

TITLE 14

BOARD OF PUBLIC UTILITIES

CHAPTER 1

RULES OF PRACTICE

Authority

N.J.S.A. 48:2-12.

Source and Effective Date

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

Chapter Expiration Date

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

Chapter Historical Note

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

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

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

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

Law Reviews 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
- 14:1-1.5 Hours
- 14:1-1.6 Communications
- 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 Procedure of Board on filing of petition
- 14:1-5.5 Petitions for approval of franchises or consents
- 14:1-5.6 Petitions for 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 adjustment clause rates
- 14:1-5.13 Informal complaint in lieu of petition
- 14:1-5.14 Petitions for approval of a merger or consolidation
- 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
- 14:1-9.7 (Reserved)

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. PUBLIC UTILITY TARIFFS

- 14:1-11.1 Scope
- 14:1-11.2 General
- 14:1-11.3 Arrangement and form of filed schedules
- 14:1-11.4 Selection of rate schedule
- 14:1-11.5 Forms

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, the ability of said utility 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.

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.

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

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

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”.

14:1-1.4 Offices

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

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

14:1-1.5 Hours

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

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

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

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

In (b), inserted "State recognized".

14:1-1.6 Communications

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

(b) All such pleadings and correspondence 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.

(c) As (a) and (b) above require that all correspondence be addressed to the Board's Secretary and that said submissions shall be deemed to be officially received when delivered at the office of the Board, any documents received via fax will neither be date/time stamped as formally received by the Board nor be entered into the case record. Such documents shall only be distributed to the addressee.

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

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

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

14:1-1.7 Official records

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

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

14:1-1.8 Cameras and recording devices

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 2. FEES AND CHARGES

14:1-2.1 Amount of fees and charges

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

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

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

Added second sentence.

14:1-2.2 Payment of fees and charges

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

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

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

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

SUBCHAPTER 3. APPEARANCE BEFORE THE BOARD

14:1-3.1 Appearances

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

14:1-3.2 Ethical conduct

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

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

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

14:1-3.3 Former employees

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

SUBCHAPTER 4. PLEADINGS

14:1-4.1 Pleadings enumerated and defined

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

1. "Petition" means the pleading filed to initiate a proceeding invoking the jurisdiction of the Board;

2. "Answer" means the pleading filed by a respondent or other party against whom a petition is directed or who is affected by the filing of a petition; and

3. "Reply" means the pleading filed by the petitioner or others in response to an answer.

14:1-4.2 Number of copies

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

(b) Where a pleading originating a proceeding is filed by a party other than a utility 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.

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 shall be served by such utility 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 shall be served by the Secretary of the Board upon each respondent named in such petition;

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 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.

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.