

CHAPTER 3

ALL UTILITIES

Authority

N.J.S.A. 48:2-13; 48:2-16, 16.1 through 16.4, 17, 20, 23, 24, 25, and 27; 48:3-2.3, 3, 4, and 7.8; and 48:19-17.

Source and Effective Date

Effective: February 11, 2015.
See: 47 N.J.R. 661(a).

Chapter Expiration Date

Chapter 3, All Utilities, expires on February 11, 2022.

Chapter Historical Note

All provisions of Chapter 3, All Utilities, became effective prior to September 1, 1969.

1971 Revisions: Subchapter 10, Solid Waste Collection and Solid Waste Disposal, became effective July 8, 1971 as R.1971 d.109. See: 2 N.J.R. 76(f), 3 N.J.R. 160(a).

1973 Revisions: Amendments became effective June 19, 1973 as R.1973 d.157. See: 5 N.J.R. 123(b), 5 N.J.R. 240(a). Further amendments became effective July 11, 1973 as R.1973 d.187. See: 4 N.J.R. 196(e), 5 N.J.R. 292(b).

1975 Revisions: Amendments became effective October 17, 1975 as R.1975 d.305. See: 7 N.J.R. 277(b), 7 N.J.R. 510(b).

1978 Revisions: Amendments became effective May 16, 1978 as R.1978 d.155. See: 9 N.J.R. 290(e), 10 N.J.R. 261(e).

1979 Revisions: Amendments became effective March 16, 1979 as R.1979 d.117. See: 11 N.J.R. 260(a). Further amendments became effective August 1, 1979 as R.1979 d.289. See: 11 N.J.R. 258(b), 11 N.J.R. 467(a). Further amendments became effective October 10, 1979 as R.1979 d.352. See: 11 N.J.R. 522(c).

1980 Revisions: Amendments became effective January 1, 1980 as R.1980 d.474. See: 11 N.J.R. 402(b), 12 N.J.R. 49(b). Further amendments became effective January 24, 1980 as R.1980 d.44. See: 12 N.J.R. 156(d). Further amendments became effective July 1, 1980 as R.1980 d.299. See: 12 N.J.R. 209(f), 12 N.J.R. 495(d). Further amendments became effective December 29, 1980 as R.1980 d.555. See: 12 N.J.R. 552(a), 13 N.J.R. 105(b).

1983 Revisions: Amendments became effective November 21, 1983 as R.1983 d.526. See: 15 N.J.R. 787(a), 15 N.J.R. 1949(a).

1984 Revisions: Amendments became effective February 6, 1984 as R.1983 d.651. See: 15 N.J.R. 1235(a), 16 N.J.R. 250(a). Further amendments became effective April 2, 1984 as R.1984 d.87. See: 15 N.J.R. 1355(a), 16 N.J.R. 744(a). Subchapter 3, Service, and Subchapter 7, Bills and Payments for Service, were readopted effective July 2, 1984 as R.1984 d.259. See: 16 N.J.R. 693(a), 16 N.J.R. 1807(a).

1985 Revisions: Amendments became effective April 15, 1985 as R.1985 d.166. See: 16 N.J.R. 2747(a), 17 N.J.R. 974(a). Further amendments became effective May 6, 1985 as R.1985 d.202. See: 17 N.J.R. 174(a), 17 N.J.R. 1136(a).

1986 Revisions: Amendments became effective July 7, 1986 as R.1986 d.242. See: 18 N.J.R. 463(a), 18 N.J.R. 1401(a).

1987 Revisions: Amendments became effective April 6, 1987 as R.1987 d.163. See: 18 N.J.R. 2425(a), 19 N.J.R. 552(a). N.J.A.C. 14:3-7.12A became effective December 21, 1987 as R.1987 d.516. See: 18 N.J.R. 2315(a), 19 N.J.R. 2405(b).

Pursuant to Executive Order No. 66(1978), Chapter 3, All Utilities, expired on May 6, 1990. Chapter 3, All Utilities, was subsequently adopted as new rules by R.1991 d.221, effective May 6, 1991. See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).

1993 Revisions: Subchapter 11, Solid Waste Collection Regulatory Reform, was adopted as R.1993 d.83, effective February 16, 1993. See: 24 N.J.R. 1459(a), 25 N.J.R. 692(a).

Pursuant to Executive Order No. 66(1978), Subchapter 10, Solid Waste Collection and Solid Waste Disposal, and Subchapter 11, Solid Waste Collection Regulatory Reform, were readopted as R.1996 d.253, effective May 6, 1996. As part of R.1996 d.253, Subchapters 10 and 11 were recodified to N.J.A.C. 7:26H-1 and 7:26H-5, respectively, effective June 3, 1996. See: 28 N.J.R. 78(a), 28 N.J.R. 247(a), 28 N.J.R. 1147(a), 28 N.J.R. 2908(a). The remainder of Chapter 3, All Utilities, consisting of Subchapter 1, Definitions; Subchapter 2, Plant; Subchapter 3, Service; Subchapter 4, Meters; Subchapter 5, Offices; Subchapter 6, Records; Subchapter 7, Bills and Payments for Service; Subchapter 8, Suggested Formulae for Extension of Utility Service; and Subchapter 9, General Provisions, expired on May 6, 1996.

Chapter 3, All Utilities, consisting of Subchapters 1 through 9 and 12, was adopted as new rules by R.1997 d.39, effective February 3, 1997. See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).

Subchapter 13, Interest on Deferred Balances of Levelized Energy Adjustment Clauses, Levelized Gas Adjustment Clauses, Purchased Water Adjustment Clauses and Purchased Sewerage Treatment Adjustment Clauses, was adopted as R.1997 d.351, effective September 2, 1997. See: 28 N.J.R. 4079(a), 29 N.J.R. 3845(a).

Chapter 3, All Utilities, was readopted as R.2002 d.280, effective July 31, 2002. See: 34 N.J.R. 992(a), 34 N.J.R. 3216(b).

Subchapter 8, Suggested Formulae for Extension of Utility Service, was repealed and Subchapter 8, Extensions to Provide Regulated Services, was adopted as new rules, and Subchapter 10, Targeted Revitalization Incentive Program (TRIP), was adopted as new rules by R.2004 d.462, effective December 20, 2004 (operative March 20, 2005). See: 36 N.J.R. 276(a), 36 N.J.R. 5928(a).

Subchapter 13, Interest on Deferred Balances of Levelized Energy Adjustment Clauses, Levelized Gas Adjustment Clauses, Purchased Water Adjustment Clauses and Purchased Sewerage Treatment Adjustment Clauses, was renamed Interest on Deferred Balances of Levelized Energy Adjustment Clauses, Levelized Gas Adjustment Clauses, Purchased Water Adjustment Clauses and Purchased Wastewater Treatment Adjustment Clauses by R.2006 d.367, effective October 16, 2006. See: 38 N.J.R. 1538(a), 38 N.J.R. 4490(b).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 3, All Utilities, was extended by gubernatorial directive from January 27, 2008 to April 27, 2008. See: 40 N.J.R. 887(a).

Chapter 3, All Utilities, was readopted as R.2008 d.119, effective April 10, 2008. As part of R.2008 d.119, Subchapter 1, Definitions, was renamed General Provisions; Subchapter 3A, Discontinuance and Restoration of Service, was added as new rules; Subchapter 5, Offices, was renamed Contacting the Utility; Subchapter 6, Records, was renamed Records and Reporting; Subchapter 9, General Provisions, was repealed; and Subchapter 13, Interest on Deferred Balances of Levelized Energy Adjustment Clauses, Levelized Gas Adjustment Clauses, Purchased Water Adjustment Clauses and Purchased Wastewater Treatment Adjustment Clauses, was renamed Interest on Over or Under Recovered Cost Balances Under Adjustment Clauses, effective May 19, 2008. See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 3, All Utilities, was scheduled to expire on April 10, 2015. See: 43 N.J.R. 1203(a).

Chapter 3, All Utilities, was readopted, effective February 11, 2015. See: Source and Effective Date.

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1. Prior to the conference, the utility shall attempt to have the landlord correct the diversion through rewiring and/or repiping. If the landlord or his or her agent fails to appear or to eliminate the diversion, or if the beneficiary fails to appear, the utility shall adjust the beneficiary's billing and future bills by the process described in (g) below. The utility may also refuse to establish utility service for any new tenant of the landlord if the diversion remains uncorrected and the tenant-customer moves from the premises.

2. At the conference, the parties shall negotiate the adjusted billing and payments pursuant to (g) below.

3. At the conference, the utility shall have the burden of presenting the results from the investigation and seeking remuneration from the beneficiary.

4. If the diversion has not already been corrected, an attempt shall be made at the conference to have the landlord or his or her agent to file an agreement with the tenant-customer and the utility that necessary correction to the facilities shall be made within a specified time.

5. At the conference the utility shall provide all parties with a copy of these regulations.

6. The utility shall provide to all parties within two weeks of the date of the conference a detailed summary of the conference which shall include determinations, conclusions, a copy of the investigation report and the names of the participants.

(g) After the conference, billing where diversion has occurred shall be adjusted as follows:

1. The tenant-customer whose service has been diverted by another party shall be billed by the utility only for service used, based upon the estimation contained in the investigation report described in (d)3 above;

2. Where the utility can locate a diversion but not the beneficiary, the tenant-customer shall not be liable for the diverted service. Where the beneficiary can be identified, liability shall be imposed as follows:

i. If the beneficiary is currently a customer of the utility on another account, the utility shall bill that beneficiary for the amount the utility estimates is attributable to the diversion plus all related expenses incurred by the utility in accordance with the utility's tariff; or

ii. If the beneficiary is not a customer of the utility, the utility may bill that beneficiary for the excess usage, which is not attributable to the tenant-customer plus all related expenses incurred by the utility;

3. In cases where the diversion of gas or electricity is a result of a construction error in the pipes and/or wires, which was not the responsibility of the beneficiary or landlord, the account of the tenant-customer involved shall be adjusted to charge only for service used based upon a

prior use, degree day analysis, load study and/or cooling hours, whichever is appropriate;

4. In instances where the tenant-customer benefited from or cooperated in the diversion, the utility may collect from the tenant-customer of record for the diverted service plus that portion of the related expenses incurred by the utility in accordance with the utility's tariff;

5. The utility may permit the beneficiary to amortize the amount due for the diverted service. In cases of diversion due to construction error, the utility may allow the customer to amortize the amount due for the diverted service in equal installments over a period of time equal to the period of the diversion, for up to a maximum of four years; and

6. Billings shall be corrected retroactively to the most recent of the following dates:

- i. The date of the beginning of the diversion;
- ii. The date of the beginning of the tenancy; or
- iii. The date four years prior to the date of the tenant-customer's diversion complaint.

(h) If an agreement cannot be reached at the conference, the landlord, tenant-customer and beneficiary shall be advised by the utility that, within three weeks of the date on which the conference summary is available, they may request Board intervention.

(i) Each electric, gas, water and/or wastewater utility shall send the following notice to all of its tenant-customers with the tenant-customer's initial bill and annually thereafter: "Pursuant to Board of Public Utilities rules, no tenant-customer may be billed or disconnected for failure to pay for electric, gas, water and/or wastewater service which was diverted outside of his/her premises without the tenant-customer's permission. Upon suspecting that his/her utility bill is unexplainably high because of a diversion of service, the tenant-customer should notify the utility immediately by calling the following number: _____."

(j) Each electric, gas, water and/or wastewater utility shall annually report to the Board on the utilization of the diversion of service complaint proceedings provided for in (a) through (k) above. This report shall be provided on a Board-approved report format.

R.1983 d.526, effective November 21, 1983.

See: 15 N.J.R. 787(a), 15 N.J.R. 1949(a).

Amended by R.1997 d.39, effective February 3, 1997.

See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).

Amended by R.2002 d.280, effective September 16, 2002.

See: 34 N.J.R. 992(a), 34 N.J.R. 3216(b).

Inserted "water and/or wastewater" throughout.

Recodified from N.J.A.C. 14:3-7.16 and amended by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

In the introductory paragraph of (a), substituted a colon for a period at the end; in definition "Landlord", deleted "both" preceding "those persons,"; deleted definition "Utility"; in (b), substituted "include in its tariff provisions ensuring" for "file tariff amendments to provide"; in the

introductory paragraph of (d), substituted "Each utility shall investigate" for "Investigation of" and deleted "shall be conducted following "diversions"; in (d)1, substituted a semicolon for a comma at the end of the first sentence and recodified the second and third sentences as new (d)2 and (d)3 and the fourth and fifth sentences as (d)4; in (d)2, substituted a semicolon for a period at the end; rewrote (d)3; in (d)4, substituted "shall" for "must" twice and updated the N.J.A.C. reference; recodified former (d)1i and (d)1ii as (d)5 and (d)6; in (d)5, updated the N.J.A.C. reference and substituted a semicolon for a period at the end; in (d)6, inserted a comma following "If", deleted a comma following "tenant-customer" and substituted a semicolon for a period at the end; recodified former (d)2 as (d)7; in (d)7, substituted "If a diversion is found, the" for "The" and substituted a semicolon for a period at the end; recodified former (d)2i and (d)2ii as (d)8 and (d)9; in (d)9, inserted a comma following "information" and substituted a semicolon for a period at the end; recodified the first and second sentences of former (d)3 as (d)10; in (d)10, substituted a semicolon for a period at the end; recodified the former third and fourth sentences of (d)3 as (d)11 and (d)12; in (d)11, substituted "; and" for a period at the end; in (e)1, substituted "; and" for a period at the end; in the introductory paragraph of (f), inserted a comma following "parties" and substituted "utility" for "company"; in (g)1, substituted a semicolon for a period at the end; in (g)2i substituted "utility's tariff; or" for "company's tariff."; in (g)2ii and (g)3, substituted a semicolon for a period at the end; in (g)3, inserted commas following "wires" and "hours" and inserted "/or"; in (g)4, substituted "utility's tariff;" for "company's tariff."; in (g)5, substituted "utility" for "company" and "; and" for a period at the end; in (i), substituted "all of its tenant-customers" for "its tenant-customer"; and in (j), deleted the former first sentence. Former N.J.A.C. 14:3-7.8, Record of customer's account, was repealed.

