

CHAPTER 9

WATER AND WASTEWATER

Authority

N.J.S.A. 48:2-13, 48:2-20, 48:2-24, 48:2-27, 48:3-3, 48:3-7.8, 48:3-12, 48:19-18, and 58:11-59.

Source and Effective Date

R.2006 d.367, effective September 15, 2006.
See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 9, Water and Wastewater, expires on March 14, 2014. See: 45 N.J.R. 2174(a).

Chapter Historical Note

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

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

Pursuant to Executive Order No. 66(1978), Chapter 9, Sewer and Water, expired on April 15, 1990.

Chapter 9, Sewer and Water, was adopted as new rules by R.1991 d.179, effective April 1, 1991. See: 22 N.J.R. 907(a), 23 N.J.R. 1012(a).

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

Pursuant to Executive Order No. 66(1978), Chapter 9, Sewer and Water, was readopted as R.1996 d.207, effective March 29, 1996. See: 28 N.J.R. 1190(a), 28 N.J.R. 2405(b).

Pursuant to Executive Order No. 66(1978), Chapter 9, Water and Wastewater, was readopted as R.2001 d.133, effective March 27, 2001. Subchapter 10, Consumer Confidence Reports, was adopted effective May 7, 2001. See: 33 N.J.R. 367(a), 33 N.J.R. 1392(b).

Chapter 9, Water and Wastewater, was readopted as R.2006 d.367, effective September 15, 2006. As a part of R.2006 d.367, Subchapter 1, General Provisions and Definitions, was adopted as new rules; former Subchapter 1, Plant, was recodified as Subchapter 2, Plant; former Subchapter 2, Service, was recodified and renamed as Subchapter 3, Quality of Service; former Subchapter 3, Meters, was repealed; Subchapter 4, Meters, was adopted as new rules; Subchapter 6, Small Water Company Takeover Act Regulations, was renamed Small Water Company and Small Sewer Company Takeover Act Rules; Subchapter 7, Purchased Water Adjustment Clause, was renamed Purchased Water and Wastewater Adjustment Clauses; Subchapter 8, Purchased Sewerage Treatment Adjustment Clause, was repealed and Subchapter 8, Combined Domestic Water and Fire Suppression Service, was adopted as new rules; and Subchapter 10, Consumer Confidence Reports, was recodified as Subchapter 9, Consumer Confidence Reports, effective October 16, 2006. See: Source and Effective Date. See, also, section annotations.

Subchapter 10, Distribution System Improvement Charge, was adopted as new rules by R.2012 d.108, effective June 4, 2012. See: 43 N.J.R. 3303(a), 44 N.J.R. 1723(a). Administrative correction. See: 44 N.J.R. 1784(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 9, Water and Wastewater, was scheduled to expire on September 15, 2013. See: 43 N.J.R. 1203(a).

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**SUBCHAPTER 1. GENERAL PROVISIONS AND
DEFINITIONS**

14:9-1.1 Scope

(a) This chapter shall apply to any water utility or wastewater utility, as defined at N.J.A.C. 14:9-2, which constructs, operates and/or maintains plant and/or service connections for providing water and/or wastewater service.

(b) In addition to complying with this chapter, each water and/or wastewater utility described at (a) above shall also comply with the applicable provisions of the Board's rules for all utilities at N.J.A.C. 14:3.

(c) A utility may obtain a waiver of one or more requirements of this chapter in accordance with N.J.A.C. 14:1-1.2(b).

14:9-1.2 Definitions

For the purposes of this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1.

"Board" means the New Jersey Board of Public Utilities.

"NJDEP" means the New Jersey Department of Environmental Protection.

"Wastewater treatment service" means the processing of wastewater and includes any activity related to such processing, including transport, handling, and delivery of wastewater, and other similar activities.

"Wastewater utility" means an investor owned public utility, as defined at N.J.S.A. 48:2-13, that provides wastewater treatment service, or a municipal public utility that provides wastewater treatment service to more than 1,000 billed customers in another municipality.

"Water purveyor" means a public water utility or municipal water utility which delivers water, subject to the terms of a bulk contract, to customers.

"Water utility" means:

1. An investor-owned public utility that provides water service; or
2. A municipal public utility that meets both of the following criteria:
 - i. The utility provides water service to more than 1,000 billed customers in another municipality; and
 - ii. The utility charges a different rate to customers inside the municipality than it charges customers outside of the municipality.

SUBCHAPTER 2. PLANT

14:9-2.1 Plant construction

All water and wastewater utilities shall ensure that the construction and installation of their plants and facilities comply with N.J.A.C. 14:3-2.1, Plant construction, and in addition, complies with the applicable provisions of Water Meters: Selection, Installation, Testing, and Maintenance (M6), 1999 Edition, published by the American Water Works Association, which is incorporated herein by reference, as amended and supplemented, and/or complies with all applicable standards governing construction and installation of plant and facilities found in publications of the American Water Works Association, including all supplements and amendments, and is available at <http://www.awwa.org>.

Amended by R.1996 d.207, effective May 6, 1996.

See: 28 N.J.R. 1190(a), 28 N.J.R. 2405(b).

Recodified from N.J.A.C. 14:9-1.1 and amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Rewrote the section. Former N.J.A.C. 14:9-2.1, Pressure and volume of water service, recodified to N.J.A.C. 14:9-3.1.

14:9-2.2 Inspection of property

(a) Each water and wastewater utility shall inspect each valve in the utility's system in accordance with the schedule in (b) below, to determine how easy or difficult it is to reach the valve to operate it, and the valve's operating condition.

(b) Each water or wastewater utility shall inspect each valve that is 12 or more inches in diameter at least once every two years, and shall inspect all other valves at least once every four years.

(c) At a minimum, each valve inspection shall include:

1. The clearing of the area around the valve so as to ensure full access to the valve for operating purposes;
2. The cleaning out of the valve; and
3. The dynamic testing of the valve, by opening and then closing the valve for either of the following number of turns:

i. That number of turns recommended by the valve manufacturer to constitute a credible test; or

ii. That number of turns which constitutes 15 percent of the total number of turns necessary to completely open or completely close the valve.

(d) Each water utility shall, once a year, test every hydrant in its system in order to determine the hydrant's working condition.

(e) In addition to the testing required under (d) above, each water utility shall formulate and implement a plan for flushing every hydrant in the utility's system, and every dead end of a main in the utility's system. This plan for flushing may

be combined with the periodic testing of hydrants required under (d) above.

(f) Each water and wastewater utility shall keep a record of all inspections, tests and flushings for a period of at least five years.

(g) All water and wastewater utilities shall comply with the applicable provisions of N.J.A.C. 14:3-2.5.

