matter shall be immediately transmitted to the Office of Administrative Law.

(b) Such stipulations shall be signed by the parties or their attorneys, may be received in evidence as part of the record and, when so received, shall be binding on the parties with respect to the matters therein stipulated.

(c) Such stipulations are subject to review by the Board at a regularly scheduled agenda meeting.

14:1-7.4 Authority of Board-designated officers

(a) Any Board-designated officer shall have the authority to conduct and preside over pre-transmittal conferences in the interest of fostering resolution of issues.

(b) When appropriate, a Board-designated officer may submit a pre-transmittal order which shall be reviewed by the Board at an agenda meeting and, if acceptable, shall be adopted as its own order.

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

SUBCHAPTER 8. CONTESTED CASE HEARINGS

14:1-8.1 Contested case procedures

The hearing in any matter which is determined by the Board to be a contested case shall be conducted pursuant to the procedures in the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1, and the Board of Public Utilities Rules of Special Applicability, N.J.A.C. 1:14.

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

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Failure to object to receipt of financial records in evidence part of grounds for denial of motion for further hearings on rate increase; rate increase approved. In re: Petition of Landfill and Development Co., 207 N.J.Super. 5, 503 A.2d 881 (App.Div.1985).

Action to enjoin tree removal on easement by utility is within jurisdiction of Board of Public Utilities for resolution as a contested case. *Boss v. Rockland Electric Co.*, 95 N.J. 33, 468 A.2d 1055 (1983).

Board does not have power to override municipality's refusal to grant private water company a franchise nor municipal authority's refusal to consent to private water company's commencement or extension of operation within the authority's territory. In re: Petition of South Lakewood Water Co., 61 N.J. 230, 294 A.2d 13 (1972).

Sewage company was denied additional rate revenues. In the Matter of the Petition of Valley Road Sewage Company for an Approval of an Increase in its Rates, 94 N.J.A.R.2d (BRC) 79.

Denial of water company's proposed rate increase to cover cost of new project was proper. In the Matter of the Petition of New Jersey American Water Company for an Increase in Rates, 94 N.J.A.R.2d (BRC) 60.

Utility company's rate and tax increases were appropriate. In the Matter of the Petition of Jersey Central Power & Light Company, 94 N.J.A.R.2d (BRC) 49.

Power and light company's proposal to offer services and equipment to protect sensitive electronic equipment from power disturbances approved. In the Matter of Jersey Central Power & Light Co.'s Petition for Authorization to Implement a Conditioned Power Service Program, 94 N.J.A.R.2d (BRC) 41.

Power and light company's economic recovery tariff riders and programs approved. In the Matter of the Petition of Jersey Central Power & Light Company for Approval of Economic Recovery Tariff Riders, 94 N.J.A.R.2d (BRC) 39.

Board rejected Rate Counsel's proposals to modify telephone company's plan for an alternative form of regulation because the plan comported with the Board's prior decision and order. In the Matter of New Jersey Bell Telephone Company's Application for Approval of Its Plan for an Alternative Form of Regulation, 94 N.J.A.R.2d (BRC) 26.

Attempt to reopen a challenge to water and sewage billing practices and rates denied. Holiday Lake, Inc., et al. v. Montague Water Company, 94 N.Y.A.R.2d (BRC) 23.

Rate increase proposed by public utility company to cover reasonable remediation costs for manufactured gas plant sites would be granted. In the Matter of the Petition of Public Service Electric and Gas Company for Approval of an Increase in Rates, 94 N.J.A.R.2d (BRC) 1.

Electric utility was not entitled to recover interest related to Nuclear Performance Standard penalty incurred as result of substandard performance of nuclear generating units. In Matter of Motion of Public Service Electric and Gas Company, 93 N.J.A.R.2d (BRC) 149.

Increased gross receipts and franchise tax payments warranted grant to electric utility of rate increase. In Matter of Petition of Atlantic City Electric Company, 93 N.J.A.R.2d (BRC) 117.

Electric utility entitled to rate of return of 10.28 percent based upon allowed return on equity of 12.2 percent. In Matter of Petition of Jersey Central Power & Light Company, 93 N.J.A.R.2d (BRC) 85.

Settlement stipulation adopted in water utility rate proceedings; 4.863 percent increase in annual revenues over present pro forma revenues granted. In Matter of Petition of Elizabethtown Water Company, 92 N.J.A.R.2d (BRC) 81.

Electric utility rate proceeding stipulation substantially adopted; \$5.1 million dollar annual revenue increase approved. In Matter of Petition of Rockland Electric Company, 92 N.J.A.R.2d (BRC) 61.

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

Consolidated tax adjustment and rate proceeding stipulation adopted. In Matter of Petitions of New Jersey Gas Company, 92 N.J.A.R.2d (BRC) 49.

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.

Contract between water utility and state water supply authority was prudent; interim rate adopted as permanent with slight reduction. In Matter of Petition of Adelphia Water Company, Inc., 92 N.J.A.R.2d (BRC) 16.

Electric utility sought energy adjustment and hotel casino service adjustment, sought to retain portion of fuel and energy savings resulting from purchase power agreement, and sought recovery of interest paid due to exclusion of power plant deferral and nuclear performance standard penalty amount from fuel underrecovery balance; partially denied and partially deferred. In Matter of Atlantic City Electric Company Tariff PUC NJ. No 9, 92 N.J.A.R.2d (BRC) 7.