Case Notes

When a customer contended that he experienced a diversion of services and that the utility company overbilled him, the New Jersey Board of Public Utilities adopted the initial decision and dismissed the customer's petition. The utility company did not conduct a diversion investigation in accordance with N.J.A.C. 14:3-7.8(d) because the investigation was not done within two months of the complaint; however, there was no showing by a preponderance of the credible evidence that there was a gas or electrical diversion of service other than the hallway lights. In addition, the customer was not entitled to a diversion investigation because he was not a tenant-customer in accordance with N.J.A.C. 14:3-7.8(a). *Peter Triestman v. Pub. Serv. And Gas Co.*, OAL DKT. No. PUC 03126-13 (on remand PUC 05419-2012N), 2013 N.J. PUC LEXIS 388, Final Decision (December 18, 2013).

Shared electric metering condition involving a landlord and one tenant who resided in the landlord's building under an oral lease was shown to exist. Because the landlord was the beneficiary of the resulting "diversion" of electrical power, the landlord was properly held responsible for the amount estimated by the utility to be attributable to the diversion plus all related expenses incurred by the utility in accord with its tariff. *Sanders v. Jersey Cent. Power & Light Co.*, OAL DKT. NO. PUC 02672-09, AGENCY DKT. NO. EC09020130U, 2010 N.J. AGEN LEXIS 1033, Initial Decision (March 22, 2010).

An Administrative Law Judge (ALJ) concluded that the owner of a multifamily residence in which tenants resided in separate units was liable for the cost of electrical service that was being billed to one of the tenants although it did not appear to relate to any usage by that particular tenant. The set of facts relating to the service on the premises was properly characterized as a diversion within the meaning of N.J.A.C. 14:3-7.8 for which the owner of the premises was properly held responsible. *Sanders v. Jersey Central P&L Co.*, OAL Dkt. No. PUC 02672-09, AGENCY Dkt. No. EC09020130U, 2010 N.J. AGEN LEXIS 1033, Initial Decision, March 22, 2010.

Customer's electric bills were shown to be consistent with size of dwelling and number of appliances used. *Elco v. Public Service Electric and Gas Company*, 96 N.J.A.R.2d (BRC) 39.

14:3-7.9 (Reserved)

Recodified to N.J.A.C. 14:3-7.2 by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Form of bill for metered service".

14:3-7.10 (Reserved)

Recodified to N.J.A.C. 14:3-7.3 by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Form of bill for unmetered service".

14:3-7.11 (Reserved)

Recodified to N.J.A.C. 14:3-7.4 by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Method of billing".

14:3-7.11A (Reserved)

Recodified to N.J.A.C. 14:3-7.5 by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Requirement for budget billing and payment plans of gas, electric, water and wastewater utilities for residential accounts".

14:3-7.12 (Reserved)

As amended, R.1978 d.155, eff. May 16, 1978.

See: 9 N.J.R. 290(e), 10 N.J.R. 261(e).

As amended, R.1980 d.555, eff. December 29, 1980.

See: 12 N.J.R. 552(a), 13 N.J.R. 105(b).

(a)3, (d)1-3, and (e) added.

Amended by R.1985 d.166, effective April 15, 1985.

See: 16 N.J.R. 2747(a), 17 N.J.R. 974(a).

Added text in (c)3 "In the case ... each utility service."

Amended by R.1991 d.221, effective May 6, 1991.

See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).

Added toll-free number at (c)1.

Amended by R.1992 d.456, effective November 16, 1992.

See: 24 N.J.R. 2341(a), 24 N.J.R. 4271(a).

Add new (f)1 and 2; requirements regarding notification of discontinuance fire protection service.

Amended by R.1997 d.39, effective February 3, 1997.

See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).

Substantially amended (a); in (e), inserted requirement that notice be in boldface; in (f), inserted text "make a reasonable effort to"; and in (f)1, amended list of entities to be notified.

Amended by R.2002 d.280, effective September 16, 2002.

See: 34 N.J.R. 992(a), 34 N.J.R. 3216(b).

In (a) substituted "wastewater" for "sewer" in 1 and 2 and added 4; rewrote (c)1.

Amended by R.2004 d.12, effective January 5, 2004.

See: 35 N.J.R. 91(a), 36 N.J.R. 200(b).

In (a), rewrote the introductory paragraph.

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 paragraphs of (f) and (f)1; in (f)1i, inserted "or multi-use"; in (f)1viii, added "and" at the end; deleted (f)1ix; recodified (f)1x as (f)1ix; in (f)1ix, substituted "; and" for a period at the end; and in (f)2, inserted "or multi-use service" and deleted "the servicing water utility" preceding "immediately".

Repealed by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Notice of discontinuance".

14:3-7.12A (Reserved)

New Rule, R.1987 d.516, effective December 21, 1987.

See: 18 N.J.R. 2315(a), 19 N.J.R. 2405(b).

Amended by R.1991 d.221, effective May 6, 1991.

See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).

Corrected erroneous reference at (i)lii., to tampering "not" occurring; correct indication is to tampering occurring.

Amended by R.1997 d.39, effective February 3, 1997.

See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).

In (h), inserted reference to program availability; and in (h)8, added provision relating to eligible customers not heating with natural gas.

Amended by R.2002 d.280, effective September 16, 2002.

See: 34 N.J.R. 992(a), 34 N.J.R. 3216(b).

In (a)3, substituted "Temporary Assistance to Need Families (TANF)" for "Federal Aid to Families with Dependent Children (AFDC)"; in (a)6, substituted "General Assistance (GA) benefits" for "general welfare assistance".

Amended by R.2005 d.22, effective January 3, 2005.

See: 36 N.J.R. 17(b), 37 N.J.R. 88(a).

In (a), added new 7 and recodified former 7 as 8.

Repealed by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Winter termination of residential electric and gas service (Winter Termination Program)".

14:3-7.13 (Reserved)

Recodified to N.J.A.C. 14:3-7.6 and N.J.A.C. 14:3-7.7 by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Disputes as to bills".

14:3-7.14 (Reserved)

Recodified to N.J.A.C. 14:3-3A.6 by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Discontinuance of service to tenants".

14:3-7.15 (Reserved)

Recodified to N.J.A.C. 14:3-3A.7 by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Notification to municipalities of discontinuance of gas and electric service to residential customer".

14:3-7.16 (Reserved)

Recodified to N.J.A.C. 14:3-7.8 by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Diversion of service".

14:3-7.17 (Reserved)

Recodified to N.J.A.C. 14:3-3A.8 by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Termination of residential telephone service".

**SUBCHAPTER 8. EXTENSIONS TO PROVIDE
REGULATED SERVICES**

14:3-8.1 Scope and applicability

(a) This subchapter governs the construction of an extension, as defined at N.J.A.C. 14:3-8.2.

(b) This subchapter addresses whether and how a regulated entity may contribute financially to an extension made in response to an application for an extension by a person, as these terms are defined at N.J.A.C. 14:3-1.1 and 8.2. Any other extension is not subject to this subchapter; nor is any maintenance, repair or operation of an extension; or any

expansion, upgrade, improvement, or other installation of plant and/or facilities, wherever located.

(c) This subchapter includes provisions regarding whether an extension shall be placed overhead or underground, and the extent to which a regulated entity may pay for or financially contribute to the costs of an extension. How much a regulated entity is authorized to pay for or financially contribute to an extension varies based on whether the customers that the extension will serve are located in an area not designated for growth, a designated growth area, a smart growth infrastructure incentive program (SGIIP) area, or a targeted revitalization incentive program (TRIP) area, as described at N.J.A.C. 14:3-8.12 and 14:3-10, respectively.

(d) This subchapter applies to extensions made by all regulated entities, as those terms are defined at N.J.A.C. 14:3-8.2, except that:

1. This subchapter does not apply to cable television companies. The extension of cable television service shall be governed by N.J.S.A. 48:5A-28 and N.J.A.C. 14:18-3.2;

2. This subchapter does not apply to a telecommunications public utility that has obtained a system-wide franchise from the Board in accordance with N.J.A.C. 14:18-14; and

3. This subchapter does not apply to a portion of an extension that is regulated by the Federal Energy Regulatory Commission (FERC).

(e) This subchapter applies to construction of extensions to provide service to all customers, whether residential or non-residential.

(f) This subchapter does not provide for a calculation of the dollar amount that a regulated entity may charge for construction of an extension. This amount is determined based on tariffs submitted to the Board by each regulated entity and approved by the Board.

(g) This subchapter is intended to fulfill the mandate at N.J.S.A. 48:2-23 that regulated entity service be safe, adequate and proper, and furnished in a manner that tends to conserve and preserve the quality of the environment. One way in which this subchapter fulfills that mandate is through provisions that generally do not permit regulated entities to invest, in response to an application for an extension, in new infrastructure in areas that are not designated for growth.

(h) Nothing in this subchapter shall require a regulated entity to construct an extension or portion thereof if the extension would not be required under N.J.S.A. 48:2-27 or other applicable law.

Amended by R.2005 d.377, effective November 7, 2005.
See: 37 N.J.R. 1401(a), 37 N.J.R. 4292(a).

Rewrote (d)1.

Amended by R.2006 d.342, effective September 18, 2006.
See: 37 N.J.R. 4188(a), 38 N.J.R. 3908(a).

In (b) and (g), substituted "an extension" for "service".

Amended by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Rewrote (d)1; added new (d)2; and recodified former (d)2 as (d)3.

Case Notes

No proof presented in line extension case that owner required to construct new line or that utility is without authority to do so. *State v. Sun Oil Co.*, 160 N.J.Super. 513, 390 A.2d 661 (Law Div.1978).

Award of interest denied on rebate moneys wrongfully withheld (citing former regulation). *A & A Construction Corp. v. West Kearsburg Water Co.*, 6 N.J.A.R. 210 (1980).

14:3-8.1A (Reserved)

New Rule, R.2004 d.462, effective December 20, 2004.

See: 36 N.J.R. 276(a), 37 N.J.R. 5928(a).

Repealed by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Waiver request, operative date".

14:3-8.1B (Reserved)

New Rule, R.2004 d.462, effective December 20, 2004.

See: 36 N.J.R. 276(a), 36 N.J.R. 5928(a).

Repealed by R.2006 d.342, effective September 18, 2006.

See: 37 N.J.R. 4188(a), 38 N.J.R. 3908(a).

Section heading was "Submission of modified tariff".

14:3-8.2 Definitions

In addition to the definitions at N.J.A.C. 14:3-1.1 and 14:4-1.2, the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Applicable tariff" means the tariff, filed with and approved by the Board, that covers the geographic area in which a particular development or extension is located.

"Applicant for an extension" means a person that has applied to the appropriate regulated entity, as defined at N.J.A.C. 14:3-1, for the construction of an extension as defined at N.J.A.C. 14:3-8.2.

"Area not designated for growth" means an area that is not a designated growth area as defined herein.

"Cost" means, with respect to the cost of construction of an extension, actual and/or site-specific unitized expenses incurred for materials and labor (including both internal and external labor) employed in the design, purchase, construction, and/or installation of the extension, including overhead directly attributable to the work, as well as overrides or loading factors such as those for back-up personnel for mapping, records, clerical, supervision or general office functions.

"Center designation" or "designated center" means a center that has been officially recognized as such by the State Planning Commission in accordance with its rules at N.J.A.C. 5:85 or in the Pinelands Area, a center recognized as such pursuant to a valid Memorandum of Agreement between the

New Jersey Pinelands Commission and the New Jersey State Planning Commission.

“Designated growth area” means an area depicted on the New Jersey State Planning Commission State Plan Policy Map as:

1. Planning Area 1 (Metropolitan Planning Area, or PA-1);
2. Planning Area 2 (Suburban Planning Area, or PA-2);
3. A designated center;
4. An area identified for growth as a result of a petition for municipal plan endorsement that has been approved by the State Planning Commission pursuant to N.J.A.C. 5:85-7;
5. A smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (l) of section 6 of N.J.S.A. 13:17-6; or
6. A Pinelands Regional Growth Area, Pinelands Village or Pinelands Town, as designated in the Comprehensive Management Plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the Pinelands Protection Act, N.J.S.A. 13:18A-8.

