

**TITLE 14**

**PUBLIC UTILITIES**

**CHAPTER 1**

**RULES OF PRACTICE**

**Authority**

N.J.S.A. 47:1A-1 et seq., 48:2-12 and 52:27F-18.

**Source and Effective Date**

R.2008 d.79, effective March 3, 2008.  
See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 1, Rules of Practice, expires on March 3, 2015. See: 43 N.J.R. 1203(a).

**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).

Subchapter 11, Public Utility Tariffs, was recodified from N.J.A.C. 14:11-7 by R.1998 d.84, effective February 2, 1998. See: 29 N.J.R. 4250(b), 30 N.J.R. 563(a).

Chapter 1, Rules of Practice, was readopted as R.2002 d.337, effective September 19, 2002. See: 34 N.J.R. 1769(a), 34 N.J.R. 3639(a).

Subchapter 12, Procedures for Determining the Confidentiality of Submitted Information, was adopted as R.2003 d.290, effective July 21, 2003. 34 N.J.R. 2271(b), 35 N.J.R. 3368(b).

Chapter 1, Rules of Practice, was readopted as R.2008 d.79, effective March 3, 2008. As a part of R.2008 d.79, Subchapter 11, Public Utility Tariffs, was repealed, effective April 7, 2008. 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).

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. GENERAL PROVISIONS**

- 14:1-1.1 Scope
- 14:1-1.2 Construction and amendment
- 14:1-1.3 Definitions
- 14:1-1.4 Offices and hours
- 14:1-1.5 Requesting Board action on a complaint
- 14:1-1.6 Communications
- 14:1-1.6A Submittal of comments on rule proposals
- 14:1-1.7 Official records
- 14:1-1.8 Cameras and recording devices

**SUBCHAPTER 2. FEES AND CHARGES**

- 14:1-2.1 Amount of fees and charges
- 14:1-2.2 Payment of fees and charges

**SUBCHAPTER 3. APPEARANCE BEFORE THE BOARD**

- 14:1-3.1 Appearances
- 14:1-3.2 Ethical conduct
- 14:1-3.3 Former employees

**SUBCHAPTER 4. PLEADINGS**

- 14:1-4.1 Pleadings enumerated and defined
- 14:1-4.2 Number of copies
- 14:1-4.3 Attachments to pleadings
- 14:1-4.4 Defective pleadings
- 14:1-4.5 Service and notice of proceedings
- 14:1-4.6 Verification
- 14:1-4.7 Changes in facts or circumstances

**SUBCHAPTER 5. PETITIONS**

- 14:1-5.1 Form and content
- 14:1-5.2 Applications to other regulatory bodies
- 14:1-5.3 Joinder of requests for relief
- 14:1-5.4 Procedures of Board on filing of petition
- 14:1-5.5 Petitions for approval of franchises or consents
- 14:1-5.6 Petitions for the approval of the sale or lease of property
- 14:1-5.7 Petitions for authority to change depreciation rates
- 14:1-5.8 Petitions for authority to exercise power of eminent domain
- 14:1-5.9 Petitions for authority to issue stocks, bonds, notes, other evidence of indebtedness or to execute mortgages
- 14:1-5.9A Criteria for proposed security issues
- 14:1-5.10 Petitions for authority to transfer capital stock
- 14:1-5.11 Tariff filings which do not propose increases in charges to customers
- 14:1-5.12 Tariff filings or petitions which propose increases in charges to customers
- 14:1-5.12A Changes to levelized energy adjustment clause rates, basic generation service rates, or basic gas supply service pricing rates
- 14:1-5.13 Informal complaint in lieu of petition
- 14:1-5.14 Petitions for approval of a merger, consolidation, acquisition and/or change in control; standard of review
- 14:1-5.15 Petitions for permission to keep books and records outside the State of New Jersey

**SUBCHAPTER 6. ANSWERS AND REPLIES**

- 14:1-6.1 Form and content
- 14:1-6.2 Time for filing

**SUBCHAPTER 7. CONFERENCES**

- 14:1-7.1 Purposes
- 14:1-7.2 Initiation of conferences
- 14:1-7.3 Stipulation of conference results
- 14:1-7.4 Authority of Board-designated officers

**SUBCHAPTER 8. CONTESTED CASE HEARINGS**

- 14:1-8.1 Contested case procedures
- 14:1-8.2 Argument on exceptions
- 14:1-8.3 Review of initial decision by the Board on its own motion
- 14:1-8.4 Method of reopening
- 14:1-8.5 Motions to reopen
- 14:1-8.6 Rehearing, reargument or reconsideration
- 14:1-8.7 Motions and answers on rehearing

## SUBCHAPTER 9. UNCONTESTED CASE PROCEEDINGS

- 14:1-9.1 Uncontested case proceedings
- 14:1-9.2 Designation
- 14:1-9.3 Filing
- 14:1-9.4 Cameras and recording devices
- 14:1-9.5 Appearances
- 14:1-9.6 Service

## SUBCHAPTER 10. COMPLIANCE WITH ORDERS, DECISIONS AND RECOMMENDATIONS

- 14:1-10.1 Orders and decisions
- 14:1-10.2 Recommendations
- 14:1-10.3 Extension of time limits
- 14:1-10.4 Answers to communications

## SUBCHAPTER 11. (RESERVED)

## SUBCHAPTER 12. PROCEDURES FOR DETERMINING THE CONFIDENTIALITY OF SUBMITTED INFORMATION

- 14:1-12.1 Scope
- 14:1-12.2 Definitions
- 14:1-12.3 Procedure for making a confidentiality claim
- 14:1-12.4 Designation by claimant of a designee for notices and inquiries
- 14:1-12.5 Correspondence, inquiries and notices
- 14:1-12.6 Time for making confidentiality determinations
- 14:1-12.7 Notice of pending confidentiality determination
- 14:1-12.8 Substantiation of confidentiality
- 14:1-12.9 Final confidentiality determination
- 14:1-12.10 Treatment of information pending confidentiality determination
- 14:1-12.11 Availability of information to the public after determination that information is not confidential
- 14:1-12.12 Disclosure of confidential information to other public agencies
- 14:1-12.13 Disclosure of confidential information to contractors
- 14:1-12.14 Disclosure to alleviate an imminent and substantial danger
- 14:1-12.15 Disclosure by consent
- 14:1-12.16 Incorporation of confidential information into accumulations of data
- 14:1-12.17 Confidentiality agreements
- 14:1-12.18 Payment for copies

## 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 and hours**

(a) The statutory office of the Board and the office of the Secretary of the Board are located at 44 South Clinton Avenue, 9th Floor, PO Box 350, Trenton, New Jersey 08625-0350.

(b) 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.

(c) 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).  
 Recodified in part from 14:1-1.5 and amended by R.2008 d.79, effective April 7, 2008.  
 See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).  
 Section was “Offices”. Inserted designation (a).  
 Administrative change.  
 See: 43 N.J.R. 1896(a).

**14:1-1.5 Requesting Board action on a complaint**

(a) All formal petitions that seek to start a formal proceeding before the Board shall conform to N.J.A.C. 14:1-4 and 5.

(b) A formal complaint requesting a formal hearing shall consist of a petition to the Board that meets the applicable requirements of N.J.A.C. 14:1-4 and 5, accompanied by the appropriate fee in the amount and in the manner prescribed in N.J.A.C. 14:1-2.1 and 14:1-2.2.

(c) An informal complaint or filing, requesting Board action without a formal Board proceeding may be made by letter, telephone call, e-mail, fax or other writing, in accordance with N.J.A.C. 14:1-5.13.

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”.  
 New Rule, R.2008 d.79, effective April 7, 2008.  
 See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).  
 Former 14:1-1.5, Hours, recodified to 14:1-1.4.

**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, 44 South Clinton Avenue, 9th Floor, PO Box 350, Trenton, New Jersey 08625-0350.

(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) In a formal proceeding, a document submitted via fax or electronically will neither be date/time stamped as formally received by the Board nor be entered into the case or rulemaking record, except as provided under N.J.A.C. 14:1-1.6A. 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).  
 Amended by R.2008 d.79, effective April 7, 2008.  
 See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).  
 In (c), substituted “In a formal proceeding,” for “If the Board receives” and “or electronically” for “, the document”, and inserted “submitted” and “, except as provided under N.J.A.C. 14:1-1.6A”.  
 Administrative change.  
 See: 43 N.J.R. 1896(a).

**14:1-1.6A Submittal of comments on rule proposals**

(a) This section governs submittal of comments on all rule proposals published by the Board in the New Jersey Register.

(b) (Reserved.)

(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.

(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).

New Rule, R.2006 d.354, effective October 2, 2006.  
See: 37 N.J.R. 3621(a), 38 N.J.R. 4236(c).  
Amended by R.2009 d.189, effective June 15, 2009.  
See: 41 N.J.R. 99(a), 41 N.J.R. 2495(a).

Section was "Submittal of comments on rule proposals, pilot study for electronic submittal." In (a) and in (c), deleted the last sentence; reserved (b); and deleted (g).

#### 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.

(c) Copies of official Board annual reports or other reports will be furnished by the Secretary or its designee upon payment of appropriate fees.

(d) The Board may supplement official reports and documents electronically as deemed appropriate by the Secretary of the Board.

Amended by R.2008 d.79, effective April 7, 2008.  
See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).  
Added (c) and (d).

#### 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 or its designee, 44 South Clinton Avenue, 9th Floor, PO Box 350, Trenton, New Jersey 08625-0350. The check shall include a description as to the nature of the payment.