Rate increase for sewer and water customers was reasonable. In Matter of Petition of New Jersey American Water Company, 92 N.J.A.R.2d (BRC) 1.

14:1-5.12A Changes to adjustment clause rates

(a) Unless otherwise ordered or permitted by the Board, in every instance where a utility, subject to the jurisdiction of the Board, has filed or may hereafter file, with the approval of the Board, a clause in its tariff providing for an adjustment to its rates for a utility service or product based upon changes in the cost of a basic raw material (sometimes known as a levelized energy adjustment clause or a levelized gas adjustment clause or a purchased gas adjustment clause), it shall conform to the following requirements whenever an adjustment would become effective thereunder which would result in charges being imposed for the utility service or product that would differ from the basic rates:

1. Not less than seven days prior to the date upon which the initial or any subsequent adjustment is to become effective, a supplemental tariff sheet shall be filed setting forth the amount of the adjustment for each classification of service and the proposed effective date thereof.
2. The filing of the supplemental tariff sheet as provided in paragraph 1 of this subsection shall be accompanied by a detailed calculation showing for each class of service the calculation by which the proposed adjustment was derived, the amount by which the said adjustment will increase or decrease utility operating revenues on an annual basis, and the amount by which the change in the basic raw material cost will increase or decrease operating revenue deductions on an annual basis.
3. The filing of the supplemental tariff sheet referred to in paragraph 1 of this subsection shall also be accompanied by any additional information which the Board may have required in any order or other authorization by which the adjustment clause was permitted to be filed, or which the Board may hereafter require with respect to such a filing.

(b) The adjustment clauses and requirements set out in (a) above do not pertain to Purchase Water Adjustment Clauses or Purchased Sewerage Treatment Adjustment Clauses as the criteria for these clauses are specifically addressed in N.J.A.C. 14:9-7 and 14:9-8, respectively.

Recodified from N.J.A.C. 14:11-1.13 and amended by R.1998 d.84, effective February 2, 1998.
See: 29 N.J.R. 4250(b), 30 N.J.R. 563(a).
Added (b).

14:1-5.13 Informal complaint in lieu of petition

(a) In lieu of filing a petition, an informal complaint may be made by letter or other writing.

(b) Matters thus presented may be taken up by the Board with the parties affected by correspondence or otherwise, in an endeavor to bring about an adjustment of the subject matter of the complaint without formal hearing order.

(c) While no form of informal complaint is prescribed, to be considered by the Board such informal complaint must be signed and state the name and address of the complainant and the party complained of as well as the essential facts upon which the complaint is based, including the dates of acts or omissions complained of.

(d) Informal complaints are usually assigned to the Board's appropriate operating division which deals with the subject matter involved. This division then brings the matter to the attention of the utility and directs the latter to submit information deemed to be pertinent as well as a statement of its position.

(e) Following a study and review of the complainant's and utility's positions and supporting data and after such informal conferences as may be held, an attempt is made to affect an amicable adjustment of the dispute.

(f) A letter is then forwarded to the complainant with a copy to the utility reflecting the results, if any, of the processing of the informal complaint.

(g) Informal complaints shall be without prejudice to the right of any party to file a petition or of the Board to institute a formal proceeding.

(h) While informal complaints are recommended wherever practicable as a method designed for amicable adjustment of disputes, no mandatory or prohibitory order will be issued on an informal complaint.

(i) A party desiring a decision on order of the Board must file a petition.

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

14:1-5.14 Petitions for approval of a merger or consolidation

(a) Petitions for approval of a merger or consolidation of one public utility of New Jersey with that of another public utility 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 and 5.9 to the extent applicable, and shall contain in the petition, or as attached exhibits, the following information:

1. A copy of the agreement of merger or consolidation;

2. Copies of corporate resolutions of the stockholders of each of the corporations authorizing the transaction;

3. Copies of recent balance sheets of each company and a pro forma balance sheet of the continuing company;

4. Copies of recent income statements of the operation of each of the companies involved and a pro forma income statement of the continuing corporation, in sufficient detail;

5. Copies of certificates of incorporation of each corporation to be merged and amendments thereto, if not heretofore filed with the Board;

6. The total number of shares of each of the various classes of capital stock proposed to be issued, if any, by the surviving corporation; the par or stated value per share; and the total amount of new capital stock to be issued;

7. The percentage, and the manner in which, if any, the presently outstanding capital stock of the corporations involved will be exchanged for the new stock of the surviving corporation;

8. Whether any franchise cost is proposed to be capitalized on the books of the surviving corporation, and, if so, the reasons therefor, and in what manner and over what period the items are proposed to be amortized;

9. The names and addresses of the new officers, directors and principal stockholders and the number of shares to be held by each in the surviving corporation;

10. The various benefits to the public and the surviving corporation which will be realized as the result of the merger;

11. Proposed changes, if any, by the surviving corporation, in company policies with respect to finances, operations, accounting, rates, depreciation, operating schedules, maintenance and management affecting the public interest;

12. Proof of service of notice of the proposed merger to the public, the municipalities being served by the companies to be merged, and the public utilities serving in the area, pursuant to N.J.A.C. 14:1-4.5;

13. Proof of compliance with rules, regulations and statutes requiring approval from other State and Federal regulatory agencies having jurisdiction in the matter; and

14. A statement of the fees and expenses to be incurred in connection with the merger and the accounting disposition to be made thereof on the books of the surviving corporation.

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), deleted ", as well as N.J.A.C. 14:11-1.3" preceding "to the extent applicable".