(h) A utility may petition the Board for a waiver of this provision in accordance with N.J.A.C. 14:9-1.1.

Amended by R.2001 d.133, effective May 7, 2001.

See: 33 N.J.R. 367(a), 33 N.J.R. 1392(b).

In (a), added the last sentence of the introductory paragraph and added 1 through 3; in (b), substituted "The water utility" for "It" at the beginning of the second sentence.

Recodified from N.J.A.C. 14:9-1.2 and amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Rewrote the section. Former N.J.A.C. 14:9-2.2, Quality of water, recodified to N.J.A.C. 14:9-3.2.

SUBCHAPTER 3. QUALITY OF SERVICE

14:9-3.1 Pressure and volume of water

(a) Each water utility shall ensure that it provides water at adequate pressure and volume. For the purposes of this section, the pressure and volume of water shall be measured at the curb of the property being served, or if there is no curb, at the point of connection with the customer's service line.

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

Recodified from N.J.A.C. 14:9-2.2 by R.2005 d.377, effective November 7, 2005.

See: 37 N.J.R. 1401(a), 37 N.J.R. 4292(a).

Former N.J.A.C. 14:9-2.1, Service connections, repealed.

Recodified from N.J.A.C. 14:9-2.1 and amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Section was "Pressure and volume of water service". Rewrote (a). Former N.J.A.C. 14:9-3.1, Testing of water meters, repealed.

Case Notes

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

Private water company was immune from liability for fire insurance companies' subrogation claims arising from its negligent failure to maintain adequate water pressure for fire fighting, overruling *Reimann v. Monmouth Consol. Water Co.*, 9 N.J. 134, 87 A.2d 325; *Sydney Grossman Hotel Corp. v. Lakewood Water Co.*, 27 N.J. 91, 141 A.2d 541; *Brooks v. City of Orange*, 61 N.J. 576, 297 A.2d 1; *J.H.M. Realty Corp. v. Town of Belleville*, 61 N.J. 577, 297 A.2d 2; calling into doubt *Baum*

v. Somerville Water Co., 84 N.J.L. 611, 87 A. 14 (E. & A.); *Atlas Finishing Co. v. Hackensack Water Co.*, 10 N.J.Misc. 1197, 163 A. 20 (Sup.Ct.); rejecting *German Alliance Ins. Co. v. Home Water Supply Co.*, 226 U.S. 220, 33 S.Ct. 32, 57 L.Ed. 195; *Stuart v. Crestview Mut. Water Co.*, 34 Cal.App.3d 802, 110 Cal.Rptr. 543 (2 Dist.); *Libbey v. Hampton Water Works Co., Inc.*, 118 N.H. 500, 389 A.2d 434; *H.R. Moch Co., Inc. v. Rensselaer Water Co.*, 247 N.Y. 160, 159 N.E. 896; *Rose v. Sapulpa Royal Water Co.*, 631 P.2d 752 (Okla.). *Weinberg v. Dinger*, 106 N.J. 469, 524 A.2d 366 (1987).

14:9-3.2 Quality of water

(a) Each water utility shall furnish water that is free of excess impurities and sedimentation and shall make every effort to assure that its product is potable and uncolored, in accordance with the requirements in the New Jersey Safe Drinking Water Regulations, N.J.A.C. 7:10. Noncompliance with this requirement shall constitute failure to provide safe, adequate and proper service.

(b) If a water utility provides water that does not comply with all applicable Federal and State laws, rules, standards, and guidelines, the water utility shall so notify the Board within 48 hours.

Amended by R.2001 d.133, effective May 7, 2001.

See: 33 N.J.R. 367(a), 33 N.J.R. 1392(b).

Added the second sentence.

Recodified from N.J.A.C. 14:9-2.3 by R.2005 d.377, effective November 7, 2005.

See: 37 N.J.R. 1401(a), 37 N.J.R. 4292(a).

Former N.J.A.C. 14:9-2.2, Pressure and volume of water service, recodified to N.J.A.C. 14:9-2.1.

Recodified from N.J.A.C. 14:9-2.2 and amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Rewrote the section. Former N.J.A.C. 14:9-3.2, Periodic testing of water meters, repealed.

14:9-3.3 Wastewater service

(a) Each wastewater utility shall provide wastewater treatment service in such a manner as to prevent escape of offensive odors, the overflow of effluent and the discharge of any untreated sewage, in accordance with NJDEP requirements at N.J.A.C. 7:10A. Noncompliance with this requirement shall constitute a failure to provide safe, adequate and proper service.

(b) Each wastewater utility shall operate its facilities in such a manner as to eliminate possible danger to public health and welfare.

Amended by R.2001 d.133, effective May 7, 2001.

See: 33 N.J.R. 367(a), 33 N.J.R. 1392(b).

Substituted "wastewater" for "sewer" throughout.

Recodified from N.J.A.C. 14:9-2.4 by R.2005 d.377, effective November 7, 2005.

See: 37 N.J.R. 1401(a), 37 N.J.R. 4292(a).

Former N.J.A.C. 14:9-2.3, Quality of Water, recodified to N.J.A.C. 14:9-2.2.

Recodified from N.J.A.C. 14:9-2.3 and amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Section was "Sewerage treatment". Rewrote the section. Former N.J.A.C. 14:9-3.3, Determination of Water Meter Accuracy, repealed.

SUBCHAPTER 4. METERS

14:9-4.1 Water meter testing

(a) Each water utility shall ensure that all of the meters in use in its system are tested for accuracy in accordance with this section.

(b) A water utility shall ensure that each meter is tested after a certain number of years in use, or after a certain number of gallons measured, whichever comes first, according to the schedule in Table A below:

TABLE A

Frequency for water utility testing of water meters

<u>Meter Size</u>	<u>Whichever Comes First:</u>
5/8 inch	10 years or 750,000 gallons
3/4 inch	Eight years or 1,000,000 gallons
One inch	Six years or 2,000,000 gallons
Greater than one inch	Four years – no gallon limit

(c) A water meter shall be tested, with water flowing at both intermediate and full flow capacities, as set forth in Water Meters: Selection, Installation, Testing, and Maintenance (M6), which is published by the American Water Works Association, which is incorporated herein by reference, as amended and supplemented, and may be found at <http://www.awwa.org>.

(d) A water meter shall be considered accurate if it shows an error no greater than one and one half percent, when tested in accordance with this section.

14:9-4.2 Water meter testing equipment

(a) Each water utility that has more than 100 meters in use shall ensure that it has access to facilities that are adequate for testing all of its water meters as required by N.J.A.C. 14:3-4.4.

(b) Water utilities may cooperate with other water utilities in arranging for access to meter testing facilities.