Amended by R.1997 d.264, effective July 7, 1997.  
 See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).  
 Amended by R.2008 d.79, effective April 7, 2008.  
 See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).  
 In (b), inserted “or its designee” and inserted the last sentence.  
 Administrative change.  
 See: 43 N.J.R. 1896(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, and in addition an electronic version of each filing, proceeding 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.”  
 Amended by R.2008 d.79, effective April 7, 2008.  
 See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).  
 In (a), inserted “, and in addition an electronic version of each filing, proceeding or other paper and amendment thereof”.

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;

iv. A corporate resolution or proposed resolution of the directors of the utility authorizing the issuance of the stock;

v. A copy of a pro forma balance sheet of the new corporation and copy of a pro forma income statement

of estimated operating results anticipated for the first two years of its proposed operations, unless a different period is specified by the Board;

vi. The name of the municipality and the street and number therein;

(1) In which the principal office in this State is to be located, and the name of the agent in and in charge of such principal office upon whom process against the corporation may be served;

(2) In which the principal business office is to be located; and

(3) At which the records, books, accounts, documents and other writings referred to in N.J.S.A. 48:3-7.8 are to be kept and the name, place of residence within this State, and place of business of the agent who shall have custody of said corporate records and upon whom process for the production of the same before the Board may be served. The books of account must be kept in conformity with the appropriate Uniform System of Accounts prescribed by the Board. Books and records must be kept within this State unless authority to do otherwise is obtained from the Board;

vii. A detailed list of organization expenditures;

viii. A copy of a pro forma balance sheet giving effect to the issuance of the proposed securities;

ix. A copy of a pro forma income statement giving effect to the issuance of the proposed securities; and

x. The effective rate of interest or of the cost of money to the petitioner and the reasonableness thereof, if authority is requested to issue stocks, bonds, notes or other evidence of indebtedness by means of private placement and not at a public offering, and the financial sources that the petitioner has contacted in this connection. The petitioner shall submit information as to the computation of the effective rate of interest or of the cost of money as distinguished from the nominal rates which may be indicated;

8. Where one of the purposes is the issuance of bonds to be secured by an existing mortgage, a statement showing the amount and use made of the proceeds of the bonds, if any, already issued under such mortgage;

9. Information relating to the current financial condition of the petitioner setting forth:

i. As to each class of capital stock of the petitioner, the amount authorized and the amount issued and outstanding;

ii. As to each class of preferred stock of the petitioner, a summary statement of the terms of preference thereof;

iii. As to each issue or series of long-term indebtedness of the petitioner, the principal amount authorized to be issued, date of issue, date of maturity, rate of interest and principal amount outstanding; and as to each such issue secured by a mortgage upon any property of the petitioner, the date of said mortgage, name of trustee, principal amount authorized to be secured, and a brief description of the mortgaged property;

iv. Other indebtedness of all kinds, giving same by classes and describing security, if any;

v. The amount of interest charged to income during previous fiscal year upon each kind of indebtedness and rate thereof; and, if different rates were charged, the amount charged at each rate;

vi. The amount of dividends paid upon each class of stock during the previous calendar year and rate thereof; and

vii. A detailed income statement for the previous calendar year and balance sheet showing conditions at the close of that year;

10. A statement whether any franchise or right is proposed to be capitalized directly or indirectly. In case it is proposed to capitalize any franchise as authorized by N.J.S.A. 48:3-5, a copy of such franchise and a statement, together with an affidavit showing the amount actually paid for said franchise shall be attached to the petition;

11. Where any contract, agreement or arrangement, verbal or written, has been made to sell the securities proposed to be issued, a description of such contract, agreement or arrangement and, if in writing, a copy thereof;

12. If no contract, agreement or arrangement has been made for the sale or other disposition of the securities proposed to be issued, the proposed method of sale or other disposition must be set forth together with an affidavit of a competent person showing the amount which can probably be realized from the sale and disposition thereof, and the reasons for the opinion of the affiant;

13. Petitions filed under this rule shall contain a certified copy of the resolution of the Board of Directors or other authority authorizing the proposed issuance of securities and shall be verified. The verification shall include a statement that it is the intention of the petitioner in good faith to use the proceeds of the securities proposed to be issued for the purposes set forth in the petition; and

14. Information which under this rule is required to be set forth in a petition or any exhibit attached thereto and which is contained in any report, document, pleading or other instrument previously filed with the Board pursuant to any requirement of any statute or any rule of the Board, may be incorporated in such petition or exhibit by reference to the official filing thereof with the Board provided that said information is still correct in all respects.

(b) Whenever approval is granted under the provisions of N.J.S.A. 48:3-9 for the issue of stocks, notes, bonds or other evidences of indebtedness, the company securing such approval shall semiannually file with the Board a statement setting forth:

1. The amount of stocks, notes, bonds or other evidences of indebtedness, issued under the order of approval; and
2. The extent to, and in detail, the manner in which the proceeds thereof have been disbursed.

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)9vi and vii, substituted "calendar year" for "fiscal year".  
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. 14:11-1.7(a) recodified as 14:1-5.9(b).

#### Case Notes

Water company authorized to issue and sell debentures through competitive bidding, with the inclusion of a "negative pledge". In the Matter of the Petition of Elizabethtown Water Co. for Authority to Issue and Sell up to \$50,000 of Debentures, 94 N.J.A.R.2d (BRC) 45.

Water utility authorized to sell preferred stock for purpose of purchasing second utility. In Matter of Application of Middlesex Water Company, 93 N.J.A.R.2d (BRC) 34.

Private placement of bond offering authorized for gas utility. In Matter of Petition of South Jersey Gas Company, 92 N.J.A.R.2d (BRC) 41.

#### 14:1-5.9A Criteria for proposed security issues

(a) The law at present casts upon the Board the responsibility of determining what security issues may be made by public utilities in the State of New Jersey (N.J.S.A. 48:3-9). The Board, after due hearing, or investigation, is required to approve proposed security issues; provided the Board be satisfied that proposed issues are in accordance with law, and provided the Board approves the purpose of said proposed issues.

(b) So far as the Board's approval of the purpose of a proposed security issue is concerned, the Board is already on record to the following effect:

"The term 'purpose', in the opinion of the Board, cannot and ought not narrowly be confined merely to the corporation's intention to procure or pay for property, materials and services with the proceeds of the securities intended to be issued. The powers and responsibilities of the Board in this respect are no less ample than may fairly be inferred from the spacious term 'purpose' advisedly incorporated in the Statute." (Memorandum dated July 7, 1911. In the matter of the Application of the Riverside Traction Company for Leave to Issue, Sell and Deliver Bonds, and so forth)

(c) Various cases involving the approval of proposed security issues have been acted upon by the Board under the law. An analysis of many of these cases discloses certain general principles upon which these applications should be determined. These general principles will control unless and until good reason can be shown for departing therefrom. For the information of public utilities petitioning or intending to petition for the approval of security issues, certain of these general principles are set forth as follows:

1. The two conditions first named above must in all cases be met. These are that a proposed issue must be in accordance with the law, and that the purpose of a proposed issue must be approved by the Board.

2. The purpose of a proposed issue is not commendable, and will not carry the Board's approval where the issue, if approved, would result in an evasion of mandatory statutory provisions governing the issue, sale and delivery of securities. Thus in the case of the Riverside Traction Company, cited in (b) above, the purpose of a proposed bond issue was held vitiated by the fact that said bond issue, if approved, would defer for a time or indefinitely postpone an assessment for an unpaid percentage of the face value of the stock issued and outstanding.

3. Where approval of security issues is asked, and statement is made of the use to which proposed securities are to be put, the Board endeavors through its inspectors, engineers or other Board authorized representatives to determine that the proceeds of the securities whose issue is asked shall be reasonably commensurate with the property or services to be purchased therewith. Where the property whose acquisition is sought can be inventoried and appraised, such a course is followed with as much care and in such detail as under all the circumstances is possible. Where the property or services to be acquired cannot be physically inventoried, because not yet existent, such estimate is made on the basis of unit prices and otherwise, with as much care and in such detail as is possible under all the circumstances. Approval by the Board of such proposed issue of securities does not carry or imply any confirmation of the business or financial standing of the issuing corporation as a whole. It must be recognized that no care exercised in the way of approval by the Board at the time securities are issued can preclude the subsequent chance of poor management, dishonesty, or reckless and irresponsible ill-fortunate, by which the assets of a public utility may be lessened or impaired. The intent of the statute and the Board's action thereunder seek to preclude promotion or subsequent inflated issues. No statute and no administrative process, however, can relieve the investor of the obligations of prudence and vigilance. At the best they can but aid him in furnishing some grounds for the exercise of intelligent judgment.