Assistance in determining whether a particular parcel of land in a designated growth area can be obtained through the Smart Growth Locator web site at <http://sgl.state.nj.us>, and from the Department of Community Affairs Office of Smart Growth website at <http://www.nj.gov/dca/osg/>.

“Distribution revenue” means the total revenue, plus related sales and use tax, collected by a regulated entity from a customer, minus the following, as applicable:

1. For a gas public utility as defined at N.J.A.C. 14:4-2.2, basic gas supply service charges, plus related sales and use tax on the basic gas supply service charges, assessed in accordance with the gas public utility’s tariff; and
2. For an electric public utility as defined at N.J.A.C. 14:4-1.2, basic generation service charges, plus sales and use tax on the basic generation service charges, and, unless included with basic generation service charges, transmission charges derived from Federal Energy Regulatory Commission (FERC) approved Transmission Charges, plus Sales and Use Tax on the transmission charges, assessed in accordance with the electric public utility’s tariff.

“Extension” means the construction or installation of plant and/or facilities to convey new service from existing or new plant and/or facilities to one or more applicants for an extension, to a structure that was built, or rebuilt after an existing structure was demolished, and occupied after March 20, 2005. This term also means the plant and/or facilities themselves. The provision of water and wastewater treatment service by a regulated entity shall be considered an extension

regardless of the date of construction and occupancy of the structure to be served. This term includes all plant and/or facilities for transmission and/or distribution, whether located overhead or underground, on a public street or right of way, or on private property or a private right of way, including the wire, poles or supports, cable, pipe, conduit or other means of conveying service from existing plant and/or facilities to each unit or structure to be served, except as excluded at 1 through 6 below. An extension begins at the existing infrastructure and ends as follows:

1. For water service and for wastewater treatment service, the extension ends at the curb of the property or properties on which the customers to be served are located, but also includes the meter, if any, as well as any of the following that are located on the property’s roadside utility right-of-way:
 - i. Fire hydrants;
 - ii. Branches; or
 - iii. Other water infrastructure serving others besides the applicant;
2. For gas service, the extension ends at the meter and includes the meter;
3. For an overhead extension of electric service, the extension ends at the point where the service connects to the building, but also includes the meter;
4. For an underground extension of electric service, the extension ends at, and includes, the meter; and
5. For telecommunications service, the extension ends at the point of demarcation as defined in the regulated entity’s tariff.

“Generation” means the manufacture, production, extraction or creation of a substance (such as water or petroleum products), a form of energy (such as electricity), or a signal (such as a telecommunications signal).

“New Jersey State Planning Commission” means the commission established by the State Planning Act, N.J.S.A. 52:18A-196 et seq.

“Office of Smart Growth” means the Office in the Department of Community Affairs that staffs the State Planning Commission and provides planning and technical assistance as requested. The Office of Smart Growth serves the same functions as the Office of State Planning, described at N.J.S.A. 52:18A-201.

“Planning area” has the meaning assigned to the term in the rules of the State Planning Commission at N.J.A.C. 5:85-1.4. As of December 20, 2004, this term is defined in those rules to mean an area of greater than one square mile that shares a common set of conditions, such as population density, infrastructure systems, level of development, or environmental sensitivity. The State Development and Redevelop-

ment Plan sets forth planning policies that serve as the framework to guide growth in the context of those conditions.

“Plant and/or facilities” means any machinery, apparatus, or equipment, including but not limited to mains, pipes, aqueducts, canals, wires, cables, fibers, substations, poles or other supports, generators, engines, transformers, burners, pumps, and switches, used for generation, transmission, or distribution of water, energy, telecommunications, cable television or other service that a regulated entity provides. This term includes service lines and meters, but does not include equipment used solely for administrative purposes, such as office equipment used for administering a billing system.

Amended by R.2005 d.377, effective November 7, 2005.
Sec: 37 N.J.R. 1401(a), 37 N.J.R. 4292(a).

Added 6 to definition “Extension”.

Amended by R.2006 d.342, effective September 18, 2006.
Sec: 37 N.J.R. 4188(a), 38 N.J.R. 3908(a).

In the introductory paragraph, inserted “14:4-1.2 and”; inserted definition “Applicant for an extension”; in definition “Cost”, inserted “and/or site-specific unitized”; rewrote definitions “Distribution revenue” and “Extension”.

Amended by R.2008 d.119, effective May 19, 2008.

Sec: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

In the introductory paragraph, re-ordered the N.J.A.C. references; in paragraph 4 of definition “Designated growth area” substituted the second occurrence of “a” for “either and initial or advanced” and inserted “municipal”; in the final undesignated paragraph of definition “Designated growth area”, inserted “Smart Growth Locator web site at <http://sgl.state.nj.us>, and from the”; rewrote the introductory paragraph of definition “Extension”; rewrote paragraph 1 of definition “Extension”; in paragraph 4 of definition “Extension”, substituted “and” for “unless the applicant and the regulated entity make other arrangements;”; deleted paragraph 6 of definition “Extension”; and in definition “Generation” deleted “or cable television” preceding the final occurrence of “signal”.

14:3-8.3 General requirement to provide extensions

(a) To obtain regulated services, applicants for an extension shall apply to the appropriate regulated entity, as defined at N.J.A.C. 14:3-1.1, for construction of an extension, as defined at N.J.A.C. 14:3-8.2. Prior to accepting the application, the regulated entity shall provide the applicant with a copy of this subchapter. At the time of submittal of an application for an extension, the regulated entity shall obtain from the applicant a signed certification that the applicant received a copy of this subchapter.

(b) If an applicant for an extension has met all applicable requirements in this chapter, a regulated entity shall install the requested extension in accordance with this subchapter. No regulated entity is required to construct an extension or to furnish service to any customer unless all applicable requirements of this subchapter have been met, unless ordered to do so by the Board.

(c) A regulated entity is not required to construct, own, operate or maintain an extension on any property unless the regulated entity is legally authorized to do so, for example through an easement or right of way. The applicant shall ensure that the regulated entity is provided with such legal

authority, at no cost to the regulated entity and with no requirement for condemnation of the property. This subsection shall not be construed to limit the effectiveness of existing easement or right-of-way documents, nor to require new or additional easements or other documents where valid documents have previously been accepted and/or recorded. A regulated entity shall accept existing valid documentation, unless the documentation fails to adequately describe the legal authority necessary to accomplish the requested extension. This subsection does not require an applicant for an extension to clear vegetation from a right-of-way.

(d) In constructing and operating an extension, a regulated entity shall use equipment and practices that meet all applicable requirements in this chapter, and which are consistent with applicable industry best practices and standards and the regulated entity’s minimum system design standards. An applicant may request equipment or service which exceeds these standards. If the regulated entity provides this excess equipment or service, the regulated entity may charge the applicant for the full cost of the excess facilities requested, in accordance with N.J.A.C. 14:3-8.9(d)3.

(e) A regulated entity shall construct an extension with sufficient capacity to provide safe, adequate, and proper service to customers, in accordance with the regulated entity’s and/or the industry’s system design standards, even if the applicant requests less capacity.

(f) Construction of an extension shall include all physical work required to construct the extension including, but not limited to, site preparation, vegetation clearing, trenching, and related work.

(g) A utility may refuse to connect a customer to the utility’s distribution system if there is any facility or condition on the customer’s premises that does not meet the standard terms and conditions of the utility’s tariff and all applicable requirements of this chapter and other law.

(h) If, because of its size or character, any facility or condition on the customer’s premises is so unusual that it may adversely affect the adequacy of the service furnished to other customers, present or prospective, the utility may set special conditions for connection or may refuse to connect.

Amended by R.2005 d.265, effective August 15, 2005.

Sec: 36 N.J.R. 5655(a), 37 N.J.R. 3046(b).

Rewrote (a).

Amended by R.2006 d.342, effective September 18, 2006.

Sec: 37 N.J.R. 4188(a), 38 N.J.R. 3908(a).

Rewrote (a).

Amended by R.2008 d.119, effective May 19, 2008.

Sec: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

In (a), deleted “in” following the second occurrence of “applicant”; in (c), added the third through fifth sentences; and added (f) through (h).

Case Notes

Award of interest denied on rebate moneys wrongfully withheld (citing former regulation). *A & A Construction Corp. v. West Keansburg Water Co.*, 6 N.J.A.R. 210 (1980).

14:3-8.4 Requirement to put certain extensions underground

(a) This section governs whether an extension, as defined at N.J.A.C. 14:3-8.2, shall be made underground or overhead.

(b) An extension for water, wastewater treatment, or gas service shall be underground in all cases.

(c) An extension of high-capacity main line electric distribution facilities with a capacity of four megavolt amps (MVA) or more may be made overhead.

(d) An extension of electric or telecommunications service to residential development shall be made underground if both of the criteria below are met. Portions of the extension that do not meet these criteria may be made overhead:

1. The extension is located within, and will serve, a development of three or more residential units in the same geographic area that do not have electric or telecommunications service as of August 15, 2005; and

2. Either of the following criteria are met:

i. The extension will be placed along streets that were constructed after August 15, 2005; or

ii. The extension will be placed along streets constructed prior to August 15, 2005, which are not already served by overhead facilities.

(e) If a building that would require underground service under (d) above is located on a lot that abuts an existing street on which overhead facilities are already installed, the building may be served overhead, at the discretion of the regulated entity.

(f) Underground service shall be reasonably equivalent to comparable overhead service, and shall ensure that the customer will receive safe, adequate and proper service while minimizing the difference in cost between overhead and underground service.

(g) If underground service is required by this section, or an applicant desires underground service where it is not required under (d) or (e) above, the construction costs shall be distributed as follows, regardless of who actually performs the construction:

1. In a designated growth area, the additional cost for underground extensions of service, over and above the amount it would cost to serve those customers overhead, shall be a nonrefundable contribution in aid of construction paid by the applicant according to N.J.A.C. 14:3-8.9(h). The remainder of the cost of the service, that is the amount, which overhead service would have cost, shall be shared between the applicant and the regulated entity in accordance with N.J.A.C. 14:3-8; and

2. In an area not designated for growth, a regulated entity's ability to pay for or contribute financially to extensions is governed by N.J.A.C. 14:3-8.5 and 8.6.

(h) If unusual circumstances would unreasonably delay a regulated entity's ability to provide underground service, the regulated entity may install temporary facilities in whatever manner is most practical under the circumstances. However, the regulated entity shall replace such temporary facilities as soon as practical with permanent underground service in accordance with this subchapter. The cost of the installation and removal of the temporary facilities is governed by N.J.A.C. 14:3-8.9(h).

(i) All street lighting in a development with underground electric service shall also be served underground.

(j) When the requirement that an extension be located underground will result in hardship, inequity, or will be discriminatory to other affected parties, the regulated entity or applicant may request from the Board a special exemption, or approval of special conditions. The Board may require that the requesting party submit, as part of such a request, documentation that the requesting party has deposited in an escrow account an amount up to the estimated difference in cost between underground and overhead service.

(k) Where affected regulated entities determine that it is practical, electric cables, communication cables, and cable television cables shall be installed in the same trench, if this can be done consistent with all applicable codes and regulations, and in particular those pertaining to safety.

(l) When an extension is installed underground, certain components may be installed above ground if necessary for safety or to provide reasonable access for maintenance. Examples are interconnecting points and pedestals, and electric transformers.

Repealed by R.2004 d.462, effective December 20, 2004.

See: 36 N.J.R. 276(a), 36 N.J.R. 5928(a).

Section was "Requirement to put certain extensions underground". New Rule, R.2005 d.265, effective August 15, 2005.

See: 36 N.J.R. 5655(a), 37 N.J.R. 3046(b).

Amended by R.2006 d.342, effective September 18, 2006.

See: 37 N.J.R. 4188(a), 38 N.J.R. 3908(a).

In (g), rewrote last sentence.

Amended by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

In (b), inserted ", wastewater treatment," and deleted the last sentence; in (f), recodified the second sentence as the new introductory paragraph of (g); recodified (f)1 and (f)2 as (g)1 and (g)2; in the introductory paragraph of (g), substituted "section" for "subsection" and inserted "construction" and ", regardless of who actually performs the construction"; in (g)1, deleted "as defined by N.J.A.C. 14:3-8.2" following "area", inserted a comma following "amount" and substituted "; and" for a period at the end; in (g)2, substituted "entity's" for "entities"; and recodified former (g) through (k) as (h) through (l).

14:3-8.5 General provisions regarding costs of extensions

(a) A regulated entity shall not pay for or financially contribute to the cost of an extension, as defined at N.J.A.C.

14:3-8.2, except in accordance with this subchapter or N.J.A.C. 14:3-10. This section applies in addition to the requirements of N.J.A.C. 14:3-8.6 or 8.7, whichever is applicable.