(c) No equipment shall be used in testing water meters unless it has been examined, calibrated and sealed by the New Jersey Office of Weights and Measures at least once in the five years prior to its use in testing. Appropriate evidence of such examination, calibration and sealing shall be affixed to the equipment.

SUBCHAPTER 5. PRESERVATION OF RECORDS

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

(a) Each water and wastewater utility shall keep records as required by the National Association of Regulatory Utility

Commissioners' (NARUC) 1985 "Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities," incorporated herein by reference, as amended or supplemented, and available from the National Association of Regulatory Utility Commissioners, 1101 Vermont Avenue NW, Washington, D.C. 20005, or at www.naruc.org.

(b) If the Board issues an order providing for a longer or shorter retention period for specific records, the order shall supersede the NARUC regulations.

R.1972 d.181, effective September 18, 1972.

See: 4 N.J.R. 241(b).

Amended by R.2001 d.133, effective May 7, 2001.

See: 33 N.J.R. 367(a), 33 N.J.R. 1392(b).

Rewrote the section.

Amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Rewrote (a) and (b); and deleted (c) and (d).

SUBCHAPTER 6. SMALL WATER COMPANY AND SMALL SEWER COMPANY TAKEOVER ACT RULES

14:9-6.1 Purpose

This subchapter implements the provisions of N.J.S.A. 58:11-59 et seq., commonly known as the "Small Water Company and Small Sewer Company Takeover Act." This subchapter establishes procedures by which a small water company or small sewer company that does not comply with applicable statutory and regulatory standards concerning the availability and quality of potable water or the discharge of treated sewage to the State's waters may be acquired or "taken over" by a public or private entity pursuant to a joint order issued by the New Jersey Department of Environmental Protection and the New Jersey Board of Public Utilities.

Amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Rewrote the section.

14:9-6.2 Definitions

Unless the context clearly indicates otherwise, the following terms, when used in this subchapter, shall have the following meanings. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:9-1.2, and in the Board's rules for all utilities at N.J.A.C. 14:3-1.1.

"Acquisition cost" means the cost to an acquiring entity of completing the transaction required to take over a small water and/or small sewer company through the process set forth in this subchapter. This term includes the actual purchase price of the small water and/or sewer company, as determined through negotiations under N.J.A.C. 14:9-6.11, or through eminent domain proceedings. The Board shall make the final decision as to what activities are necessary to complete the transaction and thus what constitutes acquisition costs in a particular case.

“Act” means the “Small Water Company and Small Sewer Company Takeover Act,” N.J.S.A. 58:11-59 et seq., as amended.

“Actionable violation” means:

1. For a small water company, an uncorrected violation of applicable statutory or regulatory standards, including, but not limited to, the New Jersey Safe Drinking Water Regulations, N.J.A.C. 7:10, which adversely affects the quality, pressure or volume of water delivered, as determined by the Department. Violations by a small water company or small sewer company of applicable statutory and regulatory standards that do not affect the quality, pressure or volume of water delivered as determined by the Department, in consultation with the Board, shall not be considered actual or imminent public health problems for the purposes of this subchapter, including, but not limited to, aesthetic water quality problems or minor design deficiencies; and

2. For a small sewer company, any uncorrected violation that the New Jersey Department of Environmental Protection determines is a “serious violation,” or that causes the company to be a “significant noncomplier,” as those terms are defined in the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and implementing rules.

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

“Capable” means financially and operationally able to provide safe, adequate and proper water service for the existing and foreseeable customers of the small water company or safe, adequate and proper sewer service for the existing and foreseeable customers of the small sewer company in compliance with environmental standards. The Department staff shall consult with Board staff concerning the financial status of any potential acquiring public or private entity.

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

“Department” means the Department of Environmental Protection.

“Improvement cost” means a cost expended in order to correct an actionable violation at a small water company and/or small sewer company.

“Party to the proceedings” or “party” means a noncomplying small water company and/or small sewer company; a potential acquiring public or private entity or entities; and the Department of the Public Advocate, Division of Rate Counsel.

“Proximate” means all private water or sewer companies, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq., and doing business in the region, and municipalities or other suitable governmental entities located in the jurisdiction wherein the small water company or small sewer company provides service, regardless of their ability to

reasonably physically interconnect with the small water company or small sewer company to be acquired.

“Rate Counsel” means the Division of Rate Counsel, within the Department of the Public Advocate, as established under P.L. 2005, c. 155.

“Small sewer company” means any company, business, or entity, other than a governmental agency, which is a public utility as defined pursuant to N.J.S.A. 48:2-13, that collects, stores, conveys, or treats wastewater, and that regularly serves fewer than 1,000 billed customers.

“Small water company” means any company, purveyor or entity, other than a governmental agency, which is a public utility as defined pursuant to N.J.S.A. 48:2-13, that provides water for human consumption and which regularly serves less than 1,000 billed customers.

Amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Rewrote the introductory paragraph and definitions “Act”, “Capable”, “Commissioner”, “Proximate” and “Small water company”; added definitions “Acquisition cost”, “Improvement cost”, “Party to the proceedings” and “Small sewer company”; substituted definitions “Actionable violation” for “Actual or imminent public health problems” and “Rate Counsel” for “Public Advocate”, and rewrote the definitions; and substituted definition “Board” for “BPU”.

14:9-6.3 Construction

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

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

14:9-6.4 Applicability

This subchapter shall apply to all small water companies and small sewer companies, as those terms are defined at N.J.A.C. 14:9-6.2, in New Jersey.

Amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Inserted “small sewer companies, as those terms are defined at N.J.A.C. 14:9-6.2,”; and substituted “in” for “within the State of”.

14:9-6.5 Severability

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

14:9-6.6 Scope

(a) Any small water company or smaller sewer company, determined by the Department to have committed an actionable violation, as defined at N.J.A.C. 14:9-6.2, shall be subject to this subchapter.

(b) For the purposes of this subchapter, the Department staff, after consultation with Board staff, shall determine options for improvements to correct actionable violations.

(c) For the purposes of this subchapter, Board staff, after consultation with Department staff, shall determine improvement costs, acquisition costs, and the distribution of costs through the takeover procedures set forth in this subchapter.

Amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Rewrote (a); deleted former (b); and added new (b) and (c).