4. Where petition is made for the approval of the issue of bonds or notes, where said bonds or notes are to be sold at a discount, the Board has adopted the general policy of approving such issues only upon the companies' undertaking to amortize the bond discount in accordance with certain stipulations inserted in the Board's order of approval or in accordance with the requirements of the applicable Uniform System of Accounts. Where, for example, five per cent debt securities are sold at a price below their face value, the result of the sale is as follows: First, an increase of the company's liabilities to the amount of the principal or face amount of the debt securities; Second, an increase of the company's assets to the amount of cash realized. The difference is commonly entered as an asset termed "Unamortized Debt Discount and Expense". This asset is practically a dummy asset. If the company is to make its real assets equal to its added liabilities, it must add to its property an amount equal to the amount recorded therein. The most effectual way would seem to be to lay aside from earnings an annual amount. The setting aside of this amount annually must be done before the company is entitled to declare or make any dividend. It is true that the process implies that the consumer must contribute in rates more than he would be required to pay if no amount were needed annually for this amortization. On the other hand, if the bond had been sold at par, a higher rate than the assumed five per cent would have been exacted by the lender to the company, and this higher rate of interest would have been included in the annual fixed charges. The higher fixed charges would have imposed a greater annual payment upon consumers. Practically, therefore, the burden which amortization imposes on the consumer is simply the necessary outcome of the process of issuing bonds at less than par. It would not disappear but only change its form, if the bonds were sold at par and the real rate of interest thereon were not disguised. It has been progressively acknowledged that bond discount is not properly chargeable to capital account, but should be amortized within the life of the obligation. In certain authorizations of bond issues by this Board, request has been made by the issuing corporation that a specific sum shall be named by the Board to be set aside annually for this purpose. It may be taken as the rule, therefore, that the Board's approval of bond issues will be contingent upon the petitioner's acceptance of a proper amortization provision where necessary. But the provision may vary in different cases, according to the life of the bond, the desire of the company to expedite the process, and the varying capacity of different utilities to provide expeditiously for proper amortization.

5. Where a petition for Board's approval of a security issue contains provision for calling the securities at a premium before maturity, it is realized that in certain instances refunding of securities at a premium before maturity might effect such a reduction of fixed charges as to be advantageous both to the company and the consumers. Accordingly, the Board in approving security issues

will not sanction redemption before maturity at a premium at the company's sole option; should the issuing company, however, reserve such right of redemption at a fixed premium before maturity subject to future approval by the Board after due hearing or investigation, the Board will consider in any case the inclusion of such provision in its formal order of approval.

6. In acting upon petitions for the approval of proposed issues of debt securities, the Board will insist on adequate evidence of the probability that the fixed charges can be regularly met, and that the principal sum can be repaid at maturity. Where such debt securities are to be issued by a public utility now operating, the past and current earnings of the public utility will be a relevant consideration. Also worthy of consideration will be such probable changes in earnings as properly may be expected to result from the property to be acquired by the proposed issue:

i. Where the company is newly projected, and where past experience is not available to indicate the probable return in revenue to the company, debt security issues, if they are to be approved, must carry a reasonable probability that, with average good management, fixed charges may be regularly met and ultimate payment of the principal sum may be provided;

ii. Where approval of proposed stock issues is requested, the Board will endeavor to be assured that the stock issues will secure for the public utility additional property commensurate with the par value of the stock issue proposed. The investor in stock knowingly takes a chance of return which the investor in debt securities commutes for a specified return of fixed amount. For this reason the Board does not feel obliged to be assured of the probability of returns upon stock as it does in the case of proposed debt security issues.

7. Certain special cases of proposed security issues may arise under certain circumstances, some of which are set forth hereafter. In these special cases the general principles outlined above will be applied so far as seems equitable, and exceptions made only where the general principles enunciated therein would work inequitably. Among the special cases may be mentioned the following:

i. Where a bond issue has previously been sanctioned under a mortgage or deed of trust providing that all bonds issued thereunder shall be identical in tenor, and where some part of the authorized bonds has not yet been actually issued, in some cases the Board does not feel that it can impose, as a condition of authorizing a remaining and unissued part of the total issue authorized, requirements against redemption at a premium prior to maturity;

ii. Where petitions request authority to issue new securities in order to refund outstanding securities, the new securities, to issue, must conform to such requirements as would be imposed if the refunding securities

were an original issue. The refunding debt and equity securities must be backed respectively by proportionate amounts of cash, or property of actual cash value. The refunding issues must afford the same likelihood of meeting their fixed charges and payment of the principal sum at maturity as is indicated in (c)6 above. Nor will agreements or contracts providing for refunding of security issues where such agreements or contracts were made prior to the enactment of Chapter 195 of the Laws of 1911, (now N.J.S.A. 48) be regarded by the Board as invalidating or overriding the authority over security issues vested in this Board by said Act. The power conferred upon this Board to disapprove proposed security issues not in accordance with law or whose purpose is not approved by the Board is expressly conferred by the Act of April 21, 1911 (Chapter 195, Laws of 1911) (now N.J.S.A. 48:3-9), and this power is not restricted by any other provision of the law governing public utilities, or corporations generally. All such agreements or contracts, however binding upon the individual parties thereto they might have been, in default of the Legislature's subsequently vesting power over proposed security issues in this Board, are not controlling so as to delimit the Board's action upon proposed security issues. For such outstanding securities as may legally have come into existence prior to the passage of the Act of April 21, 1911, this Board has no responsibility. But its authority is not delimited by expectations that may have been created by reason of agreements or contracts between private parties made prior to the enactment of the statute in question. Where the provisions of such agreements or contracts involve issue of new securities, they must be submitted to this Board.

8. The declaration of dividends in the form of stock by public utilities is permissible only in such cases as this Board with or without hearing may authorize. To declare such a stock dividend without first obtaining the approval of the Board is a misdemeanor, and all such securities issued without the Board's approval are illegal. In general, the Board will approve the issue of stock dividends by public utilities only after hearing or investigation, and after being satisfied that as the outcome of such issues the property and other net assets of the company over and above other liabilities resting thereon shall be equal to the par or stated value of the total stock outstanding after such stock dividends have been made. Adequate depreciation reserves and surplus must also be provided by a public utility petitioning to issue a stock dividend, and a careful inquiry will be made by the Board into the methods by which were accumulated assets or property against which the additional stock dividend is to be justified. In addition, the petition must contain a reasonably detailed inventory of its property used or useful, or held for future use and priced at original cost, estimated if not known.

9. For the information of all public utilities intending to petition this Board for the approval of proposed security issues, reference should be made to the Board's rules. The requirements of this Order and the rules as to the form and content of petitions should be carefully observed. Petitions should be filed sufficiently in advance of the time at which approval of securities is desired to insure the Board reasonable time to make the relevant inquiries. The larger the proposed issue, and the more complex the conditions surrounding it, the earlier should the petition be filed with the Board. The petitions will be acted upon hereafter in the order of their filing as indicated by the dating stamp of the Secretary's office. Petitions essentially defective in form or content will not be listed for consideration until properly amended. Where such petitions involve the necessity of inventorying property or checking accounts, the public utility applying for such authorization is requested to give such assistance as is within its power by putting its engineers, managers, and accountants in touch with the Board's engineers or other Board authorized representatives. Where the annual reports required of public utilities have not been promptly filed as by the rules of this Board, or where such accounts, when filed, disclose failure upon the part of the public utility to comply with the requirements of law or with the terms upon which previous security issues of said utilities have been approved by this Board, any subsequent petition for the approval of securities by a public utility shown to be default may be postponed until the requisite and legal compliance with the law and the lawful rules of this Board has been made by said public utility.

Recodified from N.J.A.C. 14:11-1.6 and amended by R.1998 d.84, effective February 2, 1998.  
See: 29 N.J.R. 4250(b), 30 N.J.R. 563(a).

#### 14:1-5.10 Petitions for authority to transfer capital stock

(a) Petitions for authority to transfer upon the books and records of any public utility, pursuant to N.J.S.A. 48:3-10, any share or shares of its capital stock, 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 name and address of the proposed transferor and transferee;
2. A description of the proposed transferee including information as to whether the proposed transferee is a public utility, a holding company either separately or by affiliation in a utility holding company system, or a person or other domestic or foreign corporation;
3. A description of the capital stock proposed to be transferred including the class of shares, number of shares and the par or stated value thereof;

4. The percent in interest of the outstanding voting capital stock of the public utility which the proposed transfer, either by itself or in connection with other previous sales or transfers, will vest in the transferee;

5. The reason for the proposed transfer;

6. Details and explanation of any changes expected to be made, if the petition is approved, in:

- i. The board of directors;
- ii. Officers and active managers; and
- iii. Company policies with respect to its operations, financing, accounting, capitalization, rates, depreciation, maintenance, services and any other matters affecting the public interest; and

7. The qualifications and the business or technical experience of the proposed officers, directors and stockholders, or other principal management and operating personnel with particular respect to their ability to carry out the utility's obligation to render safe, adequate and proper service.

**14:1-5.11 Tariff filings which do not propose increases in charges to customers**

(a) Tariff filings for the purpose of making effective initial tariffs or revisions, changes or alterations of existing tariffs and which are not filed because of the need for additional revenue from products or services covered by existing tariffs and which do not propose increases in charges to customers, 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. Four copies of the proposed tariff or revision, change or alteration thereof, together with an explanation of the manner in which the tariff or change differs from the existing or prior tariff, and the effect, if any, upon revenue;
- 2. A statement of the reasons why the tariff or change is proposed to be filed;
- 3. A statement of notices given, if any, together with a copy of the text of each said notices;
- 4. A statement as to the date on which it is proposed to make the tariff or change effective, which date shall not be earlier than 30 days after the filing unless otherwise permitted by the Board; and
- 5. In the case of initial tariffs, pro forma income statements for each of the first two years of operations and actual or estimated balance sheets as at the beginning and end of each year of said two-year period.

**Case Notes**

Unilateral rate discount requested by a customer over the objection of a utility denied. In the Matter of the Petition for Expedited Decision and Order Approving Proposed Tariff, 94 N.J.A.R.2d (BRC) 143.

Proposed Indigenous Refinery Gas Conversion Service tariff and Gross Receipts and Franchise Tax approved. In the Matter of the Petition of Public Service Electric and Gas Co. for Approval of Tariff, 94 N.J.A.R.2d (BRC) 129.

Sewage company's motion to reduce volumetric treatment rate denied. In the Matter of the Petition of Atlantic City Sewage Company for Approval of Increased Tariff Rates, 94 N.J.A.R.2d (BRC) 21.