(b) Except for certain underground extensions covered by N.J.A.C. 14:3-2.1(f), an extension shall become the property of the regulated entity upon its completion. If an extension is paid for by an applicant in accordance with this chapter, a regulated entity shall include the extension in its contribution in aid of construction (CIAC) accounts, for accounting purposes only. The regulated entity shall record such a contribution in a manner consistent with the Uniform System of Accounts, 18 CFR Part 101, which is incorporated by reference in the rules. Amounts that a regulated entity receives in accordance with this subchapter and which are not refunded to an applicant shall be credited to the appropriate plant account or accounts.

(c) The cost of an extension for which a regulated entity receives a deposit, or receives a non-refundable contribution, shall include the tax consequences incurred by the regulated entity as a result of receiving deposits under the Tax Reform Act of 1986.

(d) Regulated entities, customers, applicants, developers, builders, municipal bodies and other persons shall cooperate fully in order to facilitate construction of an extension at the lowest reasonable cost consistent with system reliability and safety. This includes sharing trenches where practicable, and coordinating scheduling and other aspects of construction to minimize delays and to avoid difficult conditions such as frozen or unstable soils. A municipality shall not impose an ordinance or other requirement that conflicts with this subchapter, or which would prevent or interfere with another person's compliance with this subchapter.

(e) Each regulated entity shall submit for Board approval a proposed tariff containing charges for services, including installation of underground service. The regulated entity shall periodically submit updated tariffs on its own initiative or as requested by the Board.

(f) If an applicant requests an extension to serve both a designated growth area and an area not designated for growth, the regulated entity shall pay for the portion of the extension that is necessary for and will be used to serve a designated growth area in accordance with N.J.A.C. 14:3-8.7. The regulated entity shall pay for or contribute financially to the portion of the extension that will serve the area not designated for growth only in accordance with (i) below.

(g) A regulated entity shall construct each extension with sufficient capacity to provide safe, adequate, and proper service to customers, in accordance with N.J.A.C. 14:3-8.3(e). For example, if an applicant requests a four kilovolt extension of electric service but the regulated entity's minimum system design standard is thirteen kilovolts, the regulated entity shall construct a thirteen kilovolt extension. In such a case, the cost

of the extension for purposes of this subchapter and the suggested formula shall be the full cost of the thirteen kilovolt extension, and not merely the cost of a four kilovolt extension.

(h) If, in a designated growth area, a regulated entity chooses to construct an extension or portion of an extension with additional capacity, over that which is needed to comply with N.J.A.C. 14:3-8.3(e), the regulated entity may pay for or contribute financially to the incremental cost of the additional capacity, but may not require the applicant to pay for such additional capacity.

(i) If, in an area not designated for growth, a regulated entity chooses to construct an extension or portion of an extension with additional capacity, over that which is needed to comply with N.J.A.C. 14:3-8.3(e), the regulated entity may require an applicant to pay for the additional capacity, or the regulated entity may pay for the additional capacity itself, subject to (j) below.

(j) If any of the additional capacity constructed under (h) or (i) above is added to serve anticipated customers in an area not designated for growth, the Board will consider this fact when considering whether the investment in additional capacity was reasonable and prudent, in determining whether to allow the regulated entity to include the cost of the additional capacity in its rate base or recoverable costs.

(k) This subchapter does not prohibit a regulated entity from constructing an extension or performing related services in exchange for compensation. A regulated entity may contract with an applicant for an extension to design, purchase, construct or maintain an extension on behalf of the applicant. However, the regulated entity shall be paid for the cost of constructing or installing the extension, in accordance with this subchapter.

(l) A regulated entity shall charge customers in a designated growth area only for costs related to the portion of an extension that is necessary for and will be used to serve the designated growth area.

(m) The costs of any installation or construction of infrastructure, which is not governed by this subchapter, shall be governed by other applicable law.

(n) A regulated entity may base the cost of an extension, for the purpose of determining the amount of the required deposit or non-refundable contribution, on site-specific unitized costs. The regulatory entity shall determine the site-specific unitized cost by:

1. Sending a qualified representative to the site;
2. Developing a work plan that includes a list of materials needed based upon the actual extension to be constructed;
3. Multiplying the quantity of each type of item on the list of materials by the cost per unit for that type of item.

The cost per unit for each item listed shall reflect the material cost of that item as well as the associated labor as set forth in the definition of cost at N.J.A.C. 14:3-8.2; and

4. Adding up the results obtained under (n)3 above.

Amended by R.2006 d.342, effective September 18, 2006.

See: 37 N.J.R. 4188(a), 38 N.J.R. 3908(a).

In (c), deleted "estimated" preceding "cost"; in (h), substituted "an" for "the" preceding "applicant" and inserted "in an area not designated for growth"; in (i), substituted "an extension" for "service"; and added (l).

Amended by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

In (b), substituted "Except for certain underground extensions covered by N.J.A.C. 14:3-2.1(f), an" for "An" at the beginning; in (f), substituted "(i)" for "(h)"; in (h), deleted the former first sentence, inserted ", in a designated growth area.", substituted "but may not require the applicant to pay for such additional capacity" for the second occurrence of "or", recodified a segment of the second sentence as (i) and recodified the third sentence as (j); rewrote (i); in (j), substituted "If" for "However, if" and inserted "constructed under (h) or (i) above" and "or recoverable costs"; recodified former (i) through (l) as (k) through (n); and in (n)4, substituted "(n)3" for "(l)3".

14:3-8.6 Costs for extension serving an area not designated for growth

(a) This section governs a regulated entity's authority to pay for or contribute financially to an extension or portion thereof, which has been requested solely to serve development in an area not designated for growth, as defined at N.J.A.C. 14:3-8.2. The section phases out a regulated entity's authority to pay for such an extension or portion thereof. The requirements in this section apply in addition to those of N.J.A.C. 14:3-8.5.

(b) If a regulated entity chooses to construct additional capacity, not requested by the applicant and greater than the capacity required under N.J.A.C. 14:3-8.3(e), the cost of that additional capacity shall not be governed by this section but shall be governed by N.J.A.C. 14:3-8.5(i).

(c) After January 1, 2007, both of the following shall apply:

1. A regulated entity shall not pay for or financially support an extension or portion thereof described at (a) above except pursuant to an exemption under N.J.A.C. 14:3-8.8; and
2. The Board shall not consider the cost of the extension when determining the regulated entity's rates under N.J.S.A. 48:2-21.

Amended by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

In (b), updated the N.J.A.C. reference; deleted former (c) through (e); recodified former (f) as (c); and rewrote (c).

14:3-8.7 Costs for extension serving a designated growth area

(a) This section governs the regulated entity's authority to pay for or contribute financially to an extension or portion thereof that has been requested in order to serve development

in a designated growth area, as described at (b) below. The requirements in this section apply in addition to the requirements of N.J.A.C. 14:3-8.5.

(b) If an extension is part of a project that the Board has approved for inclusion in a Targeted Revitalization Incentive Program (TRIP) under N.J.A.C. 14:3-10, the cost of the extension shall not be governed by this section but shall be governed by N.J.A.C. 14:3-10, as applicable. The cost of an extension that will serve development in an area not designated for growth is governed by N.J.A.C. 14:3-8.6. If a regulated entity chooses to construct additional capacity, not requested by the applicant and greater than the capacity required under N.J.A.C. 14:3-8.3(e), the cost of that additional capacity shall not be governed by this section but shall be governed by N.J.A.C. 14:3-8.5(h).

(c) The cost of an extension described at (a) above shall be determined by mutual agreement between the regulated entity and the applicant. If a regulated entity and an applicant cannot agree upon a financial arrangement regarding the cost of an extension, either party may petition the Board to apply the suggested formula set forth at N.J.A.C. 14:3-8.10 or 8.11, as applicable.

(d) For an extension described at (a) above, a regulated entity may require a deposit from an applicant in accordance with N.J.A.C. 14:3-8.10(b) or 8.11(b), as applicable. The regulated entity shall refund the deposit to the applicant in accordance with the suggested formula set forth at N.J.A.C. 14:3-8.10 or 8.11, as applicable.

Amended by R.2006 d.342, effective September 18, 2006.

See: 37 N.J.R. 4188(a), 38 N.J.R. 3908(a).

Rewrote (d).

14:3-8.8 Exemptions from cost limits on areas not designated for growth

(a) The following shall be exempt from the requirements for costs of extensions to serve development in an area not designated for growth at N.J.A.C. 14:3-8.6:

1. Natural gas conversions, as described in (j) below;
2. An extension serving certain agricultural buildings, as described in (d) below;
3. A prior agreement or Board order requiring a regulated entity to provide certain extensions without charge, as described at (e) below;
4. An extension already in progress as of March 20, 2005, as described in (g) below; and
5. When it is necessary to reestablish an equivalent level of service to an existing customer after the structure receiving that service was damaged or destroyed by a force outside the control of the customer or regulated entity such as a fire, flood or hurricane.

(b) The following may be exempt from the requirements for costs of extensions to serve development in an area not designated for growth at N.J.A.C. 14:3-8.6, if the Board determines that they meet all applicable requirements of this section:

1. A project that will provide a significant public good, as described in (h) below; and
2. A project for which compliance would cause extraordinary hardship, as described in (i) below.

(c) An exemption described at (a)1 through 5 above shall not require prior written approval from the Board. An exemption described at (b)1 or 2 above shall require prior written approval from the Board. The Board and/or Board staff may require those seeking exemptions to submit additional information as necessary to assist in the analysis of the exemption request.

(d) An extension to serve an agricultural use, building, or structure that is used in or supportive of the production, storage, packing, processing or on-farm sale of agricultural or horticultural products on a New Jersey commercial farm, as defined in N.J.S.A. 4:1C-3, shall be exempt from the limits at N.J.A.C. 14:3-8.6. Such uses, buildings and structures shall include, but not be limited to, wells and pumps, packing and processing equipment and buildings, structures for product and machine storage, maintenance shops for farm related equipment, farm market structures, housing for members of the farm family, and on-farm housing for agricultural laborers. The costs for an extension covered by this subsection shall be governed by the requirements for extensions to serve a designated growth area at N.J.A.C. 14:3-8.7.

(e) If a regulated entity has entered into a prior written agreement with the Board that requires the regulated entity to provide certain extensions without charge, or has been ordered by the Board to provide certain extensions without charge, those extensions shall be exempt from the limits at N.J.A.C. 14:3-8.6. For an agreement or Board order to qualify for this exemption, the agreement shall have been executed March 20, 2005.

(f) If the Board has, prior to March 20, 2005, executed a binding agreement providing for a regulated entity to contribute financially to an extension, the regulated entity may contribute financially to the extension, to the extent required for compliance with the prior agreement. However, this exemption does not cover a telecommunications infrastructure upgrade project serving areas not designated for growth under the Plan of Alternative Regulation, approved by Board Order issued under Docket No. TO92030358.

(g) If construction of an extension, or the installation of any temporary service, has begun prior to March 20, 2005, or if a regulated entity has committed in writing to pay a specific dollar amount for an extension, prior to March 20, 2005, the extension shall be exempt. A subdivision approval, building permit, zoning variance, or verbal or nonbinding communica-

tion with a regulated entity shall not, by itself, provide sufficient grounds to exempt an extension under this subsection.

(h) To obtain an exemption based on a significant public good, a person shall demonstrate to the Board that all of the following criteria are met:

1. The project or activity served by the extension would provide a significant benefit to the public or to the environment;
2. That the project described in (h)1 above is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth. In making this determination, the Board will consult with the Office of Smart Growth and, if applicable, other State agencies; and
3. There is no practicable alternative means of providing the benefit while still complying with this subchapter. This shall include a showing of why it is not possible or practicable to build the project in an area designated for growth.

(i) To obtain an exemption based on extraordinary hardship, a person shall demonstrate to the Board that all of the following criteria are met:

1. Compliance with this subchapter would cause an extraordinary hardship. Factors the Board will consider when deciding whether an extraordinary hardship exists include, but are not limited to, the cost of the extension, the degree of financial hardship created by the cost of the extension, and the impact of the development served by the extension on land use patterns. However, financial hardship alone shall not constitute a basis for this exemption;
2. The extraordinary hardship results from unique circumstances that do not apply to or affect other projects in the region;
3. The unique circumstances arise from the project itself or the activity served by the extension, and not from the circumstances or situation of the regulated entity or its customers; and
4. Neither the extraordinary hardship nor the unique circumstances are the result of any action or inaction by the regulated entity, its shareholders, or its customers.

(j) An extension of natural gas service shall be exempt from the requirements for costs of extensions to serve development in an area not designated for growth at N.J.A.C. 14:3-8.6, provided that the sole purpose of the extension is to allow for replacement of existing appliances powered by energy sources other than natural gas with natural gas appliances, in one or more structures that were built and occupied prior to August 15, 2005, or were built and occupied at least 15 years prior to the date of the application for the extension.