14:9-6.7 Departmental and Board actions

(a) Prior to the implementation of procedures under the Act, the Department shall actively pursue appropriate and available enforcement options to cause a small water company or small sewer company to cease all actionable violations, including, but not limited to:

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

(b) An unstayed Department order issued to a small water company or small sewer company, concerning an actionable violation, shall constitute a basis upon which the Department and the Board may initiate proceedings under the Act and this subchapter as follows:

1. A Department order shall specify on a case-by-case basis a reasonable time period in which the small water company or small sewer company must correct and eliminate the actionable violation(s), and shall provide the small water company or small sewer company with the opportunity for an evidentiary hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. to determine whether there has been compliance with appropriate statutory and regulatory standards;

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

3. The Department may issue another order concerning any small water company or small sewer company at any time.

(c) Should the Department conclude, following the expiration of the times for compliance set forth in Department orders, or following an evidentiary hearing if one has been requested, that the small water company or small sewer com-

pany has not complied with the Department's order and no stay has been obtained, the Department shall provide Board staff with immediate notice of the small water company's or small sewer company's noncompliance and the Department and Board shall jointly decide whether to invoke and initiate the provisions as set forth in N.J.A.C. 7:19-5.8 and N.J.A.C. 14:9-6.8.

(d) If a small water company and a small sewer company serve a common franchise area, were established by the same developer to serve the franchise, and are under common control or ownership, the companies may be treated as one company for purposes of a takeover proceeding under this subchapter, provided that any acquisition payments made by the acquiring public or private entity shall be separately allocated and made available to the creditors and claimants of each company in accordance with N.J.S.A. 59:11-60(c).

Amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Section was "Departmental action". Rewrote introductory paragraph of (a); in (a)1, substituted "notices of violation" for "directive letters"; rewrote (b) and (c); and added (d).

14:9-6.8 Joint public hearing

(a) Designated hearing officers from the Department and the Board, or an Administrative Law Judge, shall conduct a non-adversarial joint public hearing in the area of the non-complying small water company or small sewer company, preferably in the evening, after providing notice pursuant to (b) below.

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

1. Publication of a display advertisement in a newspaper circulating within the proximate area of the small water company or small sewer company for a minimum of one day per week for two weeks prior to the scheduled date of the joint public hearing;
2. Issuance of press releases and utilization of other appropriate methods of notice;
3. Written notice by certified or registered mail sent to the following:
 - i. The non-complying small water company or small sewer company, and, if known, the company's owner or operator;
 - ii. Rate Counsel;
 - iii. Capable proximate private water companies or sewer companies; and
 - iv. Capable proximate municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq., and doing business in the region, and municipalities or other capable proximate governmental entities located in the

jurisdiction wherein the non-complying small water company provides water or sewer service.

(c) The joint public hearing shall be conducted to receive public comments regarding the possible options available to bring the non-complying small water company or small sewer company into compliance with the applicable statutory and regulatory standards. The acquisition of the non-complying small water company and/or small sewer company by the most suitable public or private entity shall be discussed.

(d) The hearing officer(s), or Administrative Law Judge, at the joint hearing may require the parties to the proceedings, as defined at N.J.A.C. 14:9-6.2, to testify concerning expenditures, including acquisition and improvement costs, as those terms are defined at N.J.A.C. 14:9-6.2, that may be required to correct actionable violations, including, but not limited to, costs necessary to:

1. Assure the availability of water;
2. Assure the potability of water;
3. Assure the provision of water at adequate volume and pressure; and
4. For small sewer companies, assure the provision of adequate sewer service in compliance with Federal and State water pollution control requirements.

(e) The Department staff shall, after consultation with the Board staff, develop a presentation for the joint public hearing. This presentation shall:

1. Indicate various options for correcting actionable violations;
2. Identify the improvements to the small water company and/or small sewer company, which would be needed under each option; and
3. Be based on the information in the record and any other information available to the Department.

(f) The Department shall mail written summaries of the Department's presentation to the persons set forth in (b)3 above at least five days before the scheduled joint public hearing date. Copies of the written summaries shall also be made available at the joint public hearing.

(g) The Board staff shall, after consultation with Department staff, develop a presentation for the joint public hearing. This presentation shall:

1. Include a preliminary estimate, for each option in the Department's presentation, of the amount of the improvement costs expected to be borne by the customers of the acquiring entity, as well as the customers of the small water company and/or small sewer company;
2. Include a preliminary estimate of the acquisition costs for each option in the Department's presentation;

3. Include a preliminary estimate, for each option in the Department's presentation, of the amount of the acquisition costs expected to be borne by the customers of the acquiring entity, as well as the customers of the small water company and/or small sewer company; and

4. Be based on the information in the record and any other information available to Board staff.

(h) The non-complying small water company and/or small sewer company shall appear at the joint public hearing and shall provide all available information pertaining to the value of its water supply facilities or sewer facilities, and pertaining to the cost of correcting actionable violations.

(i) At the joint public hearing, the Department shall, to the extent possible, describe the terms of a draft administrative consent order (ACO), developed jointly with Board staff. The draft joint ACO shall contain a schedule for the acquiring entity to make all necessary improvements to correct the actionable violations.

(j) The draft joint ACO may contain a stipulation insulating the acquiring entity from liability for penalties arising from the deficiencies, obsolescence or disrepair of the facilities at the time of acquisition. Such a stipulation shall be conditioned on the acquiring entity's compliance with the schedule in the ACO.

(k) The acquiring entity shall not be liable for penalties for violations that occurred prior to the acquisition.

(l) The public hearing shall be transcribed for the record at the expense of the non-complying small water company and/or small sewer company.

(m) The designated Department and Board hearing officers, or an Administrative Law Judge, shall require answers from any appropriate person attending the joint public hearing, to all reasonable questions put forward.

(n) Questioning of any person who testifies shall not be permitted by any person at the joint public hearing, except for the hearing officer(s).

(o) All testimony from the parties to the proceedings shall be given under oath. In addition, the hearing officer(s) or Administrative Law Judge may require any other person to testify under oath.

(p) Following the joint public hearing, the Department and the Board shall keep the record open for at least 15 days to allow any person to submit written comments.

Amended by R.2006 d.367, effective October 16, 2006.
See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).
Rewrote the section.

14:9-6.9 Joint public hearing report

(a) Within 60 days after the joint public hearing record is closed, the designated Department and Board hearing officers

or an Administrative Law Judge shall review the record and prepare a joint public hearing report. The joint report shall provide a maximum of three options, and shall detail the following information for each:

1. The estimated costs of each option;
2. The potential impact on the customers of the acquiring entity, and the customers of the small water company and/or small sewer company;
3. The rationale for selection of each option; and
4. A ranking of the options in order of priority.

(b) The joint public hearing report shall be mailed to all those noticed by certified or registered mail of the joint public hearing in accordance with N.J.A.C. 14:9-6.8(b)3, and shall be made available for public review through posting on the Department's and the Board's websites, <http://www.bpu.state.nj.us/home/home.shtml>. The Department staff and Board staff shall undertake reasonable efforts to make copies of the joint report available to all other interested persons.

