

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

“Regulated entity” means a person or entity that is subject to the jurisdiction of the Board, or that provides a product or service subject to the jurisdiction of the Board. This term includes a utility, as defined in this section.

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

“Utility” has the same meaning as defined in N.J.S.A. 48:2-13 and includes pipeline utilities as defined in N.J.S.A. 48:10-3, and municipally-operated utilities, insofar as the Board’s jurisdiction is extended to them under the appropriate statutes.

Amended by R.1997 d.264, effective July 7, 1997.
 See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).
 Amended “Board” and “Commissioner”.
 Amended by R.2005 d.424, effective December 5, 2005.
 See: 37 N.J.R. 2837(a), 37 N.J.R. 4558(b).
 Added definitions “Regulated entity” and “Utility.”
 Amended by R.2006 d.354, effective October 2, 2006.
 See: 37 N.J.R. 3621(a), 38 N.J.R. 4236(c).
 Added definition “Person”.

14:1-1.4 Offices and hours

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

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

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

Amended by R.1997 d.264, effective July 7, 1997.
 See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).
 Recodified in part from 14:1-1.5 and amended by R.2008 d.79, effective April 7, 2008.
 See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).
 Section was “Offices”. Inserted designation (a).

14:1-1.5 Requesting Board action on a complaint

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

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

(c) An informal complaint or filing, requesting Board action without a formal Board proceeding may be made by

letter, telephone call, e-mail, fax or other writing, in accordance with N.J.A.C. 14:1-5.13.

Amended by R.1997 d.264, effective July 7, 1997.
 See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).
 In (b), inserted “State recognized”.
 New Rule, R.2008 d.79, effective April 7, 2008.
 See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).
 Former 14:1-1.5, Hours, recodified to 14:1-1.4.

14:1-1.6 Communications

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

(b) All communications, except for comments on rule proposals, or other communications specifically exempted by rule, or by waiver, pursuant to N.J.A.C. 14:1-1.2(b), shall be deemed to be officially received when delivered at the office of the Board, but a Commissioner or the Secretary or an Assistant Secretary of the Board may in his or her discretion receive papers and correspondence for filing. Comments on rule proposals shall be deemed to be officially received in accordance with N.J.A.C. 14:1-1.6A.

(c) In a formal proceeding, a document submitted via fax or electronically will neither be date/time stamped as formally received by the Board nor be entered into the case or rulemaking record, except as provided under N.J.A.C. 14:1-1.6A. Such documents shall only be distributed to the addressee.

Amended by R.1997 d.264, effective July 7, 1997.
 See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).
 In (a), inserted “formal” preceding “pleadings”, substituted “shall be addressed” for “should be addressed”, and amended Board name and address; and added (c).
 Amended by R.2006 d.354, effective October 2, 2006.
 See: 37 N.J.R. 3621(a), 38 N.J.R. 4236(c).
 In (a), inserted “communications, including”; and rewrote (b) and (c).
 Amended by R.2008 d.79, effective April 7, 2008.
 See: 39 N.J.R. 4551(a), 40 N.J.R. 1917(a).
 In (c), substituted “In a formal proceeding,” for “If the Board receives” and “or electronically” for “, the document”, and inserted “submitted” and “, except as provided under N.J.A.C. 14:1-1.6A”.

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

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

(b) (Reserved.)

(c) Comments on rule proposals shall be submitted by e-mail, hand delivery, or regular mail, on or before the date identified in the rule proposal published in the New Jersey Register.

(d) Comments submitted by e-mail shall be sent to the e-mail address specified in the rule proposal. E-mail comments shall be submitted in Microsoft Word format, or in PDF format with searchable text and cut and paste capability.

(e) Rule proposal comments shall not be subject to the requirements for number of copies at N.J.A.C. 14:1-4.2. If rule proposal comments are submitted by hand delivery or regular mail, the Board requests, but does not require, that the commenter submit an original and five copies of the comments.

(f) The date upon which a comment on a rule proposal shall be deemed received shall be as follows:

1. The date upon which the Board receives the comment at the e-mail address set forth in the published proposal.
2. The date upon which the comment is hand delivered to Board offices, to a Commissioner, or to the Secretary; or
3. The date upon which a comment sent by regular mail to Board offices is postmarked, in accordance with N.J.A.C. 1:30-5.4(d).

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

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

14:1-1.7 Official records

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

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

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

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

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

14:1-1.8 Cameras and recording devices

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

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

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

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

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

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

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

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

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

SUBCHAPTER 2. FEES AND CHARGES

14:1-2.1 Amount of fees and charges

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

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

Added second sentence.

14:1-2.2 Payment of fees and charges

(a) No petition, report, notice, document, or other paper will be accepted for filing, and no request for copies of any

forms, pamphlets, documents or other papers will be granted, nor action taken by the Board, unless such filings and requests are accompanied by the required fees or charges as provided by law.

(b) All checks for payment of such fees and charges shall be made payable to the order of “Treasurer, State of New Jersey” and delivered or mailed to the Secretary of the Board or its designee, Two Gateway Center, Newark, New Jersey 07102. The check shall include a description as to the nature of the payment.

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

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

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

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

In (b), inserted “or its designee” and inserted the last sentence.

SUBCHAPTER 3. APPEARANCE BEFORE THE BOARD

14:1-3.1 Appearances

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

14:1-3.2 Ethical conduct

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

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

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

14:1-3.3 Former employees

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

SUBCHAPTER 4. PLEADINGS

14:1-4.1 Pleadings enumerated and defined

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

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

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

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

14:1-4.2 Number of copies

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

(b) Where a pleading originating a proceeding is filed by a party other than a utility or other regulated entity subject to the jurisdiction of the Board, one additional conformed copy shall be filed for each respondent named therein for service by the Secretary in accordance with the provisions of N.J.A.C. 14:1-4.5.