(k) The cost of an extension that is exempt under this section shall be distributed as follows:

1. If an extension is eligible for an exemption based on a prior agreement or Board order under (e) above, the regulated entity shall pay for or financially contribute to the extension only to the extent required by the prior agreement or Board order. To the extent that the prior agreement does not specify the distribution of costs for the extension, the requirements for extensions that serve an area not designated for growth at N.J.A.C. 14:3-8.6 shall govern;

2. If an extension is eligible for an exemption based on an extension in progress under (f) above, the regulated entity shall pay for or financially contribute to the extension only to the extent that it previously committed to do so in a written agreement. To the extent that the regulated entity has not committed to pay for the extension, the requirements for extensions shall serve an area not designated for growth at N.J.A.C. 14:3-8.6 shall govern;

3. For an exemption based on significant public good or extraordinary hardship, the Board shall determine the distribution of costs for the extension at the time of approval of the exemption; and

4. For any exemption not covered at (k)1, 2, or 3 above, the regulated entity shall pay for or financially contribute to an extension in accordance with the requirements at N.J.A.C. 14:3-8.7 governing extensions in a designated growth area.

Amended by R.2005 d.265, effective August 15, 2005.

See: 36 N.J.R. 5655(a), 37 N.J.R. 3046(b).

Added new (a)1 and new (c).

Amended by R.2006 d.342, effective September 18, 2006.

See: 37 N.J.R. 4188(a), 38 N.J.R. 3908(a).

Rewrote the section.

Amended by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

In (a)1, substituted "(j)" for "(c)"; in (a)4, inserted "and" at the end; added new introductory paragraph of (b); recodified (a)6 and (a)7 as (b)1 and (b)2; recodified former (b) as (c); deleted former (c); in (c), substituted "(b)1 or 2" for "(a)6 or 7" and "the Board" for "Board staff" and added the last sentence; rewrote (d); in (g), substituted "a specific dollar amount for an" for "for or financially support the" and added the last sentence; in (h)2, inserted ", if applicable,"; in (h)3, added the last sentence; in (i)1, substituted a period for a semicolon at the end of the first sentence and added the second and third sentences; in (i)3, inserted "or the activity served by the extension,"; added new (j); recodified former (j) as (k); and in (k)4, substituted "(k)1" for "(j)1".

14:3-8.9 Designated growth area suggested formulae—general provisions

(a) The Board will direct the regulated entities to apply the suggested formula only if all of the following criteria are met:

1. The extension is subject to N.J.A.C. 14:3-8.7;

2. The extension is not included in a Board-approved TRIP Program;

3. The extension is not exempt on the basis of a significant public good or an extraordinary hardship under N.J.A.C. 14:3-8.8(h) or (i), respectively. If an extension is exempt under N.J.A.C. 14:3-8.8(h) or (i), its costs shall be distributed in accordance with N.J.A.C. 14:3-8.8(k)3; and

4. Either the regulated entity or the applicant for an extension submits a request to the Board to apply the suggested formula, based on the parties' inability to reach agreement upon the amount of the regulated entity's financial contribution to the extension.

(b) If a regulated entity or applicant requests application of the suggested formula to an extension to serve any type of development other than a single residential customer, Board staff shall apply the formula at N.J.A.C. 14:3-8.10. If a regulated entity or applicant requests that Board staff apply the suggested formula to an extension to serve only a single residential customer, Board staff shall apply the formula in N.J.A.C. 14:3-8.11.

(c) For both types of formulae (single residential customer and other), the applicant shall provide the regulated entity with a deposit. The amount of the deposit shall be determined according to the provisions for multi-unit developments at N.J.A.C. 14:3-8.10 or for single residential customers at N.J.A.C. 14:3-8.11, as applicable. The regulated entity shall then construct the extension, and shall refund the portions of the deposit that are refundable under (g) below according to the formula set forth at N.J.A.C. 14:3-8.10 or 8.11, as applicable.

(d) For purposes of determining the amount of the deposit and applying the suggested formula, the following shall apply:

1. The regulated entity shall estimate the cost of the extension in accordance with the applicable tariff, and shall include the tax consequences incurred by the regulated entity under the Tax Reform Act of 1986 as a result of receiving the deposit;

2. The regulated entity shall assume that the electric service connection to each building will be at the nearest corner of the building to the point at which the service enters the property;

3. If an applicant requests service that costs more than that which is standard under the regulated entity's and/or the industry's system design standards, or if an extension presents an unusual situation in which providing standard service is substantially more expensive than usual, the regulated entity may charge the applicant or the customer for the extra expense. In accordance with (h) below, this charge is not refundable. For example, for an underground extension, costs of pavement cutting and restoration, rock removal, blasting, or unusual or difficult digging conditions requiring equipment and methods not generally used may be charged to the applicant. In such a case, the

regulated entity shall not charge the applicant more than the actual cost for the extra work required; and

4. If the extension requires a regulated entity to pay an attachment charge for the use of utility poles located on private property and not owned by the regulated entity, the regulated entity may include the cost of the attachment charge when calculating the cost of the extension.

(e) The regulated entity shall notify the applicant of the actual cost of the extension within 30 days after the actual costs are known, and as soon as reasonably practical after construction is completed. As the application process and the construction proceeds, the amount of the deposit shall be adjusted as needed to reflect the actual cost. If the amount of the deposit exceeds actual costs at the completion of construction, the regulated entity shall return any excess. If the deposit is less than actual costs, the applicant shall provide the necessary additional funds to the regulated entity.

(f) Any amount not refunded within 10 years after the date upon which the regulated entity is first ready to render service from the extension shall remain with the regulated entity. In no event shall a regulated entity refund more than the total deposit amount to the applicant.

(g) The following portions of a deposit shall be refundable under the suggested formula:

1. For any extension, the cost of the portion of the extension that runs from existing infrastructure to the boundary of the property on which the new customers to be served are located (that is, to the subdivision gate; or for an individual lot, to the curb of the lot);

2. For an extension of gas infrastructure, the cost of the portion of the extension that is within the boundary of the property or properties on which the new customers to be served are located; and

3. For an underground or overhead extension of electricity or telecommunications service, the amount it would cost to serve the customers overhead.

(h) The following portions of the deposit are nonrefundable and shall constitute a contribution in aid of construction (CIAC):

1. For all extensions, the cost of extra service, or of extra work required to provide standards service, in accordance with N.J.A.C. 14:3-8.9(d)3; and

2. For an underground extension of electricity or telecommunications service, the additional cost for underground service over and above the amount it would cost to serve those customers overhead. This shall include the cost of any temporary overhead installation and/or removal under N.J.A.C. 14:3-8.4(g).

Amended by R.2006 d.342, effective September 18, 2006.
Sec: 37 N.J.R. 4188(a), 38 N.J.R. 3908(a).

In (a)3, substituted "an extension" for "service"; in (g)3, inserted "or overhead"; and in (h)2, inserted "and/or removal" and substituted "(g)" for "(h)".

Amended by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

In the introductory paragraph of (a), substituted "The Board will direct the regulated entities to" for "Board staff will"; in (a)2, deleted "and" from the end; added new (a)3; recodified former (a)3 as (a)4; and in (a)4, substituted "the Board" for "Board staff".

14:3-8.10 Designated growth area suggested formula—multi-unit or nonresidential development

(a) This section governs how Board staff will apply the suggested formula to the cost of an extension that is subject to N.J.A.C. 14:3-8.7, except for an extension for a single residential customer, which is covered under N.J.A.C. 14:3-8.11, an extension covered by a SGIP under N.J.A.C. 14:3-8.12, or an extension included in a Board-approved TRIP under N.J.A.C. 14:3-10. The requirements in this section apply in addition to the requirements of N.J.A.C. 14:3-8.9.

(b) The deposit required for an extension subject to this section shall be the cost of the extension required to serve the development. Prior to construction of the extension, the regulated entity shall notify the applicant of its estimated cost to construct an extension to serve the development for which service is requested.

(c) For purposes of calculating the amount of the deposit, the development for which service is requested shall be determined by reference to the subdivision map approved by the applicable local authorities. If a development is to be approved and constructed in phases, the applicant shall indicate which phases are to be treated as separate developments for purposes of determining the deposit and applying the suggested formula.

(d) As each customer begins receiving services, the regulated entity shall refund a portion of the deposit to the applicant. For each customer, this customer startup refund shall be the estimated annual distribution revenue that will result from the customer, multiplied by 10.

(e) One year after the regulated entity received the deposit, and each subsequent year thereafter, the regulated entity shall provide an annual refund to the applicant. The first annual refund shall be calculated in accordance with (f) below. Subsequent annual refunds shall be calculated under (g) below.

(f) The first annual refund shall be calculated by multiplying by 10 the difference between:

1. The distribution revenue from all customers that were served by the extension for the entire previous year; and

2. The estimated annual distribution revenue, upon which the original customer startup refund was based, for all customers that were served by the extension for the entire previous year. If the distribution revenue for the first year, determined under (f)1 above, was less than the

estimated annual distribution revenue (upon which the original customer startup refund amount was based), the regulated entity is not required to provide an annual refund.

(g) For each subsequent year, the annual refund shall be calculated as follows:

1. Sum the distribution revenue from all customers that were served by the extension for the entire previous year;
2. Determine the sum of:
 - i. The distribution revenue that was used in calculating the most recent annual refund provided to the applicant. This is the amount determined under (g)1 above when this subsection was applied to determine the most recent annual refund; and
 - ii. The original estimated annual revenue for all customers that were served by the extension for the

entire previous year, but whose revenues were not included in the calculation of the most recent annual refund that the regulated entity provided to the applicant;

3. Subtract (g)2 above from (g)1 above. If the (g)2 above is greater than (g)1 above, the regulated entity is not required to provide a refund; and

4. If (g)2 above is less than (g)1 above, multiply the difference derived under (g)3 above by 10 to determine the annual refund.

(h) In determining the revenue from a customer or set of customers for purposes of the suggested formula, the regulated entity may in its discretion use estimated or actual revenues, unless otherwise specified in this subchapter.

(i) See examples A1 and A2 below for an illustration of the use of the suggested formula for some sample multi-unit developments.

EXAMPLE A1

Suggested formula applied to a 10-unit residential development
Each year produces more revenue

	<u>When?</u>	<u>Action</u>	<u>Amount</u>
<u>Year one</u>	Before construction	Applicant provides deposit.	\$20,000.00
	First customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from first customer (\$430.00) by 10.	\$ 4,300.00
	After first customer's startup refund	Amount of deposit remaining with regulated entity.	\$15,700.00
	Second customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from second customer (\$500.00) by 10.	\$ 5,000.00
	After second customer's startup refund	Amount of deposit remaining with regulated entity.	\$10,700.00
<u>End of year one</u>	One year has passed since deposit was provided	Regulated entity gives applicant first annual refund, based on customers served for all of year one. Refund is calculated by multiplying by 10 the difference between: i. The actual distribution revenue from customer 1 (\$480.00); and ii. The original estimate of annual distribution revenue from customer 1 (\$430.00). This difference is \$50.00.	\$ 500.00
<u>Year two</u>	After first annual refund	Amount of deposit remaining with regulated entity.	\$10,200.00
	Third customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from third customer (\$400.00) by 10.	\$ 4,000.00
	After third customer startup refund	Amount of deposit remaining with regulated entity.	\$ 6,200.00
<u>End of year two</u>	Two years have passed since deposit was provided	Regulated entity gives applicant second annual refund, based on customers that were served for all of year two. Refund is calculated as follows: i. Sum the actual distribution revenue from customer 1 (\$520.00) and customer 2 (\$580.00). This results in a total of \$1,100; and ii. Determine the sum of: • The actual distribution revenue used in calculating the most recent annual refund (\$480.00); and • The original estimated annual revenue from customer 2 (\$500.00); • This results in a total of \$980.00; iii. Subtract ii above from i above, resulting in a difference of \$120.00; and iv. Multiply the difference derived under iii above by 10.	\$ 1,200.00
<u>Year three</u>	After second annual refund	Amount of deposit remaining with regulated entity	\$ 5,000.00
	Fourth customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from fourth customer (\$350.00) by 10.	\$ 3,500.00
	After fourth customer startup refund	Amount of deposit remaining with regulated entity	\$ 1,500.00

<u>End of year three</u>	Three years have passed since deposit was provided	<p>Regulated entity gives applicant third annual refund, based on customers that were served for all of year three. Refund is calculated as follows:</p> <ol style="list-style-type: none"> Sum the actual distribution revenue from customer 1 (\$550.00), customer 2 (\$610.00), and customer 3 (\$550.00). This results in a total of \$1,710; and Determine the sum of: <ul style="list-style-type: none"> The actual distribution revenue used in the calculation of the most recent annual refund (\$1,100); and The original estimated annual revenue from customer 3 (\$400.00); This results in a total of \$1,500; Subtract ii from i above, resulting in a difference of \$210.00; and Multiply the difference derived under iii above by 10, resulting in an annual refund of \$2,100. <p>Since \$2,100 exceeds the remaining deposit, the regulated entity gives the applicant the remainder of the deposit (\$1,500).</p> <p>Transaction is complete.</p>	\$ 1,500.00
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EXAMPLE A2

Suggested formula applied to a 10 unit residential development
Second year produces less revenue