(c) All persons shall file any comments concerning the report within 30 days of its issuance, by certified or electronic mail to the address supplied in the joint report.

(d) Failure to file any comments concerning the joint report by the small water company or small sewer company, by its owner or operator, by capable proximate public or private water companies, by municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1, by capable proximate municipalities, by any other capable proximate governmental entities, or by any interested person, shall be deemed a waiver of any right to raise any legal or factual issue which could have been reasonably ascertained from the joint report.

(e) The filing of a timely comment or objection shall not, in itself, confer on the objecting person a right to a contested case hearing, or the right to intervene in any contested case hearing.

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

Repeal and New Rule, R.2006 d.367, effective October 16, 2006.
See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Section was "Contested case". Recodified in part from N.J.A.C. 14:9-6.8(j) and (k) and substantially amended.

14:9-6.10 Proposed joint takeover order

(a) Upon receipt of the entire record of the joint public hearing, the joint hearing report, and any written comments on the report received during the comment period required under N.J.A.C. 14:9-6.8(p), the Department and the Board

shall jointly issue a proposed order, which shall require either the acquisition of the small water and/or sewer company, or termination of procedures under the Act.

(b) If the Board and the Department do not order the acquisition of the small water and/or sewer company, they shall order the termination of procedures under the Act.

(c) If the Department and the Board find that the improvement and acquisition costs, as defined at N.J.A.C. 14:9-6.2, are necessary and reasonable, the Department and the Board shall issue a proposed joint takeover order for the acquisition of the non-complying small water company and/or small sewer company by the most suitable entity.

(d) The proposed joint takeover order shall:

1. Designate an acquiring entity;
2. Address improvement and acquisition costs;
3. Include an action by the Board subject to refund which provides, upon the order becoming final, for the inclusion in the acquiring entity's rates of the anticipated costs of improvements required under N.J.A.C. 14:9-6.13(a). This inclusion shall be accomplished immediately or, if the acquiring entity chooses to defer determination of acquisition costs, it shall be accomplished as soon after these costs are determined as is practicable and feasible consistent with N.J.A.C. 14:9-6.11; and
4. Include tariffs approved by the Board under N.J.A.C. 14:1-5.

(e) If the Board has determined that customers shall pay for some or all of the anticipated improvement costs, the proposed joint takeover order shall require that improvements be considered contributions in aid of construction (CIAC) in all future rate cases. Separate records shall be maintained as to contributions occurring under this process.

(f) If the Department and the Board issue a proposed joint takeover order, the Board may, if necessary, issue an order:

1. Extending or transferring the franchise area of the acquiring entity to cover the service area of the non-complying small water company and/or small sewer company;
2. Revoking any service franchise previously issued by the Board to the small water company and/or small sewer company; and
3. Rendering the owner or operator of the company or companies presumptively unfit to hold any other water or sewer franchise, or municipal consent to provide water or sewer service.

(g) The Board staff shall serve the proposed joint takeover order by personal service or certified mail upon the following:

1. The noncomplying small water company and/or small sewer company;
2. The owner and operator of the noncomplying small water company and/or small sewer company, if different from (h)1 above;
3. The acquiring public or private entity; and
4. Rate Counsel.

(h) The Department staff and Board staff shall mail the proposed joint takeover order or otherwise make it available to all persons who testified or submitted written information at the joint public hearing, or who submitted timely written comments on the joint hearing report.

Amended by R.2006 d.367, effective October 16, 2006.
See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Section was "Joint takeover order by the Department and BPU".
Rewrote the section.

14:9-6.11 Acquisition costs

(a) If the small water company and/or small sewer company have not agreed with the acquiring entity as to acquisition costs or other matters relevant to the takeover proceedings, the Board's and the Department's designated representatives shall convene at least one meeting within 60 days of the issuance of the joint hearing report pursuant to N.J.A.C. 14:9-6.8(j). If all matters are not resolved at this meeting, another meeting shall be held within 15 days after issuance of the proposed joint takeover order.

(b) The meetings required under (a) above shall address issues that must be resolved in order to complete the takeover proceedings required under this subchapter.

(c) Representatives of Rate Counsel, non-complying small water company and/or small sewer company, and the acquiring entity shall be notified of each meeting.

(d) Meetings shall be continued if the Department's and Board's designated representatives determine that a reasonable possibility of success for an agreement exists.

(e) The Board's and the Department's representatives shall certify in writing, to the Department and the Board, the status of these meetings every three months.

(f) An agreement between the acquiring entity and the small water company and/or small sewer company on acquisition costs shall not be final unless the Board and the Department approve the agreement.

(g) If the acquiring entity and the small water company and/or small sewer company do not come to an agreement on acquisition costs, or if the entities agree but the Board does not approve the acquisition costs, the purchase price for the small water company and/or small sewer company shall be determined through the use of eminent domain, in accordance with N.J.S.A. 20:3-1 et seq. The acquiring entity shall provide

notice of the commencement of these proceedings to the Board, the Department, and all affected persons.

(h) If the parties to the proceedings reach an agreement on acquisition costs, which the Board approves, the Board and the Department shall continue proceedings under the Act in accordance with this subchapter.

(i) The proposed joint takeover order shall provide that any acquisition costs that the Board staff, after consultation with Department staff and Rate Counsel, determines are necessary and reasonable may be included in the acquiring entity's rates, provided that the small water company and/or small sewer company agree. The Board staff's determination under this subsection shall be based on evidence from the joint public hearing and comments on the joint hearing report.

Amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Rewrote the section.

14:9-6.12 Contested case hearing, final joint takeover order and administrative consent order (ACO)

(a) Any of the parties to the proceedings may petition the Board and the Department for a contested case hearing on the proposed joint takeover order through the procedures at N.J.A.C. 7:19-5.11 or through the procedures for filing a petition at N.J.A.C. 14:1-5.

(b) A party to the proceedings shall submit any request for a contested case hearing to the Board and the Department within 30 days after the party receives the proposed joint takeover order.

(c) The Board and the Department, may deny a request for a contested case hearing, whether by a party to the proceedings or another person, if the hearing request:

1. Is not filed within the applicable deadline in this section;
2. Does not meet the requirements at N.J.A.C. 7:19-5.11 and 14:1-5;
3. Does not specify one or more genuine issues of material fact or law that are appropriately and necessarily resolved by an adversarial, adjudicative hearing; or
4. Is based on factual or legal issues that were reasonably ascertainable from the joint hearing report, but were not raised during the comment period provided under N.J.A.C. 14:9-6.8(o) and (p).