Customer request interrupt service rate; no basis for stay pending appeal. In Matter of Filing by New Jersey Bell Telephone Company of Revision of Tariff B.P.U.—N.J. No. 2, 93 N.J.A.R.2d (BRC) 33.

**14:1-5.12 Tariff filings or petitions which propose increases in charges to customers**

(a) Tariff filings or petitions for the purpose of making effective or making revisions, changes or alterations of existing tariffs which propose to increase any rate, fare, toll, rental or charge or so to alter any classification, practice, rule or regulation as to result in such an increase, other than filings to effectuate the operation of an existing fuel or raw materials adjustment clause, 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, contain all applicable information and data set forth in N.J.A.C. 14:1-5.11 and, in addition, shall contain the following information and financial statements which shall be prepared in accordance with the applicable Uniform System of Accounts:

- 1. A comparative balance sheet for the most recent three-year period (calendar year or fiscal year);
- 2. A comparative income statement for the most recent three-year period (calendar year or fiscal year);
- 3. A balance sheet at the most recent date available;
- 4. A statement of the amount of revenue derived in the calendar year last preceding the institution of the proceedings from the intrastate sales of the product supplied, or intrastate service rendered, the rates, tolls, fares or charges for which are the subject matter of the filing;
- 5. A pro forma income statement reflecting operating income at present and proposed rates and an explanation of all adjustments thereon, as well as a calculation showing the indicated rate of return on the average net investment for the same period as that covered by the pro forma income statement, that is, investment in plant facilities plus supplies and working capital to the extent claimed, less the reserve for depreciation and advances and contributions for facilities;
- 6. If the request for rate relief is based upon N.J.S.A. 48:2-21.2, there shall be included, in lieu of the requirements of (a)5 above, a statement showing that the facts of the particular situation meet the statutory requirements;

7. Whenever a telephone company seeks to increase its rates, it shall include in its petition or attachments thereto information demonstrating the principles of rate design employed in the proposed tariff revisions. Such informa-

tion shall identify the approximate percentage of increased revenue requirement, should the Board determine a lesser additional revenue requirement than that sought by the company, at which it would derive a different proportion of revenue requirement from each of the major classes of service whose prices are sought to be increased, and the revenue requirement by class at each such level. The information shall include a statement of the amount and percentage of increase which would be raised from each such class of service if relief of approximately one-third the request were approved by the Board;

8. In providing the information required by (a)5, 6 and 7 above, a company may also file, in addition to the new rates proposed to become effective, alternative rate changes designed to produce the full revenue request, which alternatives are illustrative of the application of other possible rate designs to the filing;

9. An itemized schedule showing all payments or accruals to affiliated companies or organizations and to those who own in excess of five percent of the utility's capital stock regardless of the form or manner in which such charges are paid or accrued and an explanation of the service performed for such charges; and

10. A copy of the form of notice to customers.

(b) Each utility that makes a filing under (a) above shall, unless otherwise ordered or permitted by the Board, give notice thereof as follows:

1. Serve a notice of the filing and a copy of the proposed tariff or a copy of the petition or a statement of the effect of the proposed filing upon the municipal clerk in each of the municipalities in which there is rendered a service, the charge for which is proposed to be increased, the clerk of the Board of Chosen Freeholders of each affected county and, where appropriate, the executive officer of each affected county;

2. Serve a notice of the filing and two copies of the petition or tariff on the Department of Law and Public Safety, 124 Halsey Street, P.O. Box 45029, Newark, New Jersey 07101 and on the Director, Division of Rate Counsel, 140 East Front Street 4th Floor, P.O. Box 003, Trenton, New Jersey 08625;

3. Serve a notice of the filing and a statement of the effect on customers of various classes on all current customers who are billed on a recurring basis and who will be affected by said filing. Such notice may be by bill insert or by publication in newspapers published and circulated in the utility's service area.

(c) Each utility that makes a filing under (a) above shall, after being advised by the Board of the time and place fixed for hearing, if any and unless otherwise ordered or permitted by the Board, serve notice at least 20 days prior to such time

on those persons specified in (b)1 and 2 above; and shall give such notice to those persons designated in (b)3 above as current customers billed on a recurring basis, by bill insert or by publication 20 days prior to the date set for hearing, in newspapers published and circulated in the utility's service area.

(d) The notices provided for in (b) and (c) above may be given simultaneously.

(e) Where notice is prescribed under this rule, it shall be at the cost and expense of the party obligated to give or serve the notice.

Amended by R.1997 d.264, effective July 7, 1997.

See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).

Amended by R.2008 d.79, effective April 7, 2008.

See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

In (b)2, substituted "Rate Counsel" for "the Ratepayer Advocate".

Administrative change.

See: 46 N.J.R. 2114(a).

#### Case Notes

Solid waste disposal facility rate increase approved in order for operator to raise funds necessary to pay for closure measures and postclosure maintenance required by Department of Environmental Protection. In re: Petition of Landfill and Development Co., 207 N.J.Super. 5, 503 A.2d 881 (App.Div.1985).

Extension of time for examiner's report: discussion of rate proposal process. In re: Revision of Rates by Toms River Water Co., 82 N.J. 201, 412 A.2d 430 (1980).

All public utilities required to file rates and charges with Board; discussion of rate proposal process. In re: Revision of Rates by Toms River Water Co., 82 N.J. 201, 412 A.2d 430 (1980).

Citation as example that Board given discretionary power to require rate filings and to hold hearings thereon (cited as N.J.A.C. 14:1-16.1). In re: Revision of Rates by Redi-Flo Corp., 76 N.J. 21, 384 A.2d 1086 (1978).

In an action in which a water company proposed rate increases after detecting high levels of naturally occurring radionuclides in seven of its eight wells and purchased water from another source rather than treat the water, the company's proposed capital structure was appropriately utilized because the Ratepayer Advocate's recommended use of a hypothetical capital structure, while at times appropriate, was an unnecessary complication for a small water company when the actual capital structure was readily available for the company (modifying 2006 N.J. AGEN LEXIS 464). In re Petition of Parkway Water Co. for Increase in Rates & Charges for Water Service, OAL Dkt. No. PUC 8422-05, 2006 N.J. AGEN LEXIS 938, Final Decision (September 14, 2006).

In an action in which a water company proposed rate increases after detecting high levels of naturally occurring radionuclides in seven of its eight wells and purchased water from another source rather than treat the water, the rate of return on equity was set at 9.75%, because a 10.75% return on equity was excessive and the company's perceived risk factor was not supported by sufficient, credible evidence; while the company was a small water utility, its risk was mitigated by the use of a capital structure with a higher equity to debt ratio (73%/27%), which reduced its financial risk (modifying 2006 N.J. AGEN LEXIS 464). In re Petition of Parkway Water Co. for Increase in Rates & Charges for Water Service, OAL Dkt. No. PUC 8422-05, 2006 N.J. AGEN LEXIS 938, Final Decision (September 14, 2006).

In an action in which a water company proposed rate increases after detecting high levels of naturally occurring radionuclides in seven of its eight wells and purchased water from another source rather than treat the water, the company's seven contaminated wells and the associated pumping and treatment equipment for those wells should have been removed from rate base because these facilities were no longer used and useful (modifying 2006 N.J. AGEN LEXIS 464). In re Petition of Parkway Water Co. for Increase in Rates & Charges for Water Service, OAL Dkt. No. PUC 8422-05, 2006 N.J. AGEN LEXIS 938, Final Decision (September 14, 2006).

In an action in which a water company proposed rate increases after detecting high levels of naturally occurring radionuclides in seven of its eight wells and purchased water from another source rather than treat the water, the wells and facilities associated with the contaminated aquifer were no longer used and useful and the corresponding Contributions in Aid of Construction used to finance their construction should have been removed from rate base (modifying 2006 N.J. AGEN LEXIS 464). In re Petition of Parkway Water Co. for Increase in Rates & Charges for Water Service, OAL Dkt. No. PUC 8422-05, 2006 N.J. AGEN LEXIS 938, Final Decision (September 14, 2006).

In an action in which a water company proposed rate increases after detecting high levels of naturally occurring radionuclides in seven of its eight wells and purchased water from another source rather than treat the water, the removal of the contaminated wells and the related facilities justified a removal of accumulated depreciation from the company's rate base (modifying 2006 N.J. AGEN LEXIS 464). In re Petition of Parkway Water Co. for Increase in Rates & Charges for Water Service, OAL Dkt. No. PUC 8422-05, 2006 N.J. AGEN LEXIS 938, Final Decision (September 14, 2006).

In an action in which a water company proposed rate increases after detecting high levels of naturally occurring radionuclides in seven of its eight wells and purchased water from another source rather than treat the water, the post test year additions of the type and extent proposed by the company were common and routine in nature, and not major in nature and consequence; the company did not provide any supporting credible documentation to ascertain or confirm the in-service dates or the costs for plant additions, and absent such critical information, the additions should have been disallowed (modifying 2006 N.J. AGEN LEXIS 464). In re Petition of Parkway Water Co. for Increase in Rates & Charges for Water Service, OAL Dkt. No. PUC 8422-05, 2006 N.J. AGEN LEXIS 938, Final Decision (September 14, 2006).

In an action in which a water company proposed rate increases after detecting high levels of naturally occurring radionuclides in seven of its eight wells and purchased water from another source rather than treat the water, it was inappropriate to utilize the 1/8 method of operating and maintenance expenses formula for computing a working capital allowance where the company could have used a sampling technique of certain expenses to produce data to determine whether a working capital allowance was required (modifying 2006 N.J. AGEN LEXIS 464). In re Petition of Parkway Water Co. for Increase in Rates & Charges for Water Service, OAL Dkt. No. PUC 8422-05, 2006 N.J. AGEN LEXIS 938, Final Decision (September 14, 2006).