	<u>When?</u>	<u>Action</u>	<u>Amount</u>
<u>Year one</u>	Before construction	Applicant provides deposit.	\$20,000.00
	First customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from first customer (\$430.00) by 10.	\$ 4,300.00
	After first customer's startup refund	Amount of deposit remaining with regulated entity.	\$15,700.00
	Second customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from second customer (\$500.00) by 10.	\$ 5,000.00
	After second customer's startup refund	Amount of deposit remaining with regulated entity.	\$10,700.00
<u>End of year one</u>	One year has passed since deposit was provided	<p>Regulated entity gives applicant first annual refund, based on customers served for all of year one. Refund is calculated by multiplying by 10 the difference between:</p> <ol style="list-style-type: none"> The actual distribution revenue from customer 1 (\$480.00); and The original estimate of annual distribution revenue from customer 1 (\$430.00). This difference is \$50.00. 	\$ 500.00
<u>Year two</u>	After first annual refund	Amount of deposit remaining with regulated entity.	\$10,200.00
	Third customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from third customer (\$400.00) by 10.	\$ 4,000.00
	After third customer startup refund	Amount of deposit remaining with regulated entity.	\$ 6,200.00

<u>End of year two</u>	Two years have passed since deposit was provided	Regulated entity gives applicant second annual refund, based on customers that were served for all of year two. Refund is calculated as follows: i. Sum the actual distribution revenue from customer 1 (\$520.00) and customer 2 (\$370.00). This results in a total of \$890.00; and ii. Determine the sum of: • The actual distribution revenue used in calculating the most recent annual refund (\$480.00); and • The original estimated annual revenue from customer 2 (\$500.00); • This results in a total of \$980.00; iii. Subtract ii above from i above, resulting in a difference of -\$90.00; and iv. Because -\$90.00 is less than 0, no refund is provided.	0.00
<u>Year three</u>	After second annual refund	Amount of deposit remaining with regulated entity	\$ 6,200.00
	Fourth customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from fourth customer (\$350.00) by 10.	\$ 3,500.00
	After fourth customer startup refund	Amount of deposit remaining with regulated entity	\$ 2,700.00
<u>End of year three</u>	Three years have passed since deposit was provided	Regulated entity gives applicant third annual refund, based on customers that were served for all of year three. Refund is calculated as follows: i. Sum the actual distribution revenue from customer 1 (\$550.00), customer 2 (\$610.00), and customer 3 (\$550.00). This results in a total of \$1,710; and ii. Determine the sum of: • The actual distribution revenue used in the calculation of the most recent annual refund (\$480.00); • The original estimated annual revenue from customer 2 (\$500.00) and customer 3 (\$400.00); • This results in a total of \$1,380; iii. Subtract ii from i above, resulting in a difference of \$330.00; and iv. Multiply the difference derived under iii above by 10, resulting in an annual refund of \$3,300. Since \$3,300 exceeds the remaining deposit, the regulated entity gives the applicant the remainder of the deposit (\$2,700). Transaction is complete.	\$ 2,700.00

14:3-8.11 Designated growth area suggested formula—single residential customer

(a) The requirements in this section apply in addition to the requirements of N.J.A.C. 14:3-8.9. This section addresses how Board staff will apply the suggested formula to the costs of an extension that meets the following criteria:

1. The extension will serve only a single residential customer;

2. The extension meets the criteria for serving a designated growth area at N.J.A.C. 14:3-8.7; and

3. The extension is not covered by a TRIP under N.J.A.C. 14:3-10.

(b) To determine the deposit required for an extension to serve a single residential customer subject to this section, the regulated entity shall:

1. Estimate the actual cost of the extension required to bring service to the customer from the nearest existing infrastructure;

2. Estimate the annual distribution revenue that will be derived from the customer, and multiply it by 10, to obtain estimated distribution revenue over a 10-year period; and

3. Subtract the estimated 10 year distribution revenue determined under (b)2 above from the estimated cost of the extension determined under (b)1 above. This is the amount of the deposit.

(c) One year after the customer begins receiving service, the regulated entity shall calculate the distribution revenue derived from the customer's first year of service. If the year one distribution revenue is less than the estimated annual distribution revenue that was used in (b)2 above to determine the deposit, the regulated entity is not required to provide a refund. If the year one distribution revenue exceeds the estimated annual distribution revenue, the regulated entity shall provide a refund to the applicant. The amount of the refund shall be the difference between the estimated and annual year one distribution revenues, multiplied by 10.

(d) Two years after the customer begins receiving service, the regulated entity shall calculate the distribution revenue

derived from the customer's second year of service. The regulated entity shall provide a refund to the applicant if the actual distribution revenue from the customer's most recent year of service exceeds the greater of the amounts in (d)1 and 2 below. The amount of the refund shall be 10 multiplied by the difference between the distribution revenue from the most recent year of service and the higher of the following:

1. The estimated annual distribution revenue, which was used as the basis for the initial deposit; or

2. The highest actual distribution revenue from any prior year.

(e) The process in (d) above shall be repeated annually until the earlier of the following:

1. The regulated entity has refunded the entire deposit to the applicant; or

2. Ten years have passed since the customer began receiving service.

(f) If, during the 10-year period after a single residential customer begins receiving service, additional customers connect to the extension, the regulated entity shall increase the initial customer's annual refund to reflect the additional revenue. In such a case, the regulated entity shall add to the initial customer's refund an amount 10 times the distribution revenue derived from the additional customers for that year. This additional distribution revenue shall include the following:

1. For a water main extension, amounts paid by a municipality for fire protection during the year; and

2. For a telecommunications extension, amounts earned or saved during the year through use of the extension to carry the regulated entity's toll circuits.

(g) See Example B below for an illustration of the use of the suggested formula for a single residential customer:

EXAMPLE B

Suggested formula applied to a single residential customer

<u>When?</u>	<u>Action</u>	<u>Amount</u>
Before construction	Applicant gives deposit, determined as follows, to regulated entity:	\$2,500.00
	1. Estimate total cost of extension (\$7,500.00);	
	2. Estimate annual distribution revenue (\$500.00);	
	3. Multiply annual distribution revenue by 10 (\$5,000.00); and	
	4. Subtract item 3 from item 1 to determine deposit.	

One year after Customer comes on line

If first year distribution revenue is less than estimated annual distribution revenue (\$500.00), no refund.

\$250.00

If first year distribution revenue (\$525.00) is more than estimated annual distribution revenue (\$500.00), regulated entity gives first refund to applicant. Refund is determined as follows:

1. Subtract estimated annual distribution revenue (\$500.00) from first year distribution revenue (\$525.00); and

2. Multiply item 1 (\$25.00) by 10 (\$250.00).

Amount of deposit remaining with regulated entity after first refund

\$2,250.00

Two years after customer comes online

If second year distribution revenue is less than first year revenue (\$525.00), no refund.

\$500.00

If second year distribution revenue (\$575.00) is more than the greater of either the first year distribution revenue (\$525.00), or the estimated annual distribution revenue used as the basis for the initial deposit computation (\$500.00) regulated entity gives second refund to applicant. Refund is determined as follows:

1. Subtract the greater of either the first year distribution revenue (\$525.00) or the estimated annual distribution revenue used as the basis for the initial deposit computation (\$500.00) from second year distribution revenue (\$575.00); and

2. Multiply item 1 (\$50.00) by 10 (\$500.00).

Amount of deposit remaining with regulated entity after second refund

\$1,750.00

Continue with this process each year, until 10 years has passed or deposit is completely refunded, whichever comes first.

Amended by R.2006 d.342, effective September 18, 2006.

See: 37 N.J.R. 4188(a), 38 N.J.R. 3908(a).

Rewrote (d); and in (g), rewrote "Example B".

14:3-8.12 Smart growth infrastructure investment program (SGIIP)

(a) This section sets forth the process to cover certain infrastructure investments under a smart growth infrastructure investment program (SGIIP). Under a SGIIP, the costs of infrastructure shall be governed by the same rules that apply to extensions serving designated growth areas at N.J.A.C. 14:3-8.7, except that the following shall apply:

1. The regulated entity may include the cost of necessary relocations, upgrades, and expansions of infrastructure, which are necessary to serve new customers, in the costs covered by the SGIIP; and

2. If the suggested formula is used, the regulated entity shall apply the expedited refund formula described at (c) below to the costs of an extension, as defined at N.J.A.C. 14:3-8.2, or a relocation, upgrade, or expansion of infrastructure, that meets the requirements at (c) below.

(b) A SGIIP area is any area in a municipality that is located in planning area 1, and for which the municipality has obtained appropriate formal endorsement from the State Planning Commission.

(c) In a SGIIP area, an extension serving development in the SGIIP area shall be covered in the same manner as an extension serving a designated growth area under N.J.A.C. 14:3-8.1 through 8.11, except that if the suggested formula is applied, the following differences shall apply:

1. The rate at which deposits are refunded to the applicant shall be 20 times annual distribution revenue, rather than 10 times; and

2. In determining the amount of a deposit under N.J.A.C. 14:3-8.11 for a single residential customer, the calculation at N.J.A.C. 14:3-8.11(b) shall multiply annual distribution revenue by 20 times rather than by 10 times; and

3. Any costs that a regulated entity charges to an applicant for the relocation, upgrade, or expansion of infrastructure to serve a development for which the regulated entity is also providing an extension shall be considered part of the deposit. The regulated entity shall refund such costs at a rate of 20 times annual distribution revenue as described in the suggested formulae at N.J.A.C. 14:3-8.10 and 8.11.

Amended by R.2006 d.342, effective September 18, 2006.

See: 37 N.J.R. 4188(a), 38 N.J.R. 3908(a).

In the introductory paragraph of (a), substituted "to cover" for "by which the Board may authorize coverage of".

14:3-8.13 Enforcement

Noncompliance with this subchapter shall subject the violator to penalties and other enforcement action in accordance with applicable law.

SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. TARGETED REVITALIZATION INCENTIVE PROGRAM (TRIP)

14:3-10.1 Purpose and scope, general provisions

(a) This subchapter establishes a Targeted Revitalization Incentive Program, or TRIP, which is a pilot program intended to remove infrastructure-related barriers to development in certain areas designated for growth. Under a TRIP,

the Board may, on a pilot basis, authorize a regulated entity to charge customers for the costs of installing certain infrastructure in a specific area in order to build the necessary capacity to serve planned and prospective development that is described in a municipal master plan, and is approved by the State Planning Commission in accordance with this section.

(b) The purpose of a TRIP is to remove barriers to development and redevelopment in targeted areas when that development is consistent with the State Development and Redevelopment Plan, and with local plans and zoning. By ensuring that infrastructure for development in targeted smart growth areas is in place, on time, at no cost to developers, TRIP will eliminate delays and expense that may otherwise prevent beneficial smart growth development.

(c) This subchapter does not apply to cable television operators, including telecommunications companies that have obtained a system-wide franchise from the Board in accordance with N.J.A.C. 14:18-14.

(d) The Board shall require frequent and detailed monitoring and reporting of construction and expenditures during all phases of the TRIP, in order to ensure prudent investment and compliance with this chapter.

(e) All petitions to the Board regarding TRIP activities shall be jointly submitted by the regulated entity and the municipality.

Amended by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

In (c), inserted ", including telecommunications companies that have obtained a system-wide franchise from the Board in accordance with N.J.A.C. 14:18-14"; and deleted (f).

14:3-10.2 "TRIP area" defined

(a) "TRIP area" means an area that meets one or more of the following criteria:

1. The area is within a Planning Area 1 and the municipality has received initial plan endorsement for the area from the State Planning Commission in accordance with N.J.A.C. 5:85-7.1; and

2. The area is within a Planning Area 2, 3, 4, or the municipality has received advanced plan endorsement for the area from the State Planning Commission in accordance with N.J.A.C. 5:85-7.1, and the Office of Smart Growth has recommended consideration of the area for a TRIP.

14:3-10.3 Investments eligible for coverage under a TRIP

(a) To be eligible for coverage under a TRIP, infrastructure shall be designed, constructed and used solely to serve one or more of the following:

1. Anticipated new customers located in a TRIP area;

2. A number of additional customers served in a TRIP area, resulting from an increase in the density of land use. For the purposes of this section, the density of land use shall be measured by the number or square footage of residential units, or by the square footage of non-residential space; or

3. Anticipated new customers located in both the TRIP area and also other areas. In such a case the TRIP shall cover investments only for the portion of the infrastructure that is necessary for and will be used to serve the TRIP area. This shall be calculated in accordance with N.J.A.C. 14:3-10.7.

(b) To be eligible for coverage under a TRIP, infrastructure shall, in addition to meeting the requirements of (a) above, meet both of the following criteria:

1. The investments shall reflect actual expenditures made by the regulated entity prior to the submittal of an annual TRIP adjustment petition pursuant to N.J.A.C. 14:3-10.5, to cover the investments; and

2. The investments shall be consistent with the utility infrastructure plan and one year work plan submitted under N.J.A.C. 14:3-10.4(b), as approved by the Board, or shall comply with N.J.A.C. 14:3-10.4(g)2.