(d) Status as a ratepayer or customer of the noncomplying small water company and/or small sewer company shall not, in itself, confer a right to a hearing apart from the right of Rate Counsel. Even if the hearing request of an interested person is denied, the person may nevertheless apply to intervene or participate in a contested case requested by someone else, in accordance with N.J.A.C. 1:1-16.

(e) If no party to the proceedings submits a hearing request within the applicable time limit in (b) above, the proposed joint takeover order shall become a final order on the 31st day after service upon all the parties to the proceedings of the proposed joint order, and the Department shall, with the concurrence of the Board, finalize the joint administrative consent order (ACO).

(f) If a contested case hearing is granted, Board staff shall notify all parties to proceeding and all these parties shall be entitled to participate fully at the hearing with respect to the issues specified in the grant of the hearing.

(g) If a contested case hearing is granted, the hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and shall be held before one of the following, as determined jointly by the Board and Department:

1. The Department Commissioner;
2. A Board Commissioner; or
3. An Administrative Law Judge.

(h) If one or more timely hearing requests is submitted, the proposed joint takeover order shall become a final order upon the earliest of the following:

1. Denial of all hearing requests in accordance with (c) above;
2. If a hearing request is granted, the abandonment or termination of the contested case hearing at any time prior to a final decision by the Department and the Board; or
3. If a hearing request is granted, and if the contested case hearing is conducted and completed, the issuance of a final decision by the Department and the Board.

(i) After the joint takeover order becomes final under (h) above, the Department and the Board shall serve the final joint takeover order, together with any contested case hearing final decision, upon each of the parties to the proceeding by personal service or certified mail.

(j) The Department and the Board shall also mail or otherwise make available the final joint takeover order to all persons who:

1. Testified at the joint hearing;
2. Submitted comments on the joint hearing report in accordance with N.J.A.C. 14:9-6.8(p);
3. Submitted a request for a contested case hearing; or
4. Requested permission to intervene or participate in a contested case hearing.

New Rule, R.2006 d.367, effective October 16, 2006.
See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Former N.J.A.C. 14:9-6.12, Compliance with joint order, recodified to N.J.A.C. 14:9-6.13.

14:9-6.13 Compliance with joint order

(a) The acquiring entity named in a final joint takeover order issued under this subchapter shall acquire the noncomplying small water company and/or small sewer company, and shall make necessary improvements to assure, in the case of a small water company, the availability of water, the potability of water and the provision of water at adequate volume and pressure; and, in the case of a small sewer company, compliance with applicable Federal and State water pollution control requirements.

(b) The noncomplying small water company and/or small sewer company shall immediately comply with the final joint takeover order and shall facilitate the sale of the company to the designated acquiring entity as mandated by N.J.S.A. 58:11-62.

Recodified from N.J.A.C. 14:9-6.12 and amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Rewrote (a) and (b); and deleted (c). Former N.J.A.C. 14:9-6.13, Differential rate for customers of small water company for use of service of acquiring entity's system or facilities, recodified to N.J.A.C. 14:9-6.14.

14:9-6.14 Differential rate for customers of small water company or small sewer company

The Board may, in its discretion, allow the acquiring entity to collect from the customers of the non-complying small water and/or small sewer company, a different rate for the use or service of the acquiring entity's facilities than the rate the acquiring entity charges to the customers it served prior to the takeover, pursuant to N.J.S.A. 58:11-63.

Recodified from N.J.A.C. 14:9-6.13 and amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Section was "Differential rate for customers of small water company for use of service of acquiring entity's system or facilities". Rewrote the section.

14:9-6.15 Liability for hazardous substance discharges

An entity that acquires the facilities of a small water company and/or a small sewer company pursuant to a final joint takeover order, shall be governed by N.J.A.C. 7:19-5.14 with respect to any hazardous substance discharged at the facilities prior to the acquisition.

New Rule, R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

14:9-6.16 Violations and penalties

(a) An owner or operator of a small water company and/or a small sewer company, that violates the Act or this subchapter, or that fails to comply with any provision of a final joint takeover order, shall be subject to a civil penalty of not more than \$50,000, upon order of a court of competent jurisdiction.

contested cases at N.J.A.C. 14:1-8 and the Uniform Administrative Procedure Rules at N.J.A.C. 1:1.

(e) An initial PWAC or PSTAC shall remain in effect until the utility's next rate case, provided that the utility submits an annual year-end true up and an annual petition for adjustment of the PWAC or PSTAC amount, in accordance with N.J.A.C. 14:9-7.4.

Amended by R.1996 d.207, effective May 6, 1996.

See: 28 N.J.R. 1190(a), 28 N.J.R. 2405(b).

Rewrote the section.

Amended by R.2001 d.133, effective May 7, 2001.

See: 33 N.J.R. 367(a), 33 N.J.R. 1392(b).

In (a), rewrote the second sentence and inserted "by the Board" preceding "for just cause" in the third sentence; in (c), substituted "The" for "Said" at the beginning of the second sentence; in (d), substituted "result from" for "are results of" preceding "a true up" in the first sentence, substituted "in" for "at" preceding "its discretion" and inserted ", whichever is the most appropriate refund under the specific circumstances" following "by check" in the second sentence.

Amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Section was "Petitions for purchased water adjustment clauses; true up schedules; time for filing." Rewrote (a); added new (b), (d) and (e); recodified former (b) as new (c); and deleted former (c) through (e).

Case Notes

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

14:9-7.4 Year-end true up schedule

(a) Once a purchased water adjustment clause has been in effect for one year, a utility shall submit a true up schedule to the Board. The true up schedule shall compare:

1. The actual cost of purchased water or of wastewater treatment for the previous year; and
2. The estimated costs of purchased water or of wastewater treatment for the previous year, upon which the PWAC or PSTAC for the previous year was based.

(b) The utility shall file the true up schedule within 45 days after the end of the year covered by the PWAC or PSTAC, regardless of whether the utility files a petition for approval of an adjustment of the PWAC or PSTAC for the following year.

(c) If the utility files a petition for approval of an adjustment of a PWAC or PSTAC for the following year, the utility may file the year-end true up schedule for its previous year's PWAC or PSTAC in conjunction with the utility's petition for the adjustment (see N.J.A.C. 14:9-7.6), or in conjunction with the filing of a base rate case.

(d) If the year-end true up schedule indicates that the utility recovered more under the PWAC or PSTAC than was necessary to reflect its cost of purchased water or wastewater treatment during the preceding year, the following shall apply:

1. The utility shall submit, as part of its true up schedule, a calculation of the interest for the year on the over recovery, in accordance with N.J.A.C. 14:3-13; and

2. Either or both of the following shall apply:

i. The Board may require an adjustment that will reduce the utility's revenue under its PWAC or PSTAC for the following year; and/or

ii. The Board may require that the utility provide a refund to customers. The Board may, in its discretion, require that refunds be provided through a bill credit, refund check, or other appropriate means.