In an action in which a water company proposed rate increases after detecting high levels of naturally occurring radionuclides in seven of its eight wells and purchased water from another source rather than treat the water, in disallowing post test year additions, the revenues associated with the post test year additions were also disallowed (modifying 2006 N.J. AGEN LEXIS 464). In re Petition of Parkway Water Co. for In-

crease in Rates & Charges for Water Service, OAL Dkt. No. PUC 8422-05, 2006 N.J. AGEN LEXIS 938, Final Decision (September 14, 2006).

In an action in which a water company proposed rate increases after detecting high levels of naturally occurring radionuclides in seven of its eight wells and purchased water from another source rather than treat the water, rate case expenses should have been shared 50-50 between ratepayers and shareholders; when a company develops a base rate filing, there is a presumption of estimating rate case costs based on a fully litigated case (modifying 2006 N.J. AGEN LEXIS 464). In re Petition of Parkway Water Co. for Increase in Rates & Charges for Water Service, OAL Dkt. No. PUC 8422-05, 2006 N.J. AGEN LEXIS 938, Final Decision (September 14, 2006).

In an action in which a water company proposed rate increases after detecting high levels of naturally occurring radionuclides in seven of its eight wells and purchased water from another source rather than treat the water, the company was ordered to investigate whether it was more prudent and cost-effective to purchase the water rather than blending water and/or treating the contaminated water (modifying 2006 N.J. AGEN LEXIS 464). In re Petition of Parkway Water Co. for Increase in Rates & Charges for Water Service, OAL Dkt. No. PUC 8422-05, 2006 N.J. AGEN LEXIS 938, Final Decision (September 14, 2006).

In an action in which a water company proposed rate increases after detecting high levels of naturally occurring radionuclides in seven of its eight wells and purchased water from another source rather than treat the water, depreciation expenses associated with plant related to the wells and other facilities were eliminated because the facilities were not used and useful (modifying 2006 N.J. AGEN LEXIS 464). In re Petition of Parkway Water Co. for Increase in Rates & Charges for Water Service, OAL Dkt. No. PUC 8422-05, 2006 N.J. AGEN LEXIS 938, Final Decision (September 14, 2006).

Atlantic City Electric Company wins approval of rate increase of \$55 million. In the Matter of the Petition of Atlantic City Electric Company, 96 N.J.A.R.2d (BRC) 20.

Stipulations with respect to a change in depreciation rates for electric and gas properties were in public interest as affording a reasonable level of rate relief. Matter of Public Service Electric and Gas, 95 N.J.A.R.2d (BRC) 37.

Customer service pricing schedule set forth in program proposed by electric and gas utility for appliance parts service was not unreasonable as containing improper cross-subsidization. Matter of Customer Service Pricing Schedule, 95 N.J.A.R.2d (BRC) 23.

Remediation costs for manufactured gas plant were allocated to all gas customers except contract cogeneration customers via a unit charge based upon throughput. Matter of Public Service Electric and Gas Company, 95 N.J.A.R.2d (BRC) 19.

Costs incurred by electric utility in remediating current and former manufactured gas plant sites could be recovered from ratepayers via a remediation adjustment clause. Matter of Central Power and Light, 95 N.J.A.R.2d (BRC) 14.

Water company's ability to finance a water treatment plant; Safe Drinking Water Act. In the Matter of the Petition of Elizabethtown Water Co. for Approval to Implement Quarterly Rate Recovery, 94 N.J.A.R.2d (BRC) 127.

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 Adelpia 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 levelized energy adjustment clause rates, basic generation service rates, or basic gas supply service pricing rates**

(a) Unless otherwise ordered or permitted by the Board, a utility that files a request for an adjustment to its levelized energy adjustment clause rates, its basic generation service clause rates, or its basic gas supply service pricing clause rates, shall conform to the following requirements:

1. Not less than seven days prior to the effective date of the adjustment, or five days prior in the case of a decrease to the periodic basic gas supply service pricing clause rate, 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 (a)1 above 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; and

3. The filing of the supplemental tariff sheet referred to in (a)1 above 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.

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).

Amended by R.2008 d.79, effective April 7, 2008.

See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

Section was "Changes to adjustment clause rates". Rewrote the introductory paragraph of (a); in (a)1, substituted "effective date of the

adjustment, or five days prior in the case of a decrease to the periodic basic gas supply service pricing clause rate" for "date upon which the initial or any subsequent adjustment is to become" and substituted a semicolon for a period at the end; in (a)2 and (a)3, substituted "(a)1 above" for "paragraph 1 of this subsection"; in (a)2, substituted "; and" for a period at the end; and in (b), deleted "and 14:9-8, respectively" following "N.J.A.C. 14:9-7".

#### 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, e-mail, fax or other writing; or by telephone call.

(b) Matters thus presented may be taken up by the Board or its staff 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 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, or to the Board's Division of Customer Assistance. The appropriate division then brings the matter to the attention of the regulated entity 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 regulated entity's positions and supporting data and after such informal conferences as may be held, an attempt is made to effect an amicable adjustment of the dispute.

(f) Depending upon the type of informal complaint initiated, Board staff shall telephone, e-mail or send a letter to the complainant, and shall e-mail or send a letter to the regulated entity 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 or order of the Board must file a petition in accordance with N.J.A.C. 14:1-4, 5 and 6. Also see N.J.A.C. 14:1-1.5(a).

Amended by R.1997 d.264, effective July 7, 1997.  
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).  
Amended by R.2008 d.79, effective April 7, 2008.  
See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

In (a), inserted "; e-mail, fax" and "; or by telephone call"; in (b), inserted "or its staff"; in (c), deleted "be signed and" following "must"; in (d), inserted "; or to the Board's Division of Customer Assistance", and substituted "The appropriate" for "This" and "regulated entity" for "utility"; in (e), substituted "regulated entity's" for "utility's" and "effect" for "affect"; rewrote (f); and in (i), substituted "or" for "on", and inserted "in accordance with N.J.A.C. 14:1-4, 5 and 6" and inserted the last sentence.

#### 14:1-5.14 Petitions for approval of a merger, consolidation, acquisition and/or change in control; standard of review

(a) A petition for approval of any of the following shall conform to the provisions of N.J.A.C. 14:1-4 and 14:1-5.1 through 5.4 and 5.9 to the extent applicable:

1. A merger or consolidation of one public utility of New Jersey with that of another public utility;
2. A merger or consolidation of one public utility of New Jersey with a parent holding company of another public utility or with any other corporate or business entity; or
3. The acquisition of a public utility of New Jersey and/or a change in control of the public utility.

(b) A petition for approval of any of the actions listed at (a) above shall contain in the petition, or as attached exhibits, the following information:

1. A copy of the agreement of merger, consolidation, acquisition and/or change in control;
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, consolidated, acquired and/or changed 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, consolidation, acquisition and/or change in control;

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, consolidation, acquisition and/or change in control to the public, the municipalities being served by the companies to be merged, consolidated, acquired and/or changed, 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, consolidation, acquisition and/or change in control and the accounting disposition to be made thereof on the books of the surviving corporation.

(c) The Board shall not approve a merger, consolidation, acquisition and/or change in control unless it is satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1.

(d) The petitioners seeking merger, consolidation, acquisition and/or change in control of a public utility shall have the burden of proving to the Board, by a preponderance of the evidence, that the requirements of this section are met.

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”.

Amended by R.2006 d.165, effective May 1, 2006.

See: 37 N.J.R. 4887(a), 37 N.J.R. 1854(b).

Section was “Petitions for approval of a merger or consolidation”. Rewrote (a); in (b), rewrote the first sentence, in 1; deleted “or” following “merger” and inserted “, acquisition and/or change in control”, in 5 and 12, inserted “, consolidated, acquired and/or changed” and in 10, 12 and 14; inserted “consolidation, acquisition and/or change in control”; and added (c) and (d).

#### 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 de-

fense 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 or its Secretary may, in their discretion, extend or shorten the time to file an answer or reply.

Amended by R.2008 d.79, effective April 7, 2008.  
See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

In (c), inserted "or its Secretary" and substituted "their" for "its".

### 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.

#### Case Notes

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).

#### Case Notes

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).

Utility Company's request for withdrawal of request for proposal was properly granted. *Jersey Central Power and Light Company Request for Proposal for Short Term Capacity and Energy*, 94 N.J.A.R.2d (BRC) 106.

The Board adopted revenue requirement settlement; however, rate design provisions currently in effect in utility tariffs were ordered to remain in effect until the Board rendered final determination in other pending base rate proceedings. In *Matter of Petition of Jersey Central Power & Light Company*, 93 N.J.A.R.2d (BRC) 39.

The Board required public utilities and parent holding companies to answer Executive Compensation Questionnaire. In *Matter of Board's Review of Executive Compensation Policies*, 93 N.J.A.R.2d (BRC) 16.

Public disclosure required of electric utility's settlement agreement. In *Matter of Westinghouse Electric Corporation Motion for Protective Order*, 92 N.J.A.R.2d (BRC) 73.

Stipulations in rate petition proceedings are to be binding. In re: *Public Service Electric & Gas Co.*, 6 N.J.A.R. 633 (1981).

Determination of approval and denial of petitions for Certificates. In re: *White Bus Co.*, 6 N.J.A.R. 535 (1983).