(c) A regulated entity shall not recover the following costs through a TRIP:

1. Any construction, installation, replacement or rehabilitation of infrastructure that is necessary to provide safe, adequate and proper service to existing customers;

2. Any investment that does not reflect reasonable and prudent costs;

3. Rehabilitation of infrastructure that is fully depreciated and is near the end of its useful life;

4. Replacement of infrastructure that is fully depreciated and is near the end of its useful life, except in accordance with (d) through (f) below;

5. Costs incurred in connection with the retirement from service and the disposition of existing depreciated infrastructure including costs incurred for plant that is abandoned or retired in place;

6. Promotional expenses;

7. Costs incurred in order to comply with regulatory requirements, for example, legal fees, or costs for preparation of petitions and filings; or

8. Any investments in portions of the TRIP area where the municipality does not anticipate growth, as show in the municipal master plan and development plan or redevelopment plan.

(d) In accordance with (c)4 above, a portion of the cost of replacement infrastructure shall be eligible for recovery

through TRIP if it will be used to serve current customers and prospective customers in a TRIP area, in accordance with (e) below. If the replacement infrastructure is not needed to serve new customers envisioned by the endorsed plan and build out analysis submitted under N.J.A.C. 14:3-10.4(b), it shall not be recoverable through the TRIP charge. Replacement of infrastructure that will solely serve portions of the TRIP area where growth is not anticipated by the municipality shall not be eligible for recovery through the TRIP charge. In addition, the cost of replacing existing services and meters necessary to connect with the replacement infrastructure shall be included in the replacement costs in accordance with (e) below.

(e) If replacement infrastructure will be used to serve current customers and prospective customers in a TRIP area, a portion of the cost shall be eligible for recovery through TRIP. To determine the recoverable portion, the Board shall divide the capacity needs of the current customers by the capacity needs of both the current and anticipated new customers, and shall multiply that result by the total cost of the infrastructure. For example, if current gas customers will need 100 therms, anticipated new gas customers will need 200 therms, and the new pipe will deliver 1,000 therms, the total cost of the replacement pipe will be divided as follows: one-third to the regulated entity and two-thirds to the TRIP (recovery through the TRIP charge), not one-tenth to the regulated entity and nine-tenths to the TRIP charge. For the purpose of this subsection, the number and type of anticipated new customers shall be those envisioned by the endorsed plan and build out analysis submitted under N.J.A.C. 14:3-10.4(b).

(f) For the purposes of this subchapter, a class of infrastructure shall be considered fully depreciated at the point at which the composite depreciation rate for the class of infrastructure, multiplied by the number of years that the infrastructure has been in service, is greater than or equal to one. The composite depreciation rate for infrastructure shall be that determined by the Board in the regulated entity's most recent rate case.

(g) Infrastructure investments not covered by the TRIP shall be governed by the applicable provisions for extensions at N.J.A.C. 14:3-8.

Amended by R.2006 d.342, effective September 18, 2006.

See: 37 N.J.R. 4188(a), 38 N.J.R. 3908(a).

Rewrote (b)1 and (c)5.

14:3-10.4 Initial Board approval of a TRIP

(a) This section sets forth the process by which the Board may authorize, on a pilot basis, coverage of certain infrastructure costs under a Targeted Revitalization Incentive Program (TRIP). Under a TRIP, the Board may authorize a regulated entity to recover costs of infrastructure installed in a TRIP area through a TRIP charge approved under this subchapter.

(b) To obtain Board approval of a TRIP, a regulated entity and a municipality shall jointly apply to the Board and shall

present the following information in a format provided by the Board:

1. Evidence that the municipality has obtained the applicable designation or endorsement required for a TRIP area from the State Planning Commission;

2. A description of the planning areas in the municipality;

3. A copy of the current municipal master plan, zoning and relevant ordinances, any relevant development or redevelopment plans, and a build out analysis for the TRIP area, that describe exactly what new development the municipality is planning for in terms of new residential units or new square feet of commercial or industrial space;

4. A utility infrastructure plan, which may cover a period of time up to five years, describing all infrastructure the regulated entity estimates will be needed, including cost estimates;

5. A one-year work plan for the first year of the TRIP, which provides specificity and detail regarding the work the regulated entity intends to complete in the first year of the TRIP, including maps detailing where the work is to be done, and a breakdown of estimated costs;

6. A demonstration of how the work proposed in the utility infrastructure plan in (b)4 above is necessary to provide service to the development anticipated in (b)3 above; and

7. Any other information necessary to evaluate whether the petition submitted by a particular regulated entity and municipality complies with this subchapter.

(c) When submitting a petition for initial approval of a TRIP, a regulated entity shall comply with the notice requirements for petitions at N.J.A.C. 14:1-5.12.

(d) The Board shall provide notice of its receipt of the petition for initial approval of a TRIP on the Board's webpage at www.bpu.state.nj.us, and will make the petition available for public inspection.

(e) The Board shall approve a TRIP on a year-by-year basis. The Board's initial approval of the TRIP shall authorize the regulated entity to implement the construction detailed in the one-year work plan submitted under (b) above. Each year, the Board shall review the construction proposed for the following year and shall determine whether to approve it.

(f) Because the purpose of a TRIP is to provide data and case studies to guide the Board in future smart growth policy making, the Board may deny a petition for approval of a TRIP if the Board determines that it has sufficient data, that the TRIP is not likely to provide the information the Board needs, or that previously approved TRIP pilots are not successfully meeting their intended purpose.

(g) Once the Board has approved a TRIP pilot, the regulated entity shall begin infrastructure investments in accordance with the activities in the first one-year work plan, as approved by the Board under this section. If a developer or new customer requests service for a new development in the TRIP area during the time frame covered by the TRIP pilot, the regulated entity shall build the necessary infrastructure and shall not charge the applicant or require a deposit, provided that:

1. The development to be served is consistent with the municipal plans, zoning and ordinance submitted to the Board as part of the TRIP petition; and

2. The new infrastructure is consistent in timing and content with the one-year work plan for that year, which the Board approved under this section. If the infrastructure is included in the overall utility infrastructure plan described in (b) above, but was not submitted as part of the one-year work plan, the regulated entity shall build the necessary infrastructure without charge to the applicant and shall not require a deposit. The regulated entity shall include this cost as an additional cost in the annual TRIP adjustment petition, described in N.J.A.C. 14:3-10.5. The regulated entity shall maintain detailed records of expenditures on infrastructure constructed in the TRIP area.

14:3-10.5 Annual TRIP adjustment petition

(a) After eligible investments have begun, the regulated entity and the municipality shall submit an annual TRIP adjustment petition to the Board in a format provided by the Board and shall include the following types of information:

1. Detailed descriptions of all eligible investments and the development, existing and prospective, served by infrastructure constructed under the TRIP;

2. The amount of new utility service capacity provided by the investments;

3. A one-year work plan for all infrastructure construction planned for the forthcoming year under the TRIP, and the estimated cost of this infrastructure, consistent with N.J.A.C. 14:3-10.4(b)5;

4. Any changes in zoning laws, development or redevelopment plans, or other requirements relevant to development in the TRIP area, that have occurred since the TRIP was initially approved;

5. An accounting of the type and size of new development that is being served (housing, commercial, industrial, number of units, jobs, office space) in the TRIP area;

6. An update of the utility infrastructure plan submitted under N.J.A.C. 14:3-10.4(b), showing any changes necessitated by changes in development patterns, municipal plans or zoning, or any other causes. The updated utility infrastructure plan shall be consistent with all local plans and ordinances, and with the State Plan; and

7. The proposed TRIP charge, determined in accordance with N.J.A.C. 14:3-10.7, and detailed information demonstrating that the proposed TRIP charge meets the requirements at N.J.A.C. 14:3-10.7. Such information shall support the TRIP charge calculation with documentation, detailed financial analyses, and other relevant information showing all assumptions and calculations. All of this supporting financial information shall be presented in such a way as to allow the Board to evaluate whether the calculations meet all requirements of this subchapter.

(b) When submitting an annual TRIP adjustment petition, a regulated entity shall comply with the notice requirements for petitions at N.J.A.C. 14:1-5.12.

(c) The Board shall review each annual TRIP adjustment petition, and shall determine:

1. Whether the completed investments meet the requirements in this subchapter;
2. Whether the regulated entity's proposed TRIP charge meets the requirements at N.J.A.C. 14:3-10.7;
3. Whether the updated utility infrastructure plan remains consistent with all local plans and ordinances, with the State Plan, and with N.J.A.C. 14:3-10.1 through 10.5; and
4. Whether to approve an additional year of the TRIP.

(d) In determining whether to approve an additional year of the TRIP, the Board shall consider, at a minimum, the following:

1. Whether the regulated entity completed previously authorized TRIP investments in accordance with this subchapter, and if not, why not;
2. Whether, in light of local and regional economic and development trends, the planned and prospective development called for in the municipal plans continues to be prudent and likely, and therefore whether the regulated entity's planned infrastructure investments continue to be prudent; and
3. Whether the planned and prospective development continues to be consistent with the State Development and Redevelopment Plan and all applicable local plans and laws.

(e) The Board may condition participation in the TRIP for a subsequent year on modifications to the updated utility infrastructure plan and the proposed work plan for the upcoming year, to ensure consistency with this subchapter.

14:3-10.6 Termination of a TRIP

(a) The regulated entity shall stop assessing the TRIP charge at the earlier of the following:

1. When the infrastructure covered by the TRIP charge is fully depreciated; or

2. At the conclusion of the next rate case for the regulated entity.

(b) If at any time the Board determines that the municipal master plan or zoning and ordinances are no longer consistent with the State Plan or principles of smart growth, or if the State Planning Commission revokes the previously granted plan endorsement pursuant to N.J.A.C. 5:85-7.13, all activities under the TRIP shall stop within three months after the Board determination or the Commission's revocation, whichever is earlier.

(c) If the Board finds at any time that a regulated entity is not in compliance with the TRIP as approved, or if there is a material change in development patterns, economic trends, or other trends relevant to the prudence of the planned development to be served by infrastructure constructed under the TRIP, the Board may cancel the TRIP approval upon three months notice to the regulated entity.

(d) If a TRIP terminates under (b) or (c) above, the following shall apply, as applicable:

1. The regulated entity may continue to assess the TRIP charge for any investments made under the TRIP prior to the termination;
2. The regulated entity shall not use a TRIP charge to pay for any investments made after the TRIP is terminated; and
3. If an applicant requested an extension prior to the termination of the TRIP, which would have been covered under the TRIP, the regulated entity shall not require the applicant to provide a deposit for the extension, but may require the applicant to furnish a deposit for any additional work not requested prior to the termination of the TRIP.

(e) If the Board has not adopted a permanent TRIP to replace the pilot TRIP within five years after initial approval of a regulated entity's TRIP pilot, the regulated entity shall stop initiating infrastructure investments under the TRIP.

14:3-10.7 Calculating the TRIP charge

(a) When a regulated entity has submitted a TRIP adjustment petition in accordance with N.J.A.C. 14:3-10.5, the Board shall determine the amount of the TRIP charge in accordance with this section.

(b) The Board shall set the amount of a TRIP charge at a level that will provide the regulated entity with the following:

1. A return on eligible TRIP investments, offset by accumulated depreciation and accumulated deferred income taxes, and adjusted for taxes. The return shall be set at the rate for seven year constant maturity treasuries, as shown in the Federal Reserve Statistical Release published on or closest to August 31, plus 60 basis points; and

2. Recovery of depreciation expense on the eligible investments, calculated using the regulated entity's overall composite depreciation rate in effect for that class of assets.

(c) The TRIP charge shall be subject to the following limits:

1. The TRIP charge shall be calculated and assessed on a per unit of service basis. The TRIP charge per unit of service shall be the same for all applicable customers while the TRIP charge is in effect. For all regulated entities except for water utilities, applicable customers shall be those customers from which a regulated entity is authorized to assess the Societal Benefits Charge (SBC) in accordance with N.J.S.A. 48:3-60. For water utilities, applicable customers shall be all customers;

2. The TRIP charge shall not allow a regulated entity to earn in excess of its allowed return on common equity, as determined by the Board in the most recent base rate case for that regulated entity. Amounts not recoverable under this paragraph shall not be deferred;

3. The TRIP charge shall not be set at a level that results in a charge to residential customers that is greater than one percent of the average bill of a typical residential customer for that regulated entity; and

4. Any other limits or conditions necessary to ensure that the TRIP charge complies with (b) above.

(d) All TRIP charge calculations shall be supported as required under N.J.A.C. 14:3-10.5(a)7.