(e) A utility that is required to provide a refund under this section shall certify to Board staff that the refund was provided, the date upon which it was provided, and the total amount of the refund.

New Rule, R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Former N.J.A.C. 14:9-7.4, Petition for purchased water adjustment clauses; content; procedures, recodified to N.J.A.C. 14:9-7.6.

14:9-7.5 Billing

If a utility has a Board approved purchased water adjustment clause or purchased wastewater treatment adjustment clause, the utility shall list and identify any rate adjustment authorized through the clause separately on customer bills.

New Rule, R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Former N.J.A.C. 14:9-7.5, Formula for determination of base costs by a water utility using a flat rate basis, recodified to N.J.A.C. 14:9-7.7.

14:9-7.6 Petition contents

(a) This section sets forth the content requirements for a petition for:

1. Approval of an initial PWAC or PSTAC;
2. Approval of a year-end true up schedule; and
3. Approval of an adjustment to a PWAC or PSTAC for a year following the year of the initial PWAC or PSTAC.

(b) A petition submitted under this subchapter shall include the following:

1. A copy of the contracts for purchased water or purchased wastewater, which formed the basis for the utility's most recent base rate case or adjustment clause case, whichever is later;
2. Copies of the present and proposed purchased water or wastewater contracts, including price and detailed financial statements of associated expenses;
3. The actual number and classes of customers that the utility serves:

- i. As approved in the utility's most recent base rate case or adjustment clause case, whichever is later; and
- ii. As of the end of the most recent calendar year;

4. The actual volume of water or wastewater treatment purchased:

- i. As approved in the utility's most recent base rate case or adjustment clause case, whichever is later; and
- ii. As of the end of the most recent calendar year;

5. An estimate of the cost per unit of volume of water or wastewater treatment that the utility will purchase under contracts during the upcoming year if the Board approves the PWAC or PSTAC. The utility shall develop this estimate using the methodology approved by the Board in the utility's most recent base rate case or adjustment clause case, whichever is later;

6. A proposed tariff sheet, entitled "Purchased Water Adjustment Clause" or "Purchased Wastewater Treatment Adjustment Clause" that shows all rate schedules in the tariff that will be affected by the clause, if approved, and how each rate schedule will be affected;

7. A copy of each Board Order that approves rates, which was issued as a result of the utility's most recent base rate case or its most recent adjustment clause case;

8. A detailed description of all of the following:

- i. The utility's efforts to investigate the basis for any cost increase proposed by its purveyor;
- ii. The utility's findings and results of the investigation conducted under i above;
- iii. The utility's efforts to negotiate with the purveyor to ensure that the charges are such that they will not hamper the utility's efforts to ensure that its rates are just and reasonable;

9. A list of expenditures that a utility must make to conduct a rate case in accordance with Board procedures, including, but not limited to, consulting, legal and accounting fees; costs of the public notice, room rental, court reporter and transcripts for the public hearing; the cost of any necessary changes to customer invoices; and other traditional rate case expenses; and

10. At the utility's discretion, the utility may include a request for compression or deferred accounting.

(c) The Board shall not accept or consider a request for deferred accounting of PWAC or PSTAC amounts except in the context of an adjustment clause proceeding. The amount that the Board will permit the utility to defer may be adjudicated in a subsequent filing of an adjustment clause or base rate case.

(d) If the Board approves deferred accounting, the utility shall pay interest on the deferred amount in accordance with N.J.A.C. 14:3-13.2.

(e) A utility shall serve a copy of each petition subject to this section, and all supporting exhibits, upon Rate Counsel simultaneously with the filing of the petition with the Board.

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

Amended by R.1996 d.207, effective May 6, 1996.
See: 28 N.J.R. 1190(a), 28 N.J.R. 2405(b).

Rewrote (a).
Amended by R.2001 d.133, effective May 7, 2001.
See: 33 N.J.R. 367(a), 33 N.J.R. 1392(b).

In (a)5, substituted "The" for "Said" and "that" for "which" in the second sentence; rewrote (a)6; in (a)7, substituted "shall" for "will" in the third sentence; and in (e), substituted "of the petition" for "thereof" preceding "with the Board".

Recodified from N.J.A.C. 14:9-7.4 and amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Section was "Petition for purchased water adjustment clauses; content; procedures". Rewrote the section. Former N.J.A.C. 14:9-7.6, Formula for determination of costs by a water utility using a metered basis, combined with former N.J.A.C. 14:9-7.5 as new 14:9-7.7.

14:9-7.7 Determining the customer charge under a PWAC or PSTAC

(a) This section sets forth the procedure by which a water or wastewater utility shall calculate the amount the utility is authorized to collect from each customer under its PWAC or PSTAC. The utility shall present this calculation to the Board for its review and approval as part of a petition submitted under N.J.A.C. 14:9-7.5.

(b) To determine the customer charge under a PWAC or PSTAC, a utility shall apply the equation in Table B below, for all customers charged for service on a flat rate basis, and the equation in Table C below for all customers charged on a metered basis.

Table B

Determining PWAC or PSTAC Customer Charge – Flat Rate Basis

Utility's base cost of purchased water or wastewater at time of petition submittal

- +/- New cost of purchased water or wastewater
- +/- Rate case expenses
- +/- Amount of costs and expenses compressed or deferred, if any
- x Revenue tax factor, that is, the multiplier applied to recoup the Gross Receipts and Franchise Taxes at the rate established in the utility's last base rate or adjustment clause case
- = Total allowable expenses
- ÷ Number of customers by class
- = PWAC or PSTAC charge per customer for the upcoming year

Table C

Determining PWAC or PSTAC Customer Charge – Metered Basis

Base cost of purchased water or wastewater

- +/- New cost of purchased water or wastewater
- +/- Rate case expenses
- +/- Amount of costs and expenses compressed or deferred, if any
- x Revenue tax factor, that is, the multiplier applied to recoup the Gross Receipts and Franchise Taxes at the rate established in the utility's last base rate or adjustment clause case
- = Total allowable expenses
- + Base water consumption or base wastewater treatment
- = PWAC or PSTAC charge per thousand gallons for the upcoming year

Amended by R.1996 d.207, effective May 6, 1996.

See: 28 N.J.R. 1190(a), 28 N.J.R. 2405(b).

Rewrote section.

Recodified from N.J.A.C. 14:9-7.5 and amended by R.2006 d.367, effective October 16, 2006.