#### 14:1-8.2 Argument on exceptions

After receipt of the initial decision, the exceptions and answers thereto, if any, will be disposed of by the Board based on the exceptions, answers and briefs filed unless the Board, in its discretion, requires or permits oral argument, in which case the Board will schedule the matter for argument before it.

#### 14:1-8.3 Review of initial decision by the Board on its own motion

The Board may institute on its own motion a review of any aspect of the initial decision and it may call for oral argument, the filing of briefs, or both, or the taking of additional testimony.

#### 14:1-8.4 Method of reopening

(a) At any time after the conclusion of a hearing in a proceeding or adjournment thereof sine die, but before the entering and issuance by the Board of its final decision or order, any party to the proceeding may file with the Board a motion to reopen the hearing for the purpose of taking ad-

ditional evidence. Such motion shall set forth clearly the reasons for reopening of the hearing, including any material changes of fact or of law alleged to have occurred since the last hearing.

(b) If, after the hearing in a proceeding, the Board shall have reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such hearing, the Board will issue an order for the reopening of same.

#### 14:1-8.5 Motions to reopen

(a) After issuance of the final decision, a party may file for the reopening of the proceeding. Upon filing by any party of a motion for the reopening of a proceeding, appropriate notice thereof shall be given forthwith by the moving party to all other parties, or their attorneys of record, by service of a copy of the motion for reopening.

(b) Within 10 days following the service of a motion to reopen, any party to the proceeding may serve upon the moving party and file with the Board an answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such motion.

(c) As soon as practicable after the filing of answers to a motion to reopen or default thereof, as the case may be, the Board will grant or deny such motion. The action by the Board may be conditioned on reasonable terms.

#### 14:1-8.6 Rehearing, reargument or reconsideration

(a) A motion for rehearing, reargument or reconsideration of a proceeding may be filed by any party within 15 days after the issuance of any final decision or order by the Board.

1. Such motion shall state in separately numbered paragraphs the alleged errors of law or fact relied upon and shall specify whether reconsideration, reargument, rehearing or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation or suspension of the action taken by the Board or other relief.

2. Where opportunity is also sought to introduce additional evidence, the evidence to be adduced shall be stated briefly together with reasons for failure to previously adduce said evidence.

(b) The Board at any time may order a rehearing, reargument or reconsideration on its own motion and extend, revoke or modify any decision or order made by it.

#### Case Notes

Modification of public utility's power purchase agreement was appropriate. In the *Matter of Competitive Bidding Solicitations of Jersey Central Power & Light Co.*, 94 N.J.A.R.2d (BRC) 108.

Denial of joint motion for reconsideration was appropriate; compensation levels; failure to present new arguments or analysis. In the *Matter of the Petition of MCI, AT & T and Sprint Communications Companies*, 94 N.J.A.R.2d (BRC) 93.

**14:1-8.7 Motions and answers on rehearing**

(a) A copy of the motion shall be served by the moving party upon all other parties or their attorneys of record, forthwith upon the filing hereunder. The moving party shall also give such notice, as the Board may direct, of the filing of the motion to all other persons to whom notice of the original hearing had been given.

(b) Any answer to the motion shall be filed within 10 days following the service of the motion. Failure to file an answer shall be deemed to be a waiver of any objection to the granting of the motion.

(c) Any motion hereunder which is not granted or otherwise expressly acted upon by the Board within 60 days after the filing thereof shall be deemed denied, unless the parties are otherwise notified in writing by the Board or its Secretary.

(d) The filing or granting of any motion under this rule shall not operate as a stay of the Board's decision or order. A stay will be granted only for good cause shown.

Amended by R.2008 d.79, effective April 7, 2008.

See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

In (c), deleted a comma following "thereof" and inserted ", unless the parties are otherwise notified in writing by the Board or its Secretary".

**Case Notes**

Cogeneration association's request for a stay of further proceedings pending Federal court complaint was denied because the burden and expense in defending itself before the Board was not "good cause shown". Application of Jersey Central Power and Light Co. for Approval of the Power Purchase Agreement, 94 N.J.A.R.2d (BRC) 144.

---

**SUBCHAPTER 9. UNCONTESTED CASE PROCEEDINGS**
**14:1-9.1 Uncontested case proceedings**

This subchapter applies only to a matter which the Board determines to constitute an uncontested case. Where the Board determines to hold a hearing in an uncontested case, said hearing shall be conducted pursuant to this section and, in the absence of a specific provision herein, pursuant to the Uniform Administrative Procedure Rules, N.J.A.C. 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).

**14:1-9.2 Designation**

The Board may by general order in writing designate as a presiding officer such person or persons, as provided by statute, as its representative or representatives in and on its behalf to conduct any hearing in any uncontested proceeding now or hereafter pending before the Board.

**Case Notes**

Person seeking intervenor status must show he will be substantially and specifically affected by proceeding; 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).

**14:1-9.3 Filing**

Pleadings, correspondence or other documents pertaining to an uncontested case shall be filed pursuant to N.J.A.C. 14:1-6. Copies of such correspondence shall be filed with the presiding officer and with the parties of record.

**14:1-9.4 Cameras and recording devices**

Cameras or recording devices may be used at uncontested case proceedings in accordance with the standards and procedures of N.J.A.C. 14:1-1.8.

**14:1-9.5 Appearances**

Any person appearing in a representative capacity in any uncontested case proceeding shall conform to the requirements of N.J.A.C. 14:1-3.

**14:1-9.6 Service**

Whenever a party has the right or is required to do some act within a prescribed period after the serving of a notice or other paper upon said party, and the notice or paper is served upon said party by mail, three days from the date of mailing shall be added to the prescribed period.

---

**SUBCHAPTER 10. COMPLIANCE WITH ORDERS, DECISIONS AND RECOMMENDATIONS**
**14:1-10.1 Orders and decisions**

Upon issuance of an order or decision of the Board, the party to whom the same is directed must notify the Board on or before the date specified in said order or decision whether or not compliance has been made in conformity therewith.

**Case Notes**

Public notice of Certificate hearings may be required by Board; 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).

**14:1-10.2 Recommendations**

Upon the making of any recommendation by the Board, the party to whom the same is directed must within 15 days after the making of the recommendation, unless otherwise specifically required, notify the Board of the acceptance or rejection thereof. Failure to comply with this rule will be deemed an acceptance of the recommendation.

**Case Notes**

Certificate hearings open to public; 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).

**14:1-10.3 Extension of time limits**

In instances where the Board’s decision or order contains a specific time or date for compliance, and the petitioner desires extension of such time limit, petition to the Board shall be made in writing at least five days before the expiration of the time limit.

**14:1-10.4 Answers to communications**

Unless otherwise specified, any letter or telegram from the Board directing investigation of any matter under its jurisdiction must be complied with by the utility and a report received by the Board within 15 days from the date of the letter or telegram. If circumstances prevent compliance with this rule, the utility must advise the Board, in writing within the above prescribed period, of its inability to comply and the reasons therefor.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. PROCEDURES FOR DETERMINING THE CONFIDENTIALITY OF SUBMITTED INFORMATION

**14:1-12.1 Scope**

(a) This subchapter sets forth the procedures for making information received by the Board of Public Utilities in administering its duties available to the public and maintaining confidentiality of certain parts of the information.

(b) Any person or entity required to submit or who does submit to the Board any information pursuant to Titles 48 and 52 of the New Jersey Statutes or Title 14 of the New Jersey Administrative Code, which in the person’s or entity’s opinion constitutes trade secrets, energy trade secrets or other energy information submitted pursuant to N.J.S.A. 52:27F-18, proprietary commercial or financial information, or information which if disclosed, would be likely to cause damage to either a competitive or bidding position or national security, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(c) With regard to any determination related to a request for the confidential treatment of information, the provisions of N.J.A.C. 17:44-5.1, 5.2 and 5.4 shall be taken into consideration.

(d) This subchapter is only one of several legal mandates which govern the public release of information submitted to the Board. Because the Board is an agency in but not of the

Department of Treasury, pursuant to N.J.S.A. 52:18A-2.1, the Board will apply the Department of Treasury’s OPRA rules in addition to the provisions of this subchapter. In addition, some provisions of OPRA and other applicable statutes, which apply to the confidentiality of submitted information, may apply but are not repeated in these rules. Executive Orders No. 21 and 26 (2002) also apply to the Board’s treatment of submitted information.

(e) Nothing in this subchapter shall limit the Board’s authority to make a confidentiality determination within the context of a hearing or other proceeding or with regard to any other matter the Board may deem appropriate. Any confidentiality determination by the Board shall bind the custodian when reviewing confidentiality claims pursuant to this subchapter.

(f) The Board shall use the procedures in this subchapter to implement its authority under N.J.S.A. 52:27F-18d to make determinations regarding the confidentiality of energy trade secrets and other energy information submitted to the Board pursuant to N.J.S.A. 52:27F-18d.

Amended by R.2008 d.79, effective April 7, 2008.  
See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

In (b), inserted “, energy trade secrets or other energy information submitted pursuant to N.J.S.A. 52:27F-18,”; and added (f).  
Amended by R.2013 d.103, effective August 19, 2013.

See: 45 N.J.R. 22(a), 45 N.J.R. 1965(a).

In (e), inserted the last sentence.

**14:1-12.2 Definitions**

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

“Claimant” means any person who submits a confidentiality claim under this subchapter.

“Confidential copy” means a record (or copy thereof) submitted to or obtained by the Board or the custodian, containing information which the claimant asserts is confidential information.