(e) The TRIP charge shall be calculated annually using the following formula:

$$\frac{(ERI-ADEP-ADIT) * ATCR * RAF + ERI * DEP + PP}{PT}$$

For the purposes of the above formula, the terms are defined as follows:

1. "TRIP charge" means the charge that the Board authorizes the regulated entity to assess from each applicable customer to pay for approved ERI, as defined at (e)2 below, made under the TRIP;

2. "ERI" means the total accumulated eligible revitalization investments that:

- i. Are eligible for TRIP coverage under N.J.A.C. 14:3-10.3;
- ii. Have accumulated from the beginning of the first investment year (see (e)3 below for a definition of investment year); and
- iii. Have been placed in service prior to the end of the most recent investment year;

3. "Investment year" means a period during which the regulated entity makes investments in infrastructure under the TRIP. The first investment year shall begin on the ef-

fective date of the initial Board order approving the TRIP, or on another date set forth in the Board order. The first investment year shall end one year later, or on a date specified by the Board. Each subsequent investment year shall run for one year, starting on the date after the end of the previous investment year;

4. "ADEP" means the total accumulated depreciation that the regulated entity has recovered through TRIP on the ERI. For example:

- i. For the first annual TRIP adjustment, the ADEP would be zero;
- ii. For the second annual TRIP adjustment, the ADEP would be (ERI made during the first investment year) x DEP (see (e)8 below for definition of DEP); and
- iii. For the third annual TRIP adjustment, the ADEP would be ((ERI made during the first Investment Year) x DEP) + (ERI made during the first and second Investment Years) x DEP;

5. "ADIT" means the total accumulated deferred income taxes, which are attributable to the difference between the regulated entity's book depreciation expense and the tax depreciation expense associated with ERI under the TRIP;

6. "ATCR" means the after tax cost rate, which shall be calculated by multiplying the return on ERI under the TRIP by (1 minus the income tax rate that applies to the regulated entity). The return shall be the rate for seven-year constant maturity treasuries, as shown in the Federal Reserve Statistical Release published on or closest to the August 31 immediately prior to the annual TRIP adjustment approval, plus 60 basis points. For example:

- i. If the return on ERI (that is, the rate for seven-year constant maturity treasuries) is five percent, and the Federal Income Tax Rate is 35 percent, and the Corporate Business Tax is nine percent, the ATCR will be 3.31 percent. This is calculated using the combined income tax rate of 40.85 percent $\{(0.09 * 1) + (0.35 * (1 - 0.09))\}$, using the above formula as follows $(5 \text{ percent} + .6 \text{ percent}) \times (1 - 40.85 \text{ percent})$;

7. "RAF" means the revenue adjustment factor that was set by the Board in the regulated entity's last rate case, updated for changes in taxes and assessments.

8. "DEP" means the depreciation rate applicable to ERI, as defined above. The DEP shall be the composite depreciation rate for each class of ERI, as determined by the Board in the regulated entity's most recent rate case;

9. "PP" means the amount over or under-recovered by the regulated entity through the TRIP charge during the prior recovery year;

10. "Recovery year" means the annual period beginning on a date set by the Board during the first TRIP charge

adjustment proceeding. Each subsequent recovery year shall run for one year, starting on the day after the end of the previous recovery year;

11. "PT" means the firm throughput to applicable customers, which is projected to occur during the next recovery year, in therms, kwh, or gallons; and

12. "Applicable customers" means those gas and electric customers from whom a regulated entity is authorized to assess the Societal Benefits Charge (SBC), and all water customers.

(f) The amount derived from the formula described above shall be rounded to the nearest 1/100th of a cent per unit of throughput in therms, kwh, or gallons.

Amended by R.2005 d.265, effective August 15, 2005.

See: 36 N.J.R. 5655(a), 37 N.J.R. 3046(b).

Rewrote (b)1, added (e) and (f).

Amended by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

In the undesignated paragraph following the formula in (e), deleted "following" preceding "terms"; and in (e)6i, inserted braces around $(0.09*1) + (0.35 * (1 - 0.09))$.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. UTILITY MANAGEMENT AUDITS

14:3-12.1 Applicability

This subchapter shall apply to all public utilities, as defined at N.J.A.C. 14:3-1.1.

Repeal and New Rule, R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Applicability".

14:3-12.2 Initiation of audit

(a) Where the Board determines that an audit of a utility is necessary or desirable, it shall order the audit to be performed and shall establish the objective, scope, and other factors it deems pertinent to said audit.

(b) The Board may require an audit to be performed by members of its staff or by an independent management consulting firm under the supervision of members of the Board's staff.

(c) The Board may require that a written agreement, setting forth all terms and conditions of the audit, be signed by authorized representatives of the utility and the selected consulting firm.

Amended by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Inserted designation (a); and added (b) and (c).

14:3-12.3 Results of audit

Upon completion and review of an audit, the Board's staff shall permit the utility to review its findings of said audit and to provide written comments which shall be incorporated into the results filed with the Board.

Recodified from N.J.A.C. 14:3-12.4 by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Former N.J.A.C. 14:3-12.3, Performance of audit, was repealed.

14:3-12.4 Implementation of results

(a) The utility may adopt, or the Board may order, the implementation of new or altered practices and procedures, as determined by the results of the audit.

(b) The Board's staff shall formulate, with the assistance of the utility, detailed plans to implement new or altered practices and procedures.

(c) The Board's staff shall monitor, evaluate and modify, as necessary, the implementation of new or altered practices and procedures to ensure the promotion of efficient and adequate service to meet the public convenience and necessity.

Recodified from N.J.A.C. 14:3-12.5 by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Former N.J.A.C. 14:3-12.4, Results of audit, recodified to N.J.A.C. 14:3-12.3.

14:3-12.5 (Reserved)

Recodified to N.J.A.C. 14:3-12.4 by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Implementation of results".

SUBCHAPTER 13. INTEREST ON OVER OR UNDER RECOVERED COST BALANCES UNDER ADJUSTMENT CLAUSES

14:3-13.1 Scope

(a) This subchapter provides for a gas, water, or wastewater public utility to pay interest to customers on over/under-recovered gas, water, or wastewater cost balances, as these terms are defined at N.J.A.C. 14:3-13.2, which result from the operation of the following:

1. Periodic Basic Gas Supply Service (BGSS) pricing clauses;
2. Purchased Water Adjustment Clauses; and
3. Purchased Wastewater Treatment Adjustment Clauses.

(b) As part of each Board proceeding during which one or more periodic Basic Gas Supply Service (BGSS) charges is set, the gas utility shall submit a calculation demonstrating

how much interest, if any, the utility owes to customers in accordance with this subchapter.

(c) As part of the year-end true up schedule required under N.J.A.C. 14:9-7.4, a water or wastewater utility shall submit a calculation demonstrating how much interest, if any, the utility owes to customers in accordance with this subchapter.

Amended by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Inserted designation (a); rewrote (a); and added (b) and (c).

14:3-13.2 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. 14:3-1.1 and 14:4-1.2.

“Base cost of purchased wastewater treatment” has the same meaning as is assigned to this term at N.J.A.C. 14:9-7.2.

“Base cost of purchased water” has the same meaning as defined in N.J.A.C. 14:9-7.2.

“Over/under-recovered gas cost balance” means the amount that a gas utility has recovered from customers through basic gas supply service (BGSS) charges to date, less the net prudently incurred costs that the Board has determined are recoverable through BGSS charges to date. If the recoveries through BGSS charges to date exceed the utility’s net gas costs to date, the amount of excess is the utility’s over-recovered gas cost balance. If the utility’s gas costs to date exceed the utility’s net recoveries through BGSS charges to date, the amount of excess is the under-recovered gas cost balance.

“Periodic Basic Gas Supply Service charge” or “periodic BGSS charge” means a charge that the Board authorizes a gas utility to collect from all of its periodic BGSS customers, which is designed to enable the utility to recover the net cost of natural gas, or a substitute or supplemental fuel, that the utility has sold to customers.

“Periodic BGSS customer” means a customer who receives gas service under a periodic BGSS tariff.

“Periodic BGSS pricing clause” means the mechanism through which the Board authorizes a gas utility to adjust its periodic BGSS charge. These adjustments are made with the goal of achieving a zero over/under recovered gas cost balance by a specific date. The parameters for periodic BGSS pricing clauses are governed by various Board Orders including, but not limited to, the Board’s Order in Docket Number GX01050304, dated January 6, 2003.

“Purchased Wastewater Treatment Adjustment Clause” or “PWTAC” has the same meaning as defined in N.J.A.C. 14:9-7.2.

“Purchased Water Adjustment Clause” or “PWAC” shall have the same meaning as defined in N.J.A.C. 14:9-7.2.

Amended by R.2002 d.280, effective September 16, 2002.

See: 34 N.J.R. 992(a), 34 N.J.R. 3216(b).

In “Base cost of purchased sewerage treatment”, rewrote the first sentence; in “Deferred accounting treatment” and “Purchased Sewerage Adjustment Clause”, substituted “wastewater” for “sewer”.

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

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

Rewrote definitions “Base cost of purchased sewerage treatment”, “Base cost of purchased water” and “Deferred accounting”; deleted first occurrence of definition “Purchased Sewerage Treatment Adjustment Clause”; substituted definition “Purchased Wastewater Treatment Adjustment Clause” for second occurrence of “Purchased Sewerage Treatment Adjustment Clause”; and added definition “Purchased Water Adjustment Clause”.

Amended by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

In the introductory paragraph, substituted a period for a colon at the end of the first sentence and added the last sentence; deleted definitions “Applicable period”, “Base cost of energy”, “Base cost of gas”, “Deferred accounting”, “Deferred balance”, “Levelized Energy Adjustment Clause” and “Levelized Gas Adjustment Clause” or “LGAC”; substituted definition “Base cost of purchased wastewater treatment” for “Base cost of purchased sewerage treatment” and substituted “is assigned to this term at” for “the term ‘base cost of purchased wastewater treatment,’ as defined in”; added definitions “Over/under-recovered gas cost balance”, “Periodic Basic Gas Supply Service charge”, “Periodic BGSS customer” and “Periodic BGSS pricing clause”; and in definition “Purchased Wastewater Treatment Adjustment Clause” deleted “the term ‘purchased wastewater treatment adjustment clause,’ as” preceding “defined”.

Case Notes

A constant levelized energy adjustment clause (LEAC) charge, which is included in an electric utility’s overall rate tariff based on estimated prospective 12-month energy costs, is subject to periodic adjustment to reflect actual costs. *Petition of Atlantic City Elec. Co.*, 310 N.J.Super. 357, 708 A.2d 775 (A.D. 1998).

14:3-13.3 Interest calculation on over or under recoveries

(a) Each utility shall determine whether it owes interest to customers on excess funds recovered through adjustment clauses, and shall calculate any interest owed, in accordance with this subchapter. In no event shall interest be due to the utility as a result of a BGSS pricing clause, a purchased water adjustment clause, or a purchased wastewater treatment adjustment clause.

(b) The calculation of the amount of interest owed to customers, if any, shall cover the “applicable period,” which shall be the 12-month period under review in the clause proceeding, unless otherwise specified by the Board.

(c) A gas utility, or a Class A water utility, or a wastewater utility that meets the revenue threshold for a Class A water utility, shall calculate the interest due to customers as follows:

1. Determine the interest rate to be used in the calculation as follows:

i. Divide the utility's Board-approved overall rate of return, in effect at the time of the calculation, by 12; and

ii. Round the amount derived under (c)1i above to four decimal places; and

2. Apply the interest rate in (c)1 above to calculate the interest due to customers in accordance with the applicable requirements at (d) or (e) below.

(d) A gas utility shall:

1. Determine the interest rate for each month of the applicable period in accordance with (c)1 above;

2. Multiply the rate determined under (d)1 above by the average over/under-recovered gas cost balance for the month; and

3. At the end of the applicable period, add together the monthly amounts calculated under (d)2 above.

(e) A Class A water utility, or wastewater treatment utility that meets the revenue threshold for a Class A water utility, shall:

1. If the utility bills customers monthly, the utility shall calculate the interest in the same manner as gas utilities under (d) above, utilizing the over-recovery amount determined under N.J.A.C. 14:9-7.4, rather than the over-recovered gas cost balance; or

2. If the utility bills customers quarterly, the utility shall, at the end of the applicable period, do the following:

i. Multiply the over-recovery amount determined under N.J.A.C. 14:9-7.4 by the interest rate determined in (c)1 above; and

ii. Multiply the amount determined under (e)2i above by the number of months in the applicable period.

(f) A Class B, C, or D water utility, or a wastewater utility that does not meet the revenue threshold for a Class A water utility, shall:

1. Multiply the over-recovery amount determined under N.J.A.C. 14:9-7.4 by the interest rate determined in (c)1 above;

2. Multiply the amount determined under (f)1 above by the number of months in the applicable period; and

3. Round this amount to four decimal places.

(g) If the amount resulting from the calculations at (d), (e), or (f) above is zero or a negative number, the utility shall not owe interest to customers for the applicable period. If the amount is a positive number, this is the amount of interest that is due to customers.

(h) Any interest due to customers from a water or wastewater utility shall be credited or refunded to customers in accordance with N.J.A.C. 14:9-7.4.

(i) Any interest due to customers from a gas utility shall be added to the utility's over/under-recovered cost balance. The sum of the interest and the over/under-recovered cost balance shall be incorporated into the calculations of the BGSS rate for the next applicable period.

Amended by R.2002 d.280, effective September 16, 2002.

See: 34 N.J.R. 992(a), 34 N.J.R. 3216(b).

Rewrote the section.

Repeal and New Rule, R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Interest rate".

14:3-13.4 (Reserved)

Repealed by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Interest calculation".

14:3-13.5 (Reserved)

Repealed by R.2008 d.119, effective May 19, 2008.

See: 39 N.J.R. 4077(b), 40 N.J.R. 2481(a).

Section was "Tariff language requirement".