See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

Section was "Formula for determination of base costs by a water utility using a flat rate basis". Section combined with former N.J.A.C. 14:9-7.6, Formula for determination of costs by a water utility using a metered basis. Added (a) and (b); rewrote existing table as "Table B"; and incorporated and rewrote table from former N.J.A.C. 14:9-7.6 as "Table C".

Case Notes

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

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

SUBCHAPTER 8. COMBINED DOMESTIC WATER AND FIRE SUPPRESSION SERVICE

14:9-8.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:9-1.2, and 14:3-1.1.

"Customer's water system" means all water facilities on the customer's side of the meter, or on the customer's side of the water service, which are owned or controlled by the customer.

"DCA" means the Department of Community Affairs.

"Domestic water service" means potable water service supplied by a water utility that meets or exceeds New Jersey Safe Drinking Water rules, found at N.J.A.C. 7:10-1.3.

"Fire suppression service" means potable water supplied for use in a fire suppression system inside a structure, such as an automatic sprinkler system.

"Multi-use service" means water service that is supplied to a structure through one water line extending from the water main to the structure, and which is used inside the structure for both domestic water service and fire suppression service.

14:9-8.2 Required water tariff filings and amendments

(a) A water utility that is required under N.J.A.C. 14:1-11 to file a tariff with the Board after October 16, 2006 shall ensure that the tariff complies with this subchapter.

(b) A water utility that has filed a tariff prior to October 16, 2006, which is in effect as of October 16, 2006, shall submit an amendment to the tariff, or a new tariff page(s), that complies with this subchapter. The water utility shall submit the amendment or new tariff page(s) by January 14, 2007.

(c) If a residential customer or builder requests fire suppression service and that service is provided from a multi-use line of two inches or less, the customer's meter may be placed on the domestic branch of the customer's service to properly measure domestic water use.

14:9-8.3 Multi-use service

(a) Each water utility that provides multi-use service, as defined at N.J.A.C. 14:9-8.1, shall include in its tariff the language required in this section. The water utility shall place the language in the tariff in the location required in this section.

(b) The following language shall be located in the tariff in a Terms of Payment section governing multi-use service, or in a general Terms of Payment section:

"A water utility may terminate a customer's multi-use service for non-payment of a valid water bill for multi-use service, in accordance with the Board's rules governing discontinuance of service at N.J.A.C. 14:3-3.6."

(c) The following language shall be located in the tariff in a Conditions section that governs multi-use service:

"By applying for multi-use service, the customer or builder certifies that:

1. The customer or builder has hydraulically calculated the demand for the customer's or builder's water system, based on the simultaneous domestic demand and fire sprinkler demand. The customer or builder shall make this calculation in accordance with the Uniform Construction Code; and
2. The customer or builder will ensure that the system is installed in accordance with the Uniform Construction Code at N.J.A.C. 5:23; and
3. The customer will, prior to installation of the meter, obtain a construction permit in accordance with the Uniform Construction Code from the enforcing agency having jurisdiction over the system.

(d) The following language shall be located in the tariff in a General Terms and Conditions section that applies to all regulated water services:

“By applying for multi-use service, the customer agrees to be responsible for all claims, costs, and liability for personal injury, death and/or property damage, resulting from the customer’s individual water system, unless caused by the negligence of the water utility.”

(e) The following language shall be located in the tariff in a Provision of Services section that governs multi-use service:

“By applying for multi-use service, and operating the same, the customer agrees:

1. To include a backflow prevention device(s) as defined at N.J.A.C. 7:10-1.3, and as specified at N.J.A.C. 7:10-10.3;

2. To be solely responsible for all costs and expenses relating to the installation, operation, maintenance, repair and replacement of the customer’s water system, including the fire suppression system and backflow prevention device(s);

3. To ensure that the customer’s water system complies with the applicable requirements of the Uniform Construction Code in effect at the time of system installation, including any applicable building, plumbing and fire protection subcodes; and

4. To ensure that the customer’s water system is maintained in accordance with all applicable law so as to protect against backflow, back-siphonage and contamination of the potable water system.”

(f) A water utility shall supply multi-use service to a customer or builder upon request, unless the utility can show good cause or a compelling reason to refuse to supply multi-use service.

(g) A water utility’s intent to impose a higher safety standard than that set by DCA shall not constitute good cause or a compelling reason to refuse multi-use service to a customer or builder.

SUBCHAPTER 9. CONSUMER CONFIDENCE REPORTS

14:9-9.1 Consumer Confidence Reports

On or before July 1 of each year, each water utility shall submit to the Board a copy of the Consumer Confidence Report that the utility is required to prepare pursuant to the “Safe Drinking Water Act Amendments of 1996,” 40 CFR 141.

Amended by R.2006 d.367, effective October 16, 2006.
See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).
Rewrote the section.

SUBCHAPTER 10. DISTRIBUTION SYSTEM IMPROVEMENT CHARGE

14:9-10.1 Purpose, scope, and general provisions

(a) This subchapter establishes for water utilities in New Jersey, a voluntary Distribution System Improvement Charge (DSIC), which is an initiative intended to create a regulatory mechanism that enables the accelerated level of investment needed to promote the timely rehabilitation and replacement of certain non-revenue producing, critical water distribution components that enhance safety, reliability, water quality, system flows and pressure, and/or conservation. Through a DSIC, after approval of the foundational filing, a water utility may charge customers, up to the DSIC cap amount, for the costs of rehabilitating, improving, or replacing water distribution infrastructure in accordance with this subchapter.

(b) The purpose of a DSIC is to provide a rate recovery mechanism that encourages and supports necessary accelerated rehabilitation and replacement. As set forth under this subchapter, such investment would occur in a systematic and sustained way to advance the accelerated rehabilitation and replacement of water distribution infrastructure needed for conservation, continued system safety and reliability, improved water quality, and sustained economic growth in the State of New Jersey.

(c) The Board shall require frequent and detailed monitoring and reporting of expenditures during all phases of the DSIC, as set forth in this subchapter, in order to ensure prudent investment and compliance with this subchapter.

(d) All petitions to the Board regarding DSIC activities shall be submitted by the water utility.

(e) The initial term of the DSIC, in the absence of explicit Board action, shall end on June 4, 2017.

(f) A DSIC rate is interim, subject to refund, until the subsequent base rate case.

14:9-10.2 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1.

“Adjusted weighted average cost of capital” does not include short-term debt, so long as the water utility does not have short-term debt in its approved capital structure. The equity component of the pre-tax adjusted weighted average cost of capital will be the equity rate approved by the Board in the water utility’s most recent base rate case; however, the approved embedded cost of debt will be adjusted semi-annually, to reflect the actual embedded cost of debt at the end of the DSIC recovery period, never to exceed the actual embedded cost of debt approved in the last base rate case.