“Confidential information” means information which the custodian and/or the Board determines, in accordance with the procedures of this subchapter, to have satisfied the substantive criteria in this subchapter and/or in applicable law described at N.J.A.C. 14:1-12.1(d). Information may be claimed confidential by the person who submitted it, or the Board may on its own initiative determine information to be confidential.

“Confidentiality claim” or “claim” means, with respect to information that a person is required either to submit to the Board or to allow the Board to obtain, an assertion in accordance with this subchapter that the information is entitled to be exempt from public disclosure under applicable law.

“Confidentiality determination” means a determination by the custodian that the asserted confidential information is or is not confidential information.

“Contract” means an agreement between the Board and a contractor, for which the Board has determined it is necessary for the contractor to have access to confidential information to enable the contractor to perform the duties required by such agreement.

“Contractor” means a person other than an employee of the Board, who has entered into a contract, as defined herein, with the Board to perform services or to provide goods for the Board.

“Custodian” means the officer officially designated by the Board to oversee the public’s access to government records pursuant to N.J.S.A. 47:1A-1 et seq.

“Designee” means the person designated by a claimant in accordance with N.J.A.C. 14:1-12.4 to receive notices and other communications relating to confidentiality claims from the custodian under these rules.

“Energy information” means any statistic, datum, fact, or item of knowledge and all combinations thereof relating to energy, which is submitted to the Board pursuant to N.J.S.A. 52:27F-18.

“Energy trade secret” means a trade secret, as defined in this section, that pertains to the energy industry and is submitted to the Board pursuant to N.J.S.A. 52:27F-18.

“Final public copy” means a copy of a record submitted to or obtained by the Board, identical to the confidential copy except that any confidential information has been blacked out; however, if the record is not in a form in which the confidential information can be concealed by blacking out, the “final public copy” shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

“Preliminary public copy” means a copy of a record held by the Board, identical to the confidential copy except that any asserted confidential information has been blacked out; however, if the record is not in a form in which the confidential information can be concealed by blacking out, the “preliminary public copy” shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

“Requester” means a person who has made a request to the Board to inspect or copy records which the Board possesses or controls.

“Substantiation” means information which a claimant submits to the custodian in support of a confidentiality claim made pursuant to N.J.A.C. 14:1-12.8.

“Trade secret” means the whole or any portion or phase of any scientific, technical or otherwise proprietary information, design, process, procedure, formula or improvement which is used in one’s business and is secret and of value; and which provides him or her the opportunity to obtain an advantage over competitors who do not know or use it. A trade secret shall be presumed to be secret when the owner takes

measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

Amended by R.2008 d.79, effective April 7, 2008.

See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

Added definitions “Energy information”, “Energy trade secret” and “Trade secret”.

### 14:1-12.3 Procedure for making a confidentiality claim

(a) Any person or entity required to submit or who does submit to the Board information pursuant to Titles 48 and 52 of the New Jersey Statutes or Title 14 of the New Jersey Administrative Code, which such person believes in good faith to constitute confidential information, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) A claimant shall submit to the custodian a confidential copy and a preliminary public copy, as those terms are defined at N.J.A.C. 14:1-12.2, of the entire record containing asserted confidential information. The preliminary public copy shall carry a notation, in a form to be developed by the custodian, stating that confidential information has been blacked out or deleted. The custodian may disclose the preliminary public copy to any person, without restriction or limitation.

(c) The claimant shall label the first page of the confidential copy “CONFIDENTIAL COPY.” At the top of each page of the confidential copy which contains information that the claimant asserts is confidential, the claimant shall place a boldface heading reading “CONFIDENTIAL.” The claimant shall clearly underscore or highlight all information in the confidential copy which the claimant asserts to be confidential, in a manner which shall be clearly visible on photocopies of the confidential copy.

(d) The claimant shall seal the confidential copy in an envelope displaying the word “CONFIDENTIAL” in bold type or stamp on both sides. This envelope shall be enclosed in another envelope for transmittal to the custodian. The outer envelope shall bear no markings indicating the confidential nature of the contents.

(e) The claimant shall send the package containing the confidential copy to the custodian by certified mail, return receipt requested, or by other means providing receipt for delivery.

(f) The claimant shall include in the package a written designation of a person to receive notices and other communications. The designation shall include the information required pursuant to N.J.A.C. 14:1-12.4.

(g) The claimant shall include in the package substantiation of the confidentiality claim as described in N.J.A.C. 14:1-12.8.

Amended by R.2008 d.79, effective April 7, 2008.

See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

In (b), substituted “the entire” for “any”.

**14:1-12.4 Designation by claimant of a designee for notices and inquiries**

(a) A claimant shall designate a person as the proper addressee of notices and other communications from the custodian under this subchapter. To designate such a person, the claimant shall submit the following information to the custodian in writing:

1. The name and address of the claimant;
2. The name, address, e-mail address, telephone number and facsimile number of the designee, and any other contact information that will assist the Board in rapidly contacting the person regarding the confidentiality determination; and
3. A request that all custodian communications (oral and written), including, without limitation, the notices listed in N.J.A.C. 14:1-12.7 and 12.9, be directed to the designee.

**14:1-12.5 Correspondence, inquiries and notices**

(a) The custodian shall direct all correspondence, inquiries and notices to the designee, including, without limitation, the following:

1. Notices of requests submitted to the Board for the confidential information that was submitted by the claimant; and
2. Notices of the Board's denial of the confidentiality claims.

(b) A claimant shall direct all correspondence, inquiries, notices and submissions concerning confidentiality claims under this subchapter to the custodian at:

Records Custodian  
 New Jersey Board of Public Utilities  
 44 South Clinton Avenue, 9th Floor  
 PO Box 350  
 Trenton, New Jersey 08625-0350

Administrative change.  
 See: 43 N.J.R. 1896(a).

**14:1-12.6 Time for making confidentiality determinations**

(a) The custodian shall make a confidentiality determination within seven business days after the custodian's receipt of a request to inspect or copy records containing asserted confidential information, unless:

1. A reasonable extension is necessary because the records are in storage or in use. In such a case, the records custodian shall so advise the requestor within seven business days after the custodian received the request, and shall make other arrangements to promptly make available a copy of the records;
2. The requester consents to a reasonable extension of time; or

3. The request for access to records would substantially disrupt the Board's operations. In such a case, the custodian may deny access to the record without making the confidentiality determination, provided that the custodian first attempts to reach a reasonable solution with the requester, which accommodates the interests of the requester and the Board.

(b) The custodian shall not take any action which is inconsistent with the requirements for the treatment of information that has been claimed confidential, set forth in N.J.A.C. 14:1-12.10 until a determination has been made as to whether the information is confidential or not.

(c) Requests received after 4:00 P.M. will be considered as received on the next business day.

(d) Except as otherwise provided in (a) above, the custodian may, in his or her discretion, make a confidentiality determination at any time.

**14:1-12.7 Notice of pending confidentiality determination**

(a) When the custodian is required, pursuant to N.J.A.C. 14:1-12.6(a), to make a confidentiality determination, the custodian shall send a notice to the designee for each claimant who is known to have asserted a claim applicable to such information. The notice shall include the following:

1. A copy of the request form, with any information that is exempt from public disclosure under N.J.S.A. 47:1A-1 et seq. removed; and
2. The earliest date that the information may be made available to the public under this chapter, if the asserted confidential information is determined not to be confidential.

(b) If the identity of the claimant is immediately discernable from the information supplied on the request form, the custodian shall notify the claimant's designee by fax, telephone or e-mail as soon as feasible, but no later than two business days after receiving the request. If the identity of the claimant is not immediately discernible, the custodian shall notify the claimant's designee of the request as soon as it is reasonably possible to identify the claimant.

**14:1-12.8 Substantiation of confidentiality**

(a) To substantiate a confidentiality claim, a claimant shall submit the following information, as applicable, pursuant to the procedure set forth in N.J.A.C. 14:1-12.3 through 12.5:

1. Measures taken by the claimant to prevent disclosure of the information to others;
2. Whether the information is contained in materials which are routinely available to the general public, including, without limitation, initial and final orders in contested case adjudications, press releases, copies of speeches, pamphlets and educational materials;

3. Whether the information is contained in materials that are routinely available to other government agencies, including, but not limited to Federal, state, and municipal agencies, whether or not such entities treat this information as confidential, and the reasons therefor;

4. The extent to which the information has been disclosed to others, and the precautions taken to prevent further disclosure;

5. If the Board, custodian or any other State or Federal agency or court of competent jurisdiction has previously made a confidentiality determination relevant to the pending confidentiality claim, copies of all such determinations;

6. A description of any harmful effects which disclosure would have upon, including, but not limited to, the claimant's competitive or bidding position, trade secrets, proprietary commercial or financial information, or national security, and an explanation of the causal relationship between the disclosure and such harmful effects;

7. The period of time for which the claimant desires that the custodian treat the asserted confidential information as confidential information;

8. If known, any provision in a statute, rule, Order or other document, which would exempt the information from public disclosure; and

9. Any other substantiation which the claimant believes to be relevant in establishing that the custodian should determine the information to be confidential information.

(b) The substantiation shall be supported by an affidavit from a person with personal knowledge of the information, certifying its truth and accuracy.

(c) If the claimant fails to assert a confidentiality claim for such information at the time of submission, the claimant shall be deemed to have waived all such claims with respect to the information.

(d) Substantiation may be updated and/or supplemented by the submittal of additional information at any time. However, if an update or supplement is submitted after the custodian receives a request for the release of information that is claimed as confidential, the custodian shall take the update or supplement into account in its confidentiality determination only to the extent that the deadlines in this chapter permit.

Amended by R.2008 d.79, effective April 7, 2008.