Amended by R.2005 d.424, effective December 5, 2005.

See: 37 N.J.R. 2837(a), 37 N.J.R. 4558(b).

In (b), added “or other regulated entity” following “utility.”

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

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

In (a), inserted “, and in addition an electronic version of each filing, proceeding or other paper and amendment thereof”.

Case Notes

Parties in certificate proceedings identified as petitioners, objectors or intervenors; competitors did not have right to intervene; no requirement for showing or finding that existing service inadequate. In re: Application for Certificate of Public Convenience and Necessity, 134 N.J.Super. 500, 342 A.2d 219 (App.Div.1975).

14:1-4.3 Attachments to pleadings

All balance sheets, income statements and journal entries submitted with pleadings must conform to the applicable Uniform System of Accounts.

Case Notes

Persons opposing petitions classified as objection unless granted permission to intervene; competitors did not have right to intervene; no requirement for showing or finding that existing service inadequate. In re: Application for Certificate of Public Convenience and Necessity, 134 N.J.Super. 500, 342 A.2d 219 (App.Div.1975).

14:1-4.4 Defective pleadings

Pleadings will be liberally construed with the view to effect justice. The Board may disregard errors or defects in pleadings which do not affect the substantial rights of the parties. However, if the defect in a pleading prejudices a substantial right of any party the Board may, on notice, strike the pleading or take such other action as it deems appropriate.

14:1-4.5 Service and notice of proceedings

(a) Unless otherwise provided for by statute or in these rules or unless otherwise ordered or permitted by the Board, the following provisions shall govern:

1. A petition filed on behalf of a public utility or other regulated entity shall be served by such utility or other regulated entity or its agent or attorney upon each respondent named in such petition;
2. A petition originating a proceeding filed by a party other than a public utility or other regulated entity shall be served by the Secretary of the Board upon each respondent named in such petition.
 - i. Each utility or other regulated entity shall furnish to the Secretary of the Board and keep current the name, title, street address, telephone number and e-mail address of the person responsible for receiving service of petitions on its behalf;
3. Every other pleading, including all answers, replies, notices, briefs and other papers, shall be served by the party filing the same, whether a utility or other regulated entity or not, on all other parties of record concurrently with or prior to the filing thereof; and
4. Whenever public notice is required, the same shall be at the expense of the party directed to give such notice.

Amended by R.2005 d.424, effective December 5, 2005.
See: 37 N.J.R. 2837(a), 37 N.J.R. 4558(b).

In (a), added "or other regulated entity" following "utility" throughout; added (a)2i.

Case Notes

Ex parte relief denied; order of Board and Department of Environmental Protection redirecting solid waste to local landfill for 180 days founded on sufficient credible competent evidence, and was not arbitrary, capricious or unreasonable. In re: New Jersey Bd. of Public Utilities, 200 N.J.Super. 544, 491 A.2d 1295 (App.Div.1985).

Utility must provide notice of application and hearings; notice requirements equally applicable to decision to activate suspended rates; discussion of rate proposal process. In re: Revision of Rates by Toms River Water Co., 82 N.J. 201, 412 A.2d 430 (1980).

Notice compliance noted; determination of complex petition for electric and gas rate increases. In re: Public Service Electric & Gas Co., 6 N.J.A.R. 633 (1981).

Review of Certificate issuance and intervention permitted by competitor due to failure to serve copy of certificate petition on competitor; approval and disapproval of routes; penalty for operation of route in violation of Department order. In re: Camptown, Inc., 6 N.J.A.R. 285 (1982).

For required hearing on proposed increase in the Levelized Energy Adjustment Clause, 20 days public notice must be given. In re: Rockland Electric Co., 4 N.J.A.R. 365 (1982).

Notice compliance noted; determination of reasonable rate increase. In re: Pacio Disposal, 4 N.J.A.R. 44 (1981).

Notice compliance noted; rate increase denied; revised tariff ordered reflecting judge's findings as to operating expenses, rate base and rate of return, and time schedule for completion of capital improvements. In re: Califon Water Co., 1 N.J.A.R. 414 (1980).

14:1-4.6 Verification

All pleadings initiating a proceeding or otherwise seeking affirmative relief shall be verified except for those matters brought upon the Board's own motion or the motion of the Attorney General of the State of New Jersey.

14:1-4.7 Changes in facts or circumstances

(a) Whenever, subsequent to the date of a pleading, there is any significant change in respect to matter contained in such pleading, the party who filed the pleading shall promptly file an amendment showing or explaining the changed facts or circumstances.

(b) The filing of such amendment shall be considered a new filing as of the date of its filing unless otherwise ordered or permitted by the Board.

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

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

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

14:1-12.5 Correspondence, inquiries and notices

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

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

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

Records Custodian
New Jersey Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

14:1-12.6 Time for making confidentiality determinations

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

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

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

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

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

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

14:1-12.7 Notice of pending confidentiality determination

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

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

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

14:1-12.8 Substantiation of confidentiality

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

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

case adjudications, press releases, copies of speeches, pamphlets and educational materials;

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

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

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

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

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

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

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

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

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

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

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

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

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

14:1-12.9 Final confidentiality determination

(a) If, after review of all the information submitted pursuant to this subchapter, the custodian determines that the

asserted confidential information is not confidential information, the custodian shall as quickly as feasible:

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

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

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

1. The date on which the disclosure was made;

2. The name of the agency or other person to which the custodian disclosed the information that was claimed confidential;

3. A brief description of the information disclosed;

4. The basis for the determination; and

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

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

1. Treat such information as confidential;

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

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

(d) The custodian's determination under this section shall constitute final agency action.

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

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

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

14:1-12.10 Treatment of information pending confidentiality determination

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

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

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