See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

Added (a)3; and recodified former (a)3 through (a)8 as (a)4 through (a)9.

#### 14:1-12.9 Final confidentiality determination

(a) If, after review of all the information submitted pursuant to this subchapter, the custodian determines that the asserted confidential information is not confidential information, the custodian shall as quickly as feasible:

1. Notify the claimant's designee of the determination through reasonable efforts to contact the designee by telephone, e-mail, fax, or other means provided in the designation submittal; and

2. Provide written notice that meets the requirements of (b) below to the claimant's designee.

(b) The written notice required under (a)2 above shall include the following:

1. The date on which the disclosure was made or will be made;

2. The name of the agency or other person to which the custodian disclosed or will disclose the information that was asserted, or will assert, as confidential;

3. A brief description of the information;

4. The basis for the determination; and

5. A statement that the written notice constitutes final agency action concerning the confidentiality claim.

(c) If after review of the substantiation submitted pursuant to this subchapter, the custodian determines that the asserted confidential information is confidential information, the custodian shall:

1. Treat such information as confidential;

2. Send written notice of the determination to the claimant and, if applicable, to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim; and

3. State in the notice the basis for the determination and that it constitutes final agency action.

(d) Notwithstanding a custodian's determination that information submitted pursuant to this subchapter is not confidential information, the custodian will not release such information if a court of competent jurisdiction, in accordance with the court rules, declares the information confidential and not subject to disclosure.

1. If claimant seeks a declaratory judgment regarding confidentiality, or other court order, claimant shall notify the custodian and any requestor of any action or order seeking a declaration of confidentiality immediately upon filing with the court.

i. Any such judicial determination shall be independent of any confidentiality determination by the custodian. The court shall not be bound by any prior determination by the Board or the custodian.

2. Except as otherwise required pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., or the common law Right-to-Know, the custodian shall not release any information while a judicial confidentiality determination is pending as set forth in this subsection.

(e) The custodian’s determination under this section shall constitute final agency action. Notwithstanding that a claimant may seek a declaratory judgment regarding confidentiality under (d) above, any challenge or appeal of a final agency action shall be made in accordance with the court rules or as set forth in the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

Amended by R.2008 d.79, effective April 7, 2008.  
See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

In (a)1, substituted “the designee” for “them”; in (a)2, deleted “by certified mail, return receipt requested” from the end; in (c)2, inserted “and” at the end; in (c)3, substituted a period for “; and” at the end; and deleted (c)4.

Amended by R.2013 d.103, effective August 19, 2013.  
See: 45 N.J.R. 22(a), 45 N.J.R. 1965(a).

In (b)1, inserted “or will be made”; in (b)2, inserted “or will disclose”, and substituted “asserted, or will assert, as” for “claimed”; in (b)3,

deleted “disclosed” following “information”; added new (d); recodified former (d) as (e); and in (e), inserted the last sentence.

**14:1-12.10 Treatment of information pending confidentiality determination**

The custodian shall treat asserted confidential information as confidential information until the custodian has made a final determination that the asserted confidential information is not confidential information.

**14:1-12.11 Availability of information to the public after determination that information is not confidential**

If the custodian has received a request for asserted confidential information in accordance with this subchapter and

(e) The custodian’s determination under this section shall constitute final agency action. Notwithstanding that a claimant may seek a declaratory judgment regarding confidentiality under (d) above, any challenge or appeal of a final agency action shall be made in accordance with the court rules or as set forth in the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

Amended by R.2008 d.79, effective April 7, 2008.  
 See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

In (a)1, substituted “the designee” for “them”; in (a)2, deleted “by certified mail, return receipt requested” from the end; in (c)2, inserted “and” at the end; in (c)3, substituted a period for “; and” at the end; and deleted (c)4.

Amended by R.2013 d.103, effective August 19, 2013.  
 See: 45 N.J.R. 22(a), 45 N.J.R. 1965(a).

In (b)1, inserted “or will be made”; in (b)2, inserted “or will disclose”, and substituted “asserted, or will assert, as” for “claimed”; in (b)3,

deleted “disclosed” following “information”; added new (d); recodified former (d) as (e); and in (e), inserted the last sentence.

**14:1-12.10 Treatment of information pending confidentiality determination**

The custodian shall treat asserted confidential information as confidential information until the custodian has made a final determination that the asserted confidential information is not confidential information.

**14:1-12.11 Availability of information to the public after determination that information is not confidential**

If the custodian has received a request for asserted confidential information in accordance with this subchapter and

has determined that the information is not confidential, the custodian may disclose such information to any person on or after the seventh business day following the request for the confidential information.

Amended by R.2008 d.79, effective April 7, 2008.

See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

Deleted a comma following "subchapter" and inserted "or after".

#### **14:1-12.12 Disclosure of confidential information to other public agencies**

(a) The custodian may disclose confidential information to any other State agency or to a Federal agency if:

1. The custodian notifies the other agency of any pending confidentiality claim concerning the requested information, or of any confidentiality determination regarding the requested information; and

2. The custodian receives a written request for disclosure of the information from a duly authorized officer or employee of the requesting agency, stating that the other agency has adopted regulations or operates under statutory authority that would allow it to preserve confidential information from unauthorized disclosure, and agrees in writing to refrain from further disclosure, unless:

- i. The requesting agency has statutory authority both to compel production of the information and to disclose it; or
- ii. The claimant has consented to the disclosure of the information to the requesting agency.

#### **14:1-12.13 Disclosure of confidential information to contractors**

(a) The custodian may disclose confidential information to a contractor, if the custodian complies with the procedure under (b) below, and if:

1. The custodian determines that such disclosure is necessary in order for the contractor to perform the work required by the contract;

2. The contract provides that the contractor and the contractor's employees shall use the confidential information only for the purpose of performing the duties required by the contract, shall refrain from disclosing the confidential information to anyone other than the custodian, shall store all records containing the confidential information in locked cabinets in secure rooms, and shall return to the custodian all originals and all copies of the information (and any abstracts or extracts therefrom, or any records containing any of the confidential information) when the confidential information is no longer necessary to enable the contractor to perform its obligations under the contract, or at any time upon the request of the custodian; and

3. At the request of the claimant, the contractor contracts with the claimant to refrain from further disclosure of the confidential information.

(b) Before disclosing confidential information to a contractor under (a) above, the custodian shall notify the claimant of the proposed disclosure in writing, delivered by certified mail, return receipt requested, at least 14 days before making the disclosure. The notice shall state the information to be provided, the identity of the contractor and the scheduled date of disclosure. If, at least three working days before the scheduled date of disclosure, the claimant delivers to the custodian information sufficient to establish, to the custodian's satisfaction, that the proposed disclosure involves trade secrets, proprietary commercial or financial information or would likely cause damage to either a competitive or bidding position or national security, the custodian shall refrain from making the disclosure.

#### **14:1-12.14 Disclosure to alleviate an imminent and substantial danger**

(a) If the custodian finds that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health, safety or the environment, the custodian shall:

1. Immediately disclose the confidential information to any person whose role in alleviating the danger to public health and the environment makes such disclosure necessary; and

2. Limit any disclosure pursuant to this paragraph to that information necessary to enable the person to whom it is disclosed to carry out the activities necessary to alleviate the danger and for no other purpose.

(b) Any disclosure made pursuant to (a) above shall not be deemed a waiver of a confidentiality claim and shall not be grounds for any determination that information is no longer confidential information.

Amended by R.2008 d.79, effective April 7, 2008.

See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

In (a)2, inserted "and for no other purpose".

#### **14:1-12.15 Disclosure by consent**

(a) The custodian may disclose confidential information in accordance with the written consent of the claimant.

(b) A claimant's consent to a particular disclosure shall not operate as a waiver of a confidentiality claim with regard to further disclosures, unless the authorized disclosure is of such nature that the disclosed information is no longer confidential information.

#### **14:1-12.16 Incorporation of confidential information into accumulations of data**

Nothing in this subchapter shall be construed as prohibiting the incorporation of confidential information into accumulations of data subject to disclosure as public records, provided that after consultation with the claimant, the custodian has determined that such disclosure is not in a form that would

foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the person who supplied it to the custodian.

#### **14:1-12.17 Confidentiality agreements**

(a) The provisions of this subchapter shall supersede the provisions of any agreement imposing any duties of confidentiality or nondisclosure upon the Board, custodian or any employee, or contractor or agent thereof. This section does not govern Board orders, which are not superseded by this subchapter.

(b) Provisions of an agreement imposing confidentiality or nondisclosure duties upon the Board or any employee, contractor or agent thereof shall be of no force or effect.

(c) The Board shall presume that the submitter of any information subject to a previous agreement imposing duties of confidentiality or nondisclosure upon the Board would like the information kept confidential. Therefore, if the Board receives a request for public disclosure of such information, the Board will notify the submitter in accordance with N.J.A.C.

14:1-12.7, in order to provide the submitter with an opportunity to submit substantiation in accordance with N.J.A.C. 14:1-12.8. The Board recommends that any person who has submitted such information in the past submit updated contact information to the custodian to ensure that the custodian can contact them in the event of a request for public disclosure of the information.

#### **14:1-12.18 Payment for copies**

(a) When copies of a record have been requested, payment will be expected at the time the records are picked up, or if the requester would prefer the copies to be mailed, receipt of payment for the copies by the custodian must occur before the records will be mailed.

(b) For the convenience of the requester, payment may be made in cash, by check, money order or credit card.

Amended by R.2008 d.79, effective April 7, 2008.  
See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).

In (a), substituted "for" for "including the cost of mailing"; and in (b), substituted ", by check, money order or credit card" for "or by check